Please use this PDF as a supplemental resource.
You may use it to prompt AI for further information to assist with your preparation of the PSR.

THE PRESENTENCE INVESTIGATION REPORT

Publication 107
Office of Probation and Pretrial Services
Administrative Office of the United States Courts
(Rev. March 2006)

Table of Contents

Introduction i

Chapter I - The Presentence Investigation Report in the Federal System I-1
- Philosophy I-1
- Functions and Objectives I-1
- Statutory Authority and Requirements I-2
- Types of Investigations and Reports I-4
- Supporting the Presentence Process I-7

Chapter II - The Presentence Investigation II-1
- Managing the Investigation II-1
- Pre-Interview Activities II-1
- The Presentence Interview II-2
  - Personal History and Characteristics II-2
  - Physical Condition II-5
  - Mental and Emotional Health II-6
  - Substance Abuse II-8
  - Educational, Vocational, and Special Skills II-9
  - Employment II-9
  - Financial Condition: Ability to Pay II-11
  - Urinalysis II-15
  - Home Investigation and Collateral Contacts II-15
- Documents and Verification of Information II-17
  - The Uncooperative Party II-18
- Collateral Investigation Requests II-18
- Investigating the Instant Offense II-21
  - Interview with the AUSA/Case Agent II-21
  - Interview with the Defense Counsel II-22
- Victim Impact Statements II-23
  - Interviewing the Victim II-24
  - Child Victims II-25
- Pretrial Adjustment II-25
- The Defendant's Criminal History II-26

Chapter III - The Presentence Report for an Individual Defendant III-1
- Introduction III-1
- Style and Composition III-1
- Standard of Proof III-2
- Format and Content III-4
- The Face Sheet III-4
- Part A. The Offense III-7

Charge(s) and Conviction(s) III-7
Plea Agreements and Stipulations III-8
Pretrial Adjustment III-10
The Offense Conduct III-10
Victim Impact III-11
Obstruction of Justice III-13
Acceptance of Responsibility III-14
Offense Level Computation III-14
Offense Behavior Not Part of Relevant Conduct III-16
Information Covered by U.S.S.G. §1B1.8 . . . . . III-17

Part B. The Defendant's Criminal History III-17
Uncounseled Convictions III-19
Sealed and Expunged Records III-20
Juvenile Adjudications III-20
Criminal Convictions III-21
Criminal History Computation III-21
Other Criminal Conduct III-22
Pending Charges III-23
Other Arrests III-24

Part C. Offender Characteristics III-24
Personal and Family Data III-25
Physical Condition III-26
Mental and Emotional Health III-26
Substance Abuse III-27
Education and Vocational Skills III-27
Employment III-28
Financial Condition: Ability To Pay III-29

Part D. Sentencing Options III-31
Custody III-32
Impact of the Plea Agreement III-33
Supervised Release III-34
Probation III-36
Fines III-39
Restitution III-40
Denial of Federal Benefits III-41

Sentences Outside of the Guideline Range III-41
Part E. Factors That May Warrant Departure III-41
Guided and Unguided Departures III-43
Part F. Factors That May Warrant a Sentence Outside of the Advisory Guidelines System III-44

Chapter IV - Disclosure and the Addendum Process IV-1
Disclosure of the Presentence Report IV-1
Information Potentially Exempt From Disclosure IV-1
The Probation Officer's Role in Dispute Resolution IV-2
The Addendum IV-3
Sentencing Factors Germaine to Inmate Classification and Designation IV-4

Chapter V - Sentencing Recommendation and Justification V-1
Choosing Among the Kinds of Sentences Available V-5
Custody V-5
Supervision V-7
Criminal Monetary Penalties V-10
Writing the Sentencing Recommendation V-13
Voluntary Surrender V-14
Mandatory Detention V-14
Model Sentencing Language V-16
Statement of Reasons V-16

Chapter VI - Court-Ordered Corrections, Confidentiality, and Other Postsentence Issues VI-1
Court-Ordered Corrections VI-1
Statement of Reasons VI-1
Confidentiality: Disclosure of the Report to Third Parties and Outside Agencies VI-3

Appendix A - Sample Standard Guideline Presentence Reports A-1
Appendix B - Non-Guideline Misdemeanor Presentence Reports B-1
Appendix C - Modified Presentence Investigation Reports C-1
Appendix D - Supplemental Reports tot he Bureau of Prisons and Treaty Transfer Postsentence Reports D-1
Appendix E - Presentence Report for an Organizational Defendant E-1
Appendix F - Model Sentencing Language F-1

Introduction

Selection of an appropriate sentence is one of the most important decisions to be made in the criminal justice system. The primary vehicle to assist the sentencing court in fulfilling this responsibility is the presentence investigation report. The task of conducting presentence investigations is assigned to U.S. probation officers, an assignment requiring a professional presentence report of the highest quality. This document is a guide for U.S. probation officers in the preparation of presentence reports. It provides a uniform format for presentence reports throughout the Federal judiciary.

In 1943 the Administrative Office of the United States Courts issued Publication 101, *The Presentence Investigation Report*, which was revised in 1965 as Publication 103. In 1974 Publication 104, *The Selective Presentence Investigation Report*, was produced. Those publications were prepared by committees of special consultants under the guidance of the Judicial Conference Committee on the Administration of the Probation System and represented state-of-the-art professional judgment regarding the critical contents of the presentence report. Subsequent developments in statutory and case law redefined the contents and use of the report, leading to development of the 1978 monograph entitled Publication 105, *The Presentence Investigation Report*, subsequently updated in 1984.

In November 1987, the Sentencing Reform Act of 1984 became effective, radically changing the philosophical model for sentencing offenders in the Federal courts. Congress relinquished an indeterminate model of sentencing and adopted a determinate model based upon national guidelines. Radical changes in the content and format of the presentence report were necessary to accommodate the new sentencing process. In September 1987, Publication 107, *Presentence Investigation Reports Under the Sentencing Reform Act of 1984*, was issued setting forth the revised format of the presentence report. In 1990, after four years of guideline sentencing experience, the new presentence report format was evaluated and revisions to Publication 107 were issued.

In January 2005, the Supreme Court ruled in *United States v. Booker*,125 S.Ct. 738 (2005), that the mandatory nature of the sentencing guidelines subjected them to the jury trial requirements of the Sixth Amendment of the Constitution. The Court further held that since it was not Congress's intent to have sentencing facts decided by juries, the appropriate remedy was to strike those provisions of the Sentencing Reform Act of 1984 that made the sentencing guidelines mandatory. The result was a system in which the sentencing courts are required to consider the sentencing options recommended by the sentencing guidelines, but judges are free to impose any sentence authorized by Congress.

This document offers guidance to officers working in a post-*Booker* sentencing system. It relies upon the judgment and years of experience of those who produce or work with the presentence report on a daily basis. The guidance offered in this document supports the goals of assisting judicial officers in making sentencing decisions and assisting corrections and community corrections officials in supervising offenders.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
6

Chapter I - The Presentence Investigation Report in the Federal System

Philosophy

As a component of the federal judiciary responsible for community corrections, the Federal Probation and Pretrial Services System is fundamentally committed to providing protection to the public and assisting in the fair administration of justice.

As community corrections professionals, probation officers preparing presentence reports possess and use skills from various disciplines to investigate relevant facts about defendants; assess those facts in light of the purposes of sentencing; apply the appropriate guidelines, statutes, and rules to the available facts; and provide clear, concise, and objective reports that will assist the sentencing judges in determining appropriate sentences, aid the Bureau of Prisons in making classification, designation and programming decisions, and assist the probation officer during supervision of the offender in the community.

The probation officer's role as the court's independent investigator is critical, although the scope of any investigation may be modified by the court. Officers should be open to receiving information from all parties, but should be cautious about adopting any party's interpretation outright. It is the probation officer's responsibility to prepare all sections of the presentence report, including the tentative advisory guideline range. Attorneys for opposing sides may aggressively contest the accuracy of facts contained in the presentence report or application of the guidelines to those facts. Officers should be prepared to respond to these situations professionally by having all supporting documentation readily at hand. Throughout the investigation, the officer treats the defendant, the attorneys, and others with whom they are in contact with dignity and respect.

Functions and Objectives

The aim of the presentence investigation is to provide a timely, accurate, objective, and comprehensive report to the court. The report should have enough information to assist the court in making a fair sentencing decision and to assist corrections and community corrections officials in managing offenders under their supervision.

Officers must operate under the time frames established in the Federal Rules of Criminal Procedure or under local rules established by the court. As such, once a defendant has been referred to the probation office, the presentence investigation commences without delay. Officers should attempt to interview defendants early in the investigation so that there is sufficient time to verify and analyze information and disclose the report. Timely disclosure gives the parties an opportunity to review the report for accuracy and identify potential errors before sentencing. Effectively managing the investigation will ensure that delays are avoided and resources conserved. Early contact with the attorneys helps ensure that deadlines can be met.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
7

While time is limited, officers must endeavor to produce a quality report for the court. All relevant aspects of the defendant's personal history and background should be explored. In some cases, however -- such as those involving defendants with no ties to the country, or at the court's direction -- the scope of the investigation may be curtailed. While certain investigative steps, like the personal interview, are essential to preparing a quality report, other tasks may not be necessary in certain circumstances. Officers need to be able to identify when more comprehensive investigations are needed, and manage the investigation accordingly.

The presentence report will follow the defendant through his or her contacts in the federal criminal justice system. Many decisions -- from the sentence imposed, to the type of prison -- are made based on information presented in the report. Officers should take great care in what they include in the reports, clearly distinguishing among information that is verified, corroborated, or alleged. Every effort should be made to provide the court with reliable information, since inaccurate information that is relied on by the court or others may lead to unfair or unintended results.

The report is designed to provide the court with a complete and concise picture of the defendant. Recognizing that each defendant is unique, officers should strive to remain objective. During the investigation, the officer should give all parties an opportunity to submit relevant information. When drafting the report, the officer should avoid using subjective language or labels that may mean different things to different audiences. Officers appearing in court should maintain their independence, and avoid the appearance of favoring one party over another. While *in camera* discussions with the court are encouraged, officers should not use that time to provide factual information to the judge that was otherwise excluded from the report (unless the information was excluded pursuant to the Federal Rules of Criminal Procedure). The officer's objectivity and professionalism during the presentence and sentencing phases promote the fair treatment of the defendant, and may instill in the defendant the desire to cooperate with corrections and community corrections officials in the later phases of the federal criminal justice system.

The purposes and goals of the presentence investigation are established by various statutes and rules, and by the values and principles established for the Federal Probation and Pretrial Services System.

Statutory Authority and Requirements

Rule 32 of the Federal Rules of Criminal Procedure provides that the probation officer shall conduct a presentence investigation and submit a report to the court at least seven days before the imposition of sentence, unless the court finds that there is sufficient information in the record to enable the meaningful exercise of sentencing authority. The probation officer must conduct an investigation and submit a report if the law requires restitution. There will be no presentence report prepared for defendants sentenced under 18 U.S.C. § 3593(c) or 21 U.S.C. § 848(j).

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
8

Following the defendant's entry of a guilty plea, or upon a guilty verdict following a trial, the court may order the probation officer to conduct a presentence investigation and submit a presentence investigation report. The court may use the AO 246B form (Order of Referral to Probation for Presentence Investigation and Report) to select the scope of the officer's investigation and the report that the officer will prepare.

A presentence investigation may be initiated prior to entry of a guilty plea or nolo contendere, or prior to the establishment of guilt, but the report may not be disclosed to the court, the defendant, the attorney for the defendant, and the attorney for the government, unless the defendant consents in writing to disclosure of the report to the court prior to conviction pursuant to Rule 32. Probation Forms 13-A and 13-B are used to obtain the defendant's consent.

Before or after receipt of a presentence report, the court may order a study and report of the defendant if the court desires more information than is otherwise available to it as a basis for determining the sentence pursuant to 18 U.S.C. § 3552(b). This statute provides that the study and report are to be conducted in the community by qualified consultants, unless the court finds there is a compelling reason for the study to be conducted by the Bureau of Prisons or there are no adequate professional resources available in the local community to perform the study.

If the court is specifically interested in additional information regarding the mental condition of the defendant, the court may order a psychiatric or psychological examination and report under the provisions of 18 U.S.C. § 3552(c). The court may order the examination before or after receipt of the presentence report.[1]

Pursuant to Rule 32 of the Federal Rules of Criminal Procedure, the presentence report must:

(A) identify all applicable guidelines and policy statements of the Sentencing Commission;
(B) calculate the defendant's offense level and criminal history category;
(C) state the resulting sentencing range and kinds of sentences available;
(D) identify any factor relevant to:
    (i) the appropriate kind of sentence, or
    (ii) the appropriate sentence within the applicable sentencing range; and
(E) identify any basis for departing from the applicable sentencing range.

The presentence report must also contain the following information:

(A) the defendant's history and characteristics, including:
    (i) any prior criminal record;
    (ii) the defendant's financial condition; and

[1]Funding for these examinations is available from the Administrative Office of the U.S. Courts.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
9

(iii) any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in correctional treatment;

(B) verified information, stated in a nonargumentative style, that assesses the financial, social, psychological, and medical impact on any individual against whom the offense has been committed;

(C) when appropriate, the nature and extent of nonprison programs and resources available to the defendant;

(D) when the law provides for restitution, information sufficient for a restitution order;

(E) if the court orders a study under 18 U.S.C. § 3552(b), any resulting report and recommendation; and

(F) any other information that the court requires.

To assist the court in determining an appropriate sentence, the format of the presentence report is designed to satisfy the rule's requirements.

Types of Investigations and Reports

While most of the reports prepared by officers will be standard guideline presentence reports, officers may be called upon to prepare other types of presentence (or postsentence) investigations and reports. All of the reports are defined below. The following chapters of this publication will detail the requirements for a standard guideline presentence investigation and report. The appendices provide guidance on the requirements for the other presentence and postsentence investigations and reports.

Pre-Guideline Presentence Investigation Report -- Offenses Completed Prior to November 1, 1987

The formats of the presentence reports contained in this publication were designed to accommodate sentencing under the provisions of the Sentencing Reform Act of 1984. This Act authorized creation of the U.S. Sentencing Commission, promulgation of the sentencing guidelines, and revision of many of the statutes pertaining to sentencing. Publication 105, *The Presentence Investigation Report*, published in 1978, remains applicable to offenses occurring prior to the effective date of the guidelines, November 1, 1987. Such cases are commonly known as "old law" cases.

The presentence report for an old law case may be formatted according to Publication 105 or it may be formatted as outlined in this publication. If the current format is employed, the officer deletes the Offense Level Computation and reference to the guideline provisions in the Sentencing Options section. It is important that the report clearly indicate to the court in the Charge(s) and Conviction(s) section that the offense occurred prior to November 1, 1987, and, accordingly, that the sentencing guidelines do not apply.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
10

Occasionally, a case will involve counts that combine old law offenses and guideline offenses. The current format may be used; however, it is important to label the counts in the Charge(s) and Conviction(s) and The Offense Conduct sections, indicating which are non-guideline and which are guideline offenses. Throughout the report, the differences are highlighted, particularly in the Sentencing Options section. A good reference for the statutorily available sentences in old law cases is *Sentencing Federal Offenders for Criminal Convictions Before November 1, 1987*, published by the Federal Judicial Center.

Standard Guideline Presentence Investigation Report

The majority of this publication is devoted to the format and content of the standard guideline presentence investigation report. Unless otherwise ordered by the court, these reports are prepared in felony or class A misdemeanor cases for which the U.S. Sentencing Commission has promulgated a guideline or for which there is an analogous guideline. The report is the result of a comprehensive investigation and includes all of the sections outlined in the following chapters of this publication.

Non-Guideline Presentence Investigation Report

For certain felonies and class A misdemeanors prosecuted in the federal courts, the U.S. Sentencing Commission has not promulgated a guideline, nor is there an analogous guideline that can be used. These cases are typically assimilative crimes prosecuted under 18 U.S.C. § 13 (e.g., felony or class A misdemeanor driving under the influence offenses), but may also include certain cases committed on Indian Country and prosecuted under 18 U.S.C. § 1153(b). In such cases, the officer should follow the format for a standard guideline presentence investigation report, except that the Offense Level Computation and references to the guideline provisions in the Criminal History and Sentencing Options sections are omitted.

Non-Guideline Misdemeanor Presentence Investigation Report

A petty offense, as defined in 18 U.S.C. § 19, refers to a class B misdemeanor, a class C misdemeanor, or an infraction for which the maximum fine does not exceed $5,000. Generally, petty offenses include any offense for which the maximum term of imprisonment is six months or less, and the maximum fine is $5,000 or less. The potential deprivation of personal liberty is less severe than it is for offenses designated as class A misdemeanors or felonies. Rule 58(c) of the Rules of Criminal Procedure addresses "Additional Procedures Applicable Only to Petty Offenses for Which No Sentence of Imprisonment Will Be Imposed." As to sentencing, Rule 58(c)(3) provides:

> **Sentence**. The Court shall afford the defendant an opportunity to be heard in mitigation. The court shall then immediately proceed to sentence the defendant, except that in the discretion of the court, sentencing may be continued to allow an investigation by the Probation Service or submission of additional information by either party.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
11

Accordingly, in petty offense cases, the court has the discretion to dispense with a presentence investigation or to refer the case for a presentence report. However, the Judicial Conference has eliminated the practice of preparing presentence investigation reports if the only offense of conviction is an infraction. The Conference recognizes that reports may still be required in certain class B and C misdemeanor cases, but believes that such reports should be reserved for cases in which the defendant may pose a risk to the community or may have risk-related needs. Presentence reports for class B or C misdemeanors are prepared in a format designed specifically for these types of offenses. The format, which is a condensed version of the guideline presentence report without guideline-related headings, is addressed in Appendix B, Non-Guideline Misdemeanor Presentence Report.

Modified Presentence Investigation Report

In certain cases, a full investigation may not be required. For example, if the court determines that it has most of the information it would need to impose a sentence, and additional information is not needed to make a Bureau of Prisons designation or programming decision or for post-conviction supervision, the court may order the probation officer to conduct a limited investigation and prepare a modified report. These reports could be used in a case involving a single defendant, convicted on a single count of conviction where the defendant has no or few ties to the United States and is not exposed to a lengthy term of imprisonment or supervision (e.g., class A misdemeanors, class E felonies, cases in which the plea agreements contemplate a brief period of prison[2] or no prison at all, deportable aliens). Modified presentence investigation reports may not be suitable if the defendant has a history of violence or sexual offenses, significant ties to the country, identified risks and needs (e.g., current substance abuse or mental health issues), or significant assets.

Dispensing with a full investigation and report in certain cases allows the courts to conserve its resources and focuses officers' efforts on those cases in which they can be most helpful to the court and others. Guidance on the scope of the investigation and the content of the report is provided in Appendix C, The Modified Presentence Investigation Report.

Supplemental Report to the Federal Bureau of Prisons

Where "the court finds that the information in the record enables it to meaningfully exercise its sentencing authority under 18 U.S.C. § 3553," Rule 32 allows the court to waive the requirement that an officer conduct a presentence investigation and submit a report. In most felony and Class A misdemeanor cases, the officer will need to conduct a standard or modified presentence investigation for the court. In other cases, however, the record may be sufficient for the court to "meaningfully exercise its sentencing authority." The officer may prepare a supplemental report to

[2]For the purposes of this section, a "brief period of incarceration" is one in which the defendant would have nine months or less of imprisonment left to serve upon imposition of the sentence.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
12

the Federal Bureau of Prisons for any defendant who did not receive a presentence report, received a commitment to the Bureau of Prisons, and has at least nine months imprisonment remaining to be served. Guidance on the scope of the investigation and the content of the report is provided in Appendix D, Postsentence Reports.

Treaty Transfer Postsentence Report

Probation officers prepare treaty transfer postsentence reports for American citizens who have been imprisoned in foreign countries and have been returned to the United States under treaty agreements. This procedure is sometimes known as the prison exchange program. Title 18 U.S.C. § 4106, which went into effect October 1977, provides that upon receipt of an offender from a foreign country, the Attorney General shall assign the transferee to the U.S. Parole Commission. A U.S. probation officer in the district where the transferee is incarcerated prepares a postsentence report and submits it to the Parole Commission. The Parole Commission determines a release date, sets the term and conditions of parole, and maintains jurisdiction throughout the parole period. Guidance on the scope of the investigation and the content of the report is provided in Appendix D, Postsentence Reports.

Presentence Report for an Organizational Defendant

If the defendant is an organization, the presentence investigation report should be prepared using the guidance in Chapter III of this publication. The report includes sections on the offense, prior history of misconduct, organization characteristics, guideline application (if applicable), sentencing options, and factors that may warrant departure (if applicable). Guidance on the scope of the investigation and the content of the report are addressed in Appendix E, The Presentence Investigation Report for Organizational Defendants.

Supporting the Presentence Process

Senior officers or sentencing guideline specialists must be skilled officers, as they are called upon to prepare reports on the most challenging cases facing the courts. Some districts may have multiple specialists, each with his or her own area of expertise. Specialists also support officers by serving as consultants, providing training and mentoring, and in some cases reviewing reports. Specialists and experienced officers who supervise offenders serve as valuable partners to the officers preparing presentence reports. This is especially true in considering appropriate conditions to recommend for any period of supervision that may be imposed.

The supervisor is responsible for quality control of the presentence reports by carefully reviewing, approving, and signing the report to indicate approval. Because of the annual amendments to the guidelines and the constant development of case law affecting guideline application for each circuit, remaining knowledgeable about guideline application is a demanding and complex task. The supervisor is responsible for instructing, monitoring, motivating, and, in general, reinforcing the importance of well-researched and written presentence reports. These responsibilities are accomplished by daily contact with probation officers who actually investigate and prepare presentence reports,

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
13

familiarization with amendments and case law, and careful review of presentence reports. Supervisors communicate the needs of their officers to managers.

The deputy chief and the chief are responsible for the work of all probation officers serving in the district. They are responsible for the quality of all presentence reports produced within the district. Managers should ensure that adequate resources are available to perform the assigned duties, and that the most effective practices are used to carry out those duties. The managers should develop strong relationships with the court, other court unit executives, and executives from other stakeholder agencies so that issues related to the presentence process can be addressed. Managers should set clear expectations, and should develop a system of recognizing employees, individually or as members of groups, for their job performance and to acknowledge their contributions to the judiciary's mission.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
14

Chapter II- The Presentence Investigation

Managing the Investigation

The probation officer is responsible for gathering all pertinent facts about the defendant and the offense, verifying the information gathered, interpreting and evaluating the data, applying the facts to the advisory guidelines and statutes, and presenting the information in an organized, objective report. Proper preparation for and organization of the investigation process will save time and increase efficiency. Since the complexity of cases will vary with the nature of the offense and the background of the defendant, in addition to basic investigative procedures, specialized areas of inquiry are determined by the officer on a case-by-case basis.

Probation officers in many districts are responsible for numerous presentence investigations that are simultaneously underway in various stages of preparation. In other districts, officers manage a supervision caseload or perform specialized duties in addition to conducting investigations and writing presentence reports. Short deadlines may add difficulty to the workload. Consequently, planning the presentence investigation, setting deadlines for submission of information by the defendant or others, and monitoring progress through documentation will assist in managing the workload.

The investigation is started immediately to maximize the time available for verification of information. Information gathering is managed throughout the investigation by: demanding accountability from the defendant, agents, victims, attorneys, or others for verification of statements and assertions; setting deadlines for the submission of information from these individuals; documenting the investigative process in the case file, noting dates of conversations and deadlines set; identifying gaps in the information needed to complete the report; and communicating disputes with the parties throughout the process. Notifying the parties of disputes is critical for two reasons: disputes may be resolved prior to the sentencing hearing, and the attorneys will not be surprised by the officer's findings when the report is disclosed.

Additional Resources

- *Presentence Investigations: Getting Organized*, Curriculum Package, Federal Judicial Center, 2004

Pre-Interview Activities

The amount of time between the assignment of an investigation and the presentence interview will vary from district to district and from case to case. Whenever possible, officers should use the time before the interview to gather as much information about the defendant and the case as they can.

Having some familiarity with the defendant and the nature of the instant offense prior to the interview may prepare the officer to question the defendant more effectively. For example, understanding which guidelines apply to the offenses of conviction may help guide some of the

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
15

questions asked of the defendant. Reviewing the pretrial services file may offer a point of reference for questions relating to the defendant's personal history and background.

Under Rule 32, the probation officer must, on request, give the attorney for the defendant notice and a reasonable opportunity to attend the interview. Local rules or procedures may place additional requirements on the interview. When scheduling the interview, the officer should provide the defendant and/or the attorney for the defendant with a list of any documents or information that would be helpful during the investigation. Probation Form 15, *Instructions to Persons Referred to the Probation Office*, may be used for this purpose.

Presentence Interview

Generally, the interview of the defendant is the pivotal component of the presentence investigation. Probation Form 1, Worksheet for Presentence Report, forms the basis for information gathering. All identifying information is reviewed with the defendant in its entirety, although some data may not be included in the presentence report. Such information may be of value later to an officer providing supervision services.

The investigation may proceed more efficiently if during the initial interview the officer provides the defendant with an overview of the phases of the investigation and uses of the report (i.e., court, BOP, supervision officer), indicates the amount of time allowed for the completion of the report, and reiterates any scheduled sentencing date. It will be helpful for the defendant to understand the disclosure proceedings and the opportunity to comment upon and/or object to any material in the report.

Interview Refusals

On occasion, a defendant may refuse to be interviewed by the probation officer, sometimes upon advice of counsel. When this occurs, the officer proceeds with the investigation, attempting to develop as many leads as possible. The pretrial services officer who prepared the pretrial services report or supervised the defendant and the pretrial services file established for the case are important sources of information, as well as information obtained from state and local departments of corrections and previously prepared local and federal presentence reports. Contact with family members may yield verification of some information. Case agents may have background information regarding the defendant. The officer pursues the information that is available and, where no information is available, this fact is reported to the court.

Personal History and Characteristics

The informed exercise of the court's discretionary authority demands that the presentence report include all information relevant to sentencing decision making, whether or not the information is directly relevant to the advisory guideline application. Information regarding the defendant's personal background assists the court in selecting a reasonable sentence and appropriate sentencing

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
16

options, and in determining the need for supervision, as well as the length of the term and appropriate conditions. Such information is relevant in determining the defendant's ability to pay financial sanctions and may also be important in assessing risk factors. Community supervision of the offender is dependent upon an understanding of the defendant's personality and motivations, the extent of family and community support that can be anticipated, employment patterns, abuse of controlled substances, financial stability, and a variety of social factors that vary by case. These factors may be considered when determining a specific term within an advisory guideline range or when determining sentencing options. In extraordinary cases, these factors may even be considered when determining whether a departure from the advisory guidelines or a sentencing variance is warranted.

In the Personal and Family Data section of the report, the officer describes present and historic social factors that have had a significant bearing on the defendant's personality and behavior. The interview with the defendant will gather information concerning the defendant's past, but the focus should also be on the present. Questions asked during the course of the interview may solicit information concerning any potential factors for departure from the advisory sentencing advisory guidelines.

It is essential that the interview look at early life influences that have had a significant impact upon the defendant's present personality and behavior; extent of family cohesiveness, attitude of parents; important factors in the home and neighborhood environments; relationship with parent(s) and sibling(s); person(s) other than parents who reared the defendant and present status of this relationship; age when defendant left home and reason for leaving; any history of running away from home; primary factors affecting defendant's present lifestyle; career and social influences; and any other major factor affecting defendant's present behavior.

In addition, if the following information is important to the defendant's present situation and background, the interview should obtain information on the defendant's naturalization status, including country of birth and date of entry into U.S.; birth order among siblings; home and neighborhood; special talents, interests, and leisure time activities (including sports, hobbies, and organizations); family members and friends who may form a supportive prosocial community network.

Possible Questions to ask:

- What are the most important influences in your life?
- How would you describe your family? [Focus on what the defendant would call favorable or unfavorable about his/her family]
- Where did you grow up? How would you describe that neighborhood?
- How long did you live at that residence?
- Where else have you lived?
- Current living situation?
- Usual living situation?

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
17

In the course of the interview, the defendant's immediate family members are identified, including parents and/or guardians, siblings, marriages, divorces, and dependents. The interview should solicit information concerning the defendant's fulfillment of responsibilities toward the spouse, ex-spouse, children, or any other dependents. Information about the defendant's family obligations is relevant for a determination of an ability to pay a fine or restitution. The Bureau of Prisons considers other family information when determining where the defendant should be designated or establishing a list of approved visitors.

Possible Questions to ask:

- What are the names of parents and siblings? Current whereabouts?
- How would you describe your parents? Usual occupations?
- Any history of domestic disturbances in your childhood home?
- What is the status of your relationship with your parents? Last contact?
- Are your parents aware of your current situation? How do they feel?
- Are your parents available to be interviewed?
- What is your relationship with your sibling(s)? Aware of your situation? Available for interview?

During the interview, the probation officer should resist the tendency to ask for extraneous information about the parents, siblings and/or significant others. Dates and places of parents' birth usually have little or no relevance. The focus is on the impact of the family and family dynamics upon the defendant's history and current situation. Consider focusing on the cultural background of the family and the family influence(s) upon the defendant, as well as the stabilizing factors the family provides.

A very sensitive area that may need to be addressed is whether the defendant has a history of being physically, sexually, or emotionally abused. The interviewing officer may consider talking with defense counsel prior to the interview to determine if this area needs to be addressed. Family members not involved in the alleged abuse may serve as additional sources of information. Because of the sensitive and potentially harmful effects of such a line of questioning, the probation officer should exercise caution in questioning the defendant about this aspect of his/her life. Any questioning in this area should include whether or not counseling has been obtained by the defendant and/or family.

The defendant's current marital status or other significant relationships are explored. In addition, prior marriages or significant relationships, particularly those that resulted in the birth of children, are discussed. The following information should be asked:

- Name and age of spouse/significant other (co-habiting relationship)
- Date and place of marriage or length of relationship if not married
- Present status of relationship

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
18

- Names, ages and custodial status of children, including information on arrangements for the children if the defendant is imprisoned
- Involvement with any social service agencies
- Previous marriage(s) with name(s) of spouse(s)
- Date and place of marriage
- Date and place of divorce
- Reason(s) for divorce
- Status of relationship
- Children from previous marriage(s); custodial status of children; status of any court-ordered child support obligation

If the defendant and former spouse(s) share a cordial or close relationship, the probation officer should ask when the defendant was last in contact with the former spouse; whether he or she is aware of the defendant's situation; and whether the former spouse is someone the defendant would like interviewed.

Physical Condition

A general description of the defendant and physical condition are obtained during the interview. A history of significant medical problems, current medical problems, as well as courses of treatment, treating physicians, and medications is also obtained.

In accordance with Judicial Conference policy, officers should not disclose information regarding defendants with AIDS or HIV infection in the presentence report without the defendant's written, informed consent, unless it is relevant to the offense charged, such as a sexual assault (see, Probation Form 74: Confidential Information Release Authorization). The Court, however, may require the officer to disclose all known medical information about the defendant in order to determine its relevancy in sentencing. In this situation, the officer should confidentially advise the Court of the defendant's medical status, current symptoms, and refusal to give consent for disclosure of this information, pursuant to the provisions of Rule 32 of the Federal Rules of Criminal Procedure. Officers must also be aware of the disclosure rules for their district, including state and local rules for disclosure of such information. In the event a defendant discloses during the interview that he or she has AIDS or is HIV positive, the probation officer should report that information, using the following suggested language: **"The defendant reported suffering from a chronic illness which requires monitoring."**

Possible Questions to ask:

Essential Information:

- Height
- Weight
- Color of hair and eyes

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
19

- Birthmarks
- Tattoos and/or scars. Significance of any tattoos (i.e., gang identifiers?)
- History of significant medical condition? Date(s) of diagnosis? Treating physician? Any hospitalization? Any Surgery? Course of treatment?
- Any current medical conditions? Current treatment? Current medication and dosages? Any allergies (e.g., medications, food)?
- Family history of medical problems (i.e., cancer, heart disease, etc.)?
- General physical condition (mobility assistance, oxygen use, feeding/dressing/bathing assistance)

Include if Pertinent: Describe any medical problem or physical disability that may affect the defendant's ability to obtain/maintain employment or otherwise affect his/her life situation. Include information on any current illnesses or conditions that require medical treatment.

The physical description of the defendant is important for identification of the defendant at sentencing and while serving his/her sentence. A description of any past or present health problems is to be obtained during the interview. If the interview results in information on any current medical problem for which the defendant is being treated or requires treatment, details should be obtained but no more than necessary to understand the defendant's medical condition. The interviewing officer should obtain a summary of the treatment history of the condition and a listing of the current prescriptions. Contact with family members/significant others should assist in getting the information. In some instances, depending upon the nature of the medical condition and/course of treatment, the probation officer should try to obtain medical records. The officer may request these records from the defendant, his/her family, or defense counsel. This information may have an impact upon the determination of sentence or community service provided, and will have an impact on institutional classification.

Mental and Emotional Health

The interview should obtain information about the defendant's current and past mental and emotional condition. To that end, family members, significant others, defense counsel, and school officials may prove to be valuable sources of information. School records may include IQ testing or other psychological testing and a history of contacts with school psychologists. State probation and/or parole records may also provide information about contact with state and local social services agencies. Department of Correction records may include information on counseling while the defendant was in custody.

<u>Possible Questions to ask</u>:

- Describe your personality traits (positive and negative)
- Any history of mental or emotional problems?
- Any family history of mental or emotional problems?
- Have you ever been treated for a mental or emotional problem? What was the diagnosis?

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
20

- Date(s) of treatment?
- Any hospitalization? Dates of hospitalization? Diagnosis?
- Any medications? Types? Dosage?
- Any history of suicide attempts? Dates?
- Name of treatment provider?
- Self evaluation

Court-Ordered Psychological/Psychiatric Evaluation in Aid of Sentencing

On occasion, the interview may indicate to the probation officer that a psychological or psychiatric evaluation is necessary to assist the court in determining the sentence. Defense counsel and/or counsel for the Government may also recommend an evaluation. The probation officer should contact the sentencing judge as soon as possible if it becomes apparent that such an evaluation may be necessary. In accordance with 18 U.S.C. § 3552, the court may order a study to obtain more information concerning any mental or emotional condition of the defendant. In accordance with 18 U.S.C. § 3552(b), the court may order that an evaluation be completed. The statute clearly states that the evaluation "shall be conducted in the local community" by qualified personnel, unless the judge finds that there is a compelling reason for the evaluation to be completed by the Bureau of Prisons or there are no resources available within the local community. If the defendant is committed to the custody of the BOP for purposes of an evaluation, the study will be for a period of 60 days. This can be extended by the court for an additional 60 days if the BOP notifies the court of the need for such an extension. The order for the evaluation will specify the additional information being sought by the court and will permit disclosure of materials held by the Probation Office concerning the defendant, including the presentence report. Disclosure of the presentence report to the BOP for purposes of the study will be in accordance with local district disclosure rules.

Possible Questions to ask:

- What is the DSM-IV diagnosis?
- What is the prognosis?
- What is the recommended course of treatment? Medications?
- Is there a causal link/nexus between the defendant's mental/emotional condition and his/her participation in the instant offense?
- At the time the offense was committed, was the defendant suffering from a diminished mental capacity?

Depending upon the individual defendant, additional, more specific questions may need to be asked. In the preparation of the order, those questions should also be included.

Additional Resources

- *Handbook for Working with Mentally Disordered Defendants and Offenders*, Federal Judicial Center.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
21

- *Special Needs Offenders: An Overview of Sex Offenders in the Federal System*, Participants' Guide, Federal Judicial Center Broadcast, October 1998.
- *Special Needs Offenders: FCI Butner Sex Offender Treatment Program* (Parts One and Two), Federal Judicial Center Broadcast, December 2000.
- *Special Needs Offenders: Sex Offender Update*, Federal Judicial Center Broadcast, December 2002.
- *Safety Series: Offenders and Defendants with Mental Disorders*, Federal Judicial Center Broadcast, January 2005.

Substance Abuse

The focus during the interview should be on the defendant's current or recent substance abuse history. Results of urinalyses or refusals should be obtained, as well as details about duration of use, drugs of choice, and most recent use. The Bureau of Prisons will need information about the defendant's substance abuse history for the twelve-month period prior to his/her arrest for use in determining if placement in the Residential Drug Abuse Program (RDAP) is appropriate. The questions from the Texas Christian University Drug Screen (TCUDS-II) may be used to pinpoint the extent of the defendant's substance abuse and formulate recommendations for special conditions. As a preliminary starting point, the interviewing probation officer may consider the following questions.

Possible Questions to ask:

- Age drug use began?
- Frequency?
- Cost?
- Type(s) of drugs used?
- Date of last use?
- History of treatment?
- Family history?

Any history of substance abuse dating back more than five years should be summarized, including any information on treatment that has resulted in continuing abstinence (i.e., continued attendance at AA/NA meetings.)

Additional Resources

- *Substance Abuse: Introducing the TCUDS*, Federal Judicial Center Broadcast, August 19, 2004.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
22

Educational, Vocational and Special Skills

The interview should obtain information on the highest grade completed by the defendant, the name(s) of the schools attended, and any specialized training the defendant has received.

Possible Questions to ask:

- Schools attended?
- Highest grade completed?
- Diploma received?
- GED obtained in lieu of diploma?
- Degree received?
- Age at leaving school?
- Reason for leaving school (if other than graduation)?
- Any grades repeated?
- Vocational training received?
- Vocational school attended?
- Professional license(s)? Current status?
- Primary language (if English is not)?
- Able to read and write in the primary language?
- Able to read and write in English?

The defendant should also be asked if he/she is fluent in any other languages. If there is a question of literacy, the probation officer can ask defense counsel and other family members whether the defendant is illiterate in his/her primary language. Family members can also be interviewed for additional information on any problems the defendant experienced in school and whether the defendant attended any special schools because of learning disabilities. School records may provide additional information concerning any testing or intervention by school psychologists.

Additional Resources

- *Reducing Risk Through Employment and Education*, Special Needs Offender Bulletin, Issue Number 4, Federal Judicial Center Broadcast, January 2000.

Employment

Employment history, including current employment, is obtained for the most recent 10 years. For employment history older than 10 years, the information is summarized generally. If employment from more than 10 years has a bearing on the defendant's current position, details of that employment should be provided, if they are available. Consider the following questions.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
23

Possible Questions to Ask:

- Status of employment?
  - Employed full time
  - Employed part time
  - Unemployed, temporarily looking for work
  - Unemployed seasonal worker
  - Unemployed, not looking for work
  - Unemployed with extensive history of unemployment
  - Unemployed temporarily due to physical condition
  - Unable to work due to handicap, physical or mental
  - Incarcerated or confined
  - Student
  - Retired
  - Homemaker

- How long in current position/status?
- Salary?
- Is your employer aware of your current legal situation?
- Is he/she someone you would like to be interviewed?
- If incarcerated, would you be able to return to your current position?
- Usual occupation?
- Occupational/vocational skills? Interests?
- If a business owner, will the company/business survive if you are incarcerated?

For those defendants who are self employed and/or own their own businesses, information concerning the start date of the business and current status may be obtained through the Secretary of State's Office.

If the defendant is unemployed, determine the reasons for the unemployment. For example, if the defendant is unemployed because of a disability, the approximate date the disability was allowed by Social Security or the Veteran's Administration (VA) (for individuals with military service histories) should be obtained. The interviewing probation officer should also ask if the disability is permanent and the percentage of disability determined by the overseeing agency. For example, many military veterans with disabilities will be notified by the VA about the scope of their disability (e.g., 100 percent, 50 percent, 10 percent). The percentage of disability will determine the monthly disability benefits received. The same is true for Social Security Administration (SSA) benefit recipients. Documents from either the SSA or VA should be made available for review. Family members and defense counsel are collateral resources for information.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
24

Military

If a defendant reports prior military experience, one of the most important documents to review is the defendant's DD Form 214. This form is a summary of the defendant's active duty/active reserve service. The form includes information on the defendant's branch(es) of service; date(s) of enlistment; date(s) of discharge; foreign service; training/schooling; award(s) and recognition(s); any lost time as a result of Uniform code of Military Justice actions, including administrative punishment (Article 15 or Captain's Mast action); highest rank achieved and rank at time of discharge; and type(s) of discharge. The form can also confirm the date of birth and SSN. At the time of the initial or follow-up interview, the probation officer should review the document with the defendant.

If the defendant served in the military of a foreign country, information concerning the length of service, branch of service, rank, and specialized training should also be obtained.

Additional Resources

- *Reducing Risk Through Employment and Education*, Special Needs Offender Bulletin, Issue Number 4, Federal Judicial Center Broadcast, January 2000.

Financial Condition: Ability to Pay

The investigation into the defendant's financial condition serves many purposes. It:

- Assists the court in determining the defendant's ability to pay a criminal monetary penalty;
- Assesses the extent to which criminal livelihood is evidenced;
- Determines the type, amount, and manner of paying criminal monetary penalties.

The defendant is required by 18 U.S.C. § 3664(d)(3) to prepare and file with the probation officer a listing of all assets owned or controlled as of the date of the defendant's arrest, along with the defendant's financial needs and earning ability and the financial needs and earning ability of dependents and any other information that the court may require relating to such other factors as the court deems appropriate. "Controlled" generally refers to assets that the defendant may not own, but that contribute to his or her ability to maintain a certain lifestyle, or assets from which the defendant reaps benefit.

The provisions of 18 U.S.C. §§ 3663(a)(1)(B)(I), 3664(d)(3), 3664(f)(2), and Rule 32 all support the principle that the assets owned, jointly owned, or controlled by the defendant; liabilities; and the financial needs and earning ability of the defendant and the defendant's dependents are all relevant to the court's decision regarding the defendant's ability to pay. Officers are frequently confronted with defendants using assets that are in family members' names, and now have the duty and increased authority to request such information. The Second Circuit has noted these changed provisions and the importance of financial information in the presentence report, in *United States v. Conhaim*, 160 F.3d 893 (2d Cir. 1998).

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
25

The Mandatory Victims Restitution Act of 1996, 18 U.S.C. §3663A, requires the imposition of restitution in certain offenses regardless of the defendant's ability to pay, and special assessments are mandatory; other penalties (e.g., discretionary restitution, fines, and community restitution) and the collections of criminal monetary penalties (whether imposed mandatorily or not) require the investigation and analysis of an offender's ability to pay.

Possible Questions to Consider:

- Have the assets, liabilities, net worth, net income, necessary monthly expenses, and monthly cash flow been reported?
- Has the financial information been verified?
- Has the defendant's ability to pay a fine or restitution been analyzed and noted?

Indigent Defendants

It is widely recognized that the vast majority of defendants entering the federal criminal justice system are indigent and require court-appointed counsel due to their inability to pay for legal services. Nevertheless, 18 U.S.C. § 3664(d)(3) requires the defendant to complete and submit net worth and cash flow statements. The *Net Worth Short Form Statement* (Probation Form 48EZ) combines all of the information and requirements of the extended net worth statement into an abridged version. It also requires the disclosure of assets and liabilities jointly owned or controlled by a defendant, spouse (or significant other), and dependents.

Defendants with Assets and Liabilities

Utilizing the *Net Worth Statement* (Probation Form 48) or *Monthly Cash Flow Statement* (Probation Form 48B), reviewing supporting documentation requested from the defendant (see, Request for *Net Worth Statement Financial Records*, Probation Forms 48A, *Request for Cash Flow Statement Financial Records*, Probation Form 48C, and *Request for Self-Employment Records*, Probation Form 48F), and requiring the defendant to submit an affidavit (see, *Declaration of Defendant or Offender Net Worth and Cash Flow Statements*, Probation Form 48D), pursuant to 18 U.S.C. § 3664(d)(3), facilitate the financial investigation process.

Once officers become familiar with financial investigations, the financial forms, and the procedures determining ability to pay, it should be easy to determine which defendants have limited assets and/or liabilities and can be directed to complete the short form. For example, the mere fact that a defendant distributed large quantities of narcotics or participated in significant money laundering or telemarketing offenses may not support the conclusion that the defendant will have the ability to pay a substantial fine. Officers must examine, and must document in the presentence report, the disposition of assets that the defendant may have had at the time of the offense. A major drug dealer may have squandered the wealth away or been subject to substantial forfeitures. A dependent of a deceased social security recipient may have used the decedent's benefits to support an otherwise modest lifestyle.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
26

Assets Converted for Payment of Monetary Obligations

The court may consider "any resources" available to the defendant and their value and may refer to them on the record in determining the defendant's ability to pay. However, courts may run into difficulties ordering the liquidation of specific assets. Circuit courts seem to draw a distinction between the court's authority to order criminal monetary penalties in a particular amount and the authority to order the liquidation of specific assets, since collection enforcement is a duty of the Attorney General.

Nevertheless, the presentence report should contain specific information on the defendant's financial resources, including assets the defendant may agree to voluntarily liquidate to satisfy any criminal monetary penalties, since such information is needed to assist the court in making determinations on the record regarding the defendant's ability to pay. Most circuits look for evidence in the record that the court considered the defendant's ability to pay. Some circuits have insisted that the sentencing court make specific findings on the record in every case. Others have held that, so long as the record reflects that the court considered the defendant's financial resources, no special findings are required.

Regardless of the circuit's stand on specific findings, it is clear that the presentence investigation report is crucial. That is, where the court must make specific findings, the presentence report and its addendum provide baseline information upon which the court can base such findings after considering the views of the defense and those of the government. The government has the burden of demonstrating losses sustained by victims. In the majority of circuits, where specific findings are not required, the court's adoption of the presentence report usually provides the necessary indication that the court has considered the defendant's financial resources.

Therefore, the presentence report should detail the investigation and document the defendant's financial resources, including the needs and earning ability of the defendant and the defendant's dependents and such other factors as the court deems important. See, Rule 32 and 18 U.S.C. § 3664(d)(3). This will not only assist during appellate review, but will assist in collection efforts as well. Statute requires that the presentence report go to the financial litigation unit. See 18 U.S.C. § 3552(d). In cases where the defendant claims assets in the names of the spouse or other family members, the officer should consider asking the court to require additional information or evidence, pursuant to 18 U.S.C. § 3664(d)(3), and, if necessary, ask the court to delay the restitution determination up to 90 days, pursuant to 18 U.S.C. § 3664(d)(5).

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
27

Officers are discouraged from simply reporting assets and liabilities claimed by the defendant in his/her net worth or monthly cash flow statements and should review supporting documentation requested from the defendant (see Probation Forms 48A, 48C, and 48F). Officers should never hesitate to question defendants about their financial condition, and should routinely seek clarification when information on the net worth or monthly cash flow statement is not supported by documentation or other discrepancies are discovered.

Sources of Financial Information and Investigative Techniques

Information about a defendant's financial condition comes from a variety of sources:

- The most successful financial investigation begins by ensuring to the greatest extent possible that the defendant is forthcoming and timely with financial documentation.

- Probation officers are guided by Monograph 114, *Criminal Monetary Penalties: A Guide to the Probation Officer's Role* and the Federal Judicial Center's *Financial Investigations: Desk Reference for U.S. Probation and Pretrial Services Officers* when conducting financial investigations.

- Computer-assisted research tools, such as Westlaw, Lexis/Nexis, Choice Point, and the Internet, provide easy access to a wide array of public records.

- The Internal Revenue Service and the Social Security Administration are excellent resources for historical financial documentation.

Analysis

- The analysis considers what assets the defendant could reasonably be expected to give up, the feasibility of converting those assets to cash, the urgency of the defendant's unsecured debts and the likelihood of converting other assets to cash to satisfy those debts.

- The officer analyzes the defendant's financial condition and evaluates whether the defendant is capable of making a lump-sum immediate payment or installment payments over a specified time period, including the ability to pay interest.

- It also evaluates what installment payments would be reasonable in view of the cash flow, and what additional assets and income are available for the support of the defendant's dependents.

Questions to be considered for analysis

- Are the defendant's assets and expenditures consistent with the employment history and legitimate sources of income?

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
28

- Has the defendant made any attempt to conceal or dissipate an asset which should be brought to the court's attention?

- Is the officer addressing the shortest feasible time in which fine and restitution payments could be completed?

Additional Resources

- *Monograph 114, Criminal Monetary Penalties, A Guide to the Probation Officer's Role*, AOUSC, September 2000.

- *Financial Investigation Desk Reference for U.S. Probation and Pretrial Services Officers, 3rd Ed.*, Federal Judicial Center, November 2000.

- *Financial Investigation: Fundamentals*, Federal Judicial Center Broadcast, July 2004.

- *Financial Investigation: Document Analysis I*, Federal Judicial Center Broadcast, December 2004.

- *Financial Investigation: Document Analysis II*, Federal Judicial Center Broadcast, April 2005.

- *Financial Investigation: Organizations*, Federal Judicial Center Broadcast, September 2005.

Urinalysis

Defendants who are not in custody at the time of the presentence interview should be asked to submit a urine sample. Refusal to do so can be reported in the presentence report or an order may be requested from the court. Officers should also obtain the results of any drug tests administered by pretrial services or while in pretrial detention.

Home Investigation and Collateral Contacts

In a comprehensive investigation, the defendant is seen at least twice. One contact includes a home investigation in order to verify the information provided by the defendant during the initial interview. A home investigation is relevant for defendants on bond as well as incarcerated individuals. During the home investigation, background information may be verified by family members, and the officer may assess the defendant's standard of living (an aspect of the financial investigation), the defendant's community ties, the detection of the presence of drug or alcohol abuse, or any other factor that is relevant for the preparation of the presentence report.

Further, if the investigation discloses information that is substantially different from statements given by the defendant, it is important that the officer re-interview the defendant in order to resolve the conflicting statements or to advise the defendant of the facts that have been established that contradict the defendant's position.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
29

As the investigation progresses, the probation officer determines the need for interviews with other individuals. In order to understand the details of the offense, the effects on the victim(s), and the background of the defendant, the officer may interview the assistant U.S. attorney, defense attorney, case agent, victim(s), victim/witness coordinator, relatives or associates of the defendant, employers, local probation and parole officers, state and local authorities, or anyone else, including mental health and substance abuse treatment providers, who may assist in the collection or verification of information. The decision to interview such parties is determined by the relevancy and importance of the information being sought.

The investigation should also include a home visit. During these visits, contact with the defendant may be made, at which time follow-up questions from the initial interview may be asked. Interviews with family members and/or significant others may also be completed. The purpose of the home visit is to assess the defendant's usual and/or current living situation. The nature and circumstances of the residence are obtained, as well as the nature and character of the surrounding neighborhood. The probation officer is also a valuable resource for the family in understanding the sentencing process.

Possible Questions to Ask Family Members/Significant Others:

- How would you describe the defendant?
- What is the status of your relationship?
- How would you describe your relationship?
- What has been the impact of the offense upon your relationship? The family?
- If the defendant is incarcerated, upon release, will you be willing to have him/her return to the family home?
- Have you been/Are you aware of any substance abuse by the defendant?
- Mental health issues?
- Any history of violence in the home?
- Physical health problems?
- What do you know of the defendant's financial condition?
- How has the offense affected the family's finances?
- If the defendant is incarcerated, will the family be able to remain in the current residence/maintain the current lifestyle? If not, what plans have been made?
- Is there anything else you would like the Court to know about the defendant?

Additional Resources

- *Safety Series: Home Contacts*, Federal Judicial Center Broadcast, March 2003.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
30

Documents and Verification of Information

The officer must distinguish among information that is factual, inferred, or alleged. During the initial contact with the defendant, emphasizing the importance of verified information is important in requesting the defendant's assistance. While personal contact with third parties may be the most reliable method of verification, it is not always practical. If personal contacts cannot be initiated, the officers should request documentation. In most instances, documentation submitted by the defendant, the defendant's attorney, or family members is an acceptable form of corroboration. For example, if the defendant presents documentation of personal background information (e.g., birth, education, vocational training, or military service) or financial records (e.g., mortgage records, bank statements, lease agreements, or income tax returns), and there is no statutory provision or guideline application that would depend upon such information, it is generally unnecessary for the probation officer to seek independent verification, unless the officer questions the veracity of such documentation. Officers may request documentation by using the following forms, which detail the types of information needed:

- Probation Form 15, *Instructions to Persons Referred to the Probation Office*
- Probation Form 48A, *Request for Net Worth Financial Records*
- Probation Form 48C, *Request for Monthly Cash Flow Financial Records*
- Probation Form 48F, *Request for Self-Employment Records*

In some cases, the probation officer may want to obtain documentation directly from a third party. Obtaining specific types of information regarding a defendant's background may require an authorization form to release the information, and some agencies or institutions may require their own specialized release forms. Addresses needed for verification may be found through Internet searches, reducing the need to request collateral assistance from other districts.

Standard release forms frequently used by the probation officer include:

- Series of Probation Forms 11--authorization for release of military, drug abuse, mental health, government information, and financial records

- Series of Probation Forms 14–authorization for release of military service, medical history, employment, education, birth, and marriage or divorce records

In cases requiring complex financial investigations, Probation Form 48A, et seq. (Personal Financial Statement, Request for Financial Records, etc.) assist the officer in determining the direction of the investigation.[1] If the defendant's financial profile is simple or if the defendant is illiterate, the officer may assist the defendant in completing the Personal Financial Statement.

[1]See also, Monograph 114, *Criminal Monetary Penalties*.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
31

Reviewing case files or contacting the U.S. attorney and case agent will disclose details about the offense, the defendant's prior record, and his/her financial condition. Files from the probation office and court are routinely checked to ascertain whether there is any prior contact and documentation regarding the defendant. Records from any agency that may have supervised the defendant on pretrial release, probation, parole or supervised release, and any institution where the defendant may have been confined, are also excellent sources of information.

The Uncooperative Party

On occasion, a defendant will neither provide requested documentation nor authorize the release of information. In other cases, the attorney for the government or the case agent has not provided information needed to prepare the offense conduct section of the presentence report. If the party cannot be persuaded to cooperate, the officer should attempt to obtain necessary information from other sources. For information that is critical to the presentence investigation and is unavailable without the party's cooperation, it may be necessary to obtain assistance from the court.

Collateral Investigations

A collateral investigation is conducted by a probation officer in a district other than the sentencing district to assist the officer conducting the presentence investigation in the sentencing district. The collateral investigation assists the sentencing district by verifying information that is to be included in the presentence report that could not reasonably be verified by staff in the sentencing district. The collateral investigation may entail either a full or limited investigation, depending on the amount of requested information.

The probation office in the sentencing district is responsible for preparing the actual presentence report. In many cases, the application of advisory guideline provisions to factual information is a matter of judgment and interpretation. The probation officer may be called upon to justify recommended findings in court, which may require the officer to testify. Accordingly, the actual advisory guideline calculations are completed in the sentencing district by the probation officer, who bears the responsibility for preparing the presentence investigation report.

Standards for Requesting Collateral Assistance

When requesting collateral assistance from another district:

- The probation officer in the sentencing district should first attempt to verify as much information as possible through written requests (e.g., Probation Form 14 series), telephone interviews, and computer-assisted research tools.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
32

- When the personal attention of a probation officer in another district is required (e.g., a home inspection is necessary, request for court or police records), the officer in the sentencing district should prepare a written request of what is needed.

- Requests should be clearly written and explain exactly what is needed. The collateral request explains why the officer suspects the defendant has a record in the other district or states that he/she has resided in that district during specified years.

- The request provides a detailed description of the defendant, any aliases the defendant is known to use, local or state criminal record identification numbers, and court action or docket numbers, if known.

- **Beware of NCIC entries that reflect a defendant's residence in a district solely as a result of institutional or ICE designation. Such entries should not generate a collateral request.**

- When requesting information from multiple districts, the requesting officer should send only one letter with copies to all districts so all officers know the scope of the investigation.

- The request should be sent out promptly and the responding district should be given sufficient time (preferably 2 to 3 weeks) to complete their investigation. The requesting officer should provide a specific due date that can be reasonably met.

- The request should be e-mailed or faxed.

- The sentencing district should provide the other district with all appropriate forms, releases/authorizations, and case documents needed to conduct the investigation (e.g., a copy of the indictment; completed Form 1). These documents can be scanned or faxed.

- If a personal interview, home inspection, or interview of an employer is needed, the request should include any specific questions that need to be answered, i.e., condition or value of the residence, assessment of third-party risk, obvious assets or bond violations.

- The request should include any information that should be known to the officer completing the collateral investigation (e.g., officer safety issues).

Standards for Responding to Collateral Requests

A valuable collateral response goes beyond fact gathering and verification. The response should:

- Be as comprehensive, accurate and professionally written as any investigation completed for an officer's own district court.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
33

- Include requested documentation such as arrest reports, charging documents, judgments, dismissals, etc.

- Be in guideline format whenever appropriate.

- Be usable in the form received without local phrases, jargon, or nomenclature that may be unknown to officers in another jurisdiction.

- Be easily understood. The court of jurisdiction and case number should be clearly identified. Abbreviations commonly used in the jurisdiction should be explained. State or local statutes regarding the appointment of counsel or the treatment of diversionary dispositions may be helpful.

- Distinguish between misdemeanor and felony convictions due to predicate offense issues, i.e., armed career criminal, career offender status.

- Indicate the status of counsel, reporting whether the defendant was represented by counsel, waived counsel, appeared *pro se* (represented himself), was not represented by counsel; or reference the state law requiring the right to counsel so the court can determine if the conviction was "uncounseled."

Also important:

- The responding officer should pursue all investigative leads that may not have been known to the requesting officer.

- If there is any uncertainty about certain information or if additional information is needed, the responding officer should promptly call or email the requesting officer.

- The responding officer should ensure that any requested deadline is met. If the officer is unable to meet the deadline, the requesting officer should be notified to discuss the delay.

- If documents are not available by the due date, the response should be forwarded by email or fax and the documents mailed to the requesting officer when received.

Use of On-line Mailboxes or District Collateral Websites for Collateral Investigations

- If a duty mailbox on the DCN e-mail system or a district collateral website is used, the requesting officer should include an e-mail address where responses can be sent.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
34

- A word processing file can then be sent as an attachment to the e-mail, providing an electronic version of the response from which information can be "cut and pasted" into the presentence report.

Collateral Investigations Involving Canada

Officers should contact the Canadian Liaison Officer in the District of Vermont for records and verification in Canada.

Investigating the Instant Offense

Properly investigating a case and analyzing the information are critical in the preparation of a complete presentence report. The procedures and techniques necessary to obtain the information for each section of a report are varied and often specific to the nature of the information needed.

A complete record of the charges may be found in the file of the district court clerk. Alternate sources are the files of the prosecutor, the case agent, or the pretrial services office.

Interview with the Assistant United States Attorney/Case Agent

It is the probation officer's responsibility to prepare all sections of the presentence report. Most of the essential offense data may be found in the U.S. attorney's file, including the nature of the charges, details of the offense, reports and statements of the case agents, statements of codefendants, witnesses, and victims. Written versions of the facts submitted by either the prosecution or defense are analyzed and can be edited by the probation officer upon establishing that the edited information is factual and accurate. The defendant's statement or version of the offense is critical to evaluate. On occasion, the defendant can clarify facts as well as provide information regarding intent and motivation. The court file in the office of the clerk contains the charging documents and motions filed in the case. They may assist in providing the facts of the case as viewed by the attorney for the prosecution and the attorney for the defense. Depending upon the case, the officer may need to interview federal agents, state or municipal police, victims, and even witnesses to the offense. In addition, post-arrest statements made by the defendant and codefendant(s) may be relevant.

The fundamental task throughout these contacts is that of weighing the evidence in support of various points of view based on the best available information, with the goal of understanding what happened during the course of an offense. During the investigation of the offense, the officer must explore all offense circumstances, but in writing the offense conduct section, extraneous information can be omitted.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
35

As an independent investigator, it is important for the probation officer to compare information from other sources with the plea agreement and clarify any discrepancies. For example, the pretrial services file may show a gun was present but the plea agreement does not mention a weapon enhancement. It is the officer's responsibility to look into the discrepancy and based on the investigation, make a finding.

Possible questions to ask the AUSA (this list is not all-inclusive):

- Has the defendant cooperated with the government? Obstructed the investigation?
- What was the amount of and type of drugs involved? Any lab report?
- Are there any aggravating or mitigating circumstances to consider?
- Are there any contested issues with the defense not identified in the plea agreement?
- Do you know of any investigations of the defendant by other jurisdictions?
- Who is the victim? How do I contact the victim? What was the amount of loss? Was the victim compensated by insurance? What is the name of the insurance company? Has the case been referred to the Victim Coordinator?
- Was any of the loss recovered?
- What was the defendant's profit?
- Do you have any personal or business financial statements of the defendant?

Additional questions in multi-defendant cases:

- What was the level of culpability of the defendant?
- When did the defendant enter and leave the conspiracy?
- Did the defendant know any of the conspirators prior to the offense?
- Were any statements made by the co-defendants or co-conspirators?

Possible questions for the case agent:

- How and when did you start your investigation?
- How did the defendant come to your attention?
- Did the defendant cooperate at the time of arrest?
- What does the lab report show the type and amount of drugs to be?
- Do you know of any prior arrest record for the defendant? Where?
- What statement, if any, was made by the defendant following arrest?
- Where do you believe the defendant falls in the hierarchy of the conspiracy?
- (If the AUSA has not already provided this information) How do I contact the victim?

Interview with Defense Counsel

In preparation for the initial interview, the probation officer should consider asking defense counsel about his/her client. Consider the following questions.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
36

Possible Questions to ask:

- What is your assessment of your client's involvement in the offense?
- Is there anything about your client's background that may have contributed to the commission of the offense?
- Do you know of any family history issues that should be explored during the investigation?
- Are there any mitigating circumstances you want the Court to consider?
- (For cases involving contested guideline or sentencing issues) Other than the issues identified in the plea agreement letter, are there any other issues in dispute between you and the Government?

Victim Impact Statement

Rule 32 requires the probation officer to include in the presentence report a verified, non-argumentative assessment of the financial, social, psychological, and medical impact upon, and cost to, any individual against whom the offense has been committed. Monograph 114, *Criminal Monetary Penalties: A Guide to the Probation Officer's Role*, contains model mandatory victim restitution letters for violent crime and non-violent crime victims, and the Probation Form 72, *Declaration of Victim Losses*, which can be used by the probation office to solicit information from victims. Monograph 114 also describes useful methods for identifying the victims and confirming their losses. Furnishing the outcome of victim-related investigations in a separate section of the report is intended to emphasize the full impact of the offense on the victim(s), regardless of whether losses have been recovered or the information affects guideline application.

The Victim Impact Statement should include all consequences of the offense conduct on any identifiable victim, an assessment of the financial, social, psychological, and medical impact upon any individual victim of the offense, any financial loss caused by the conduct of the offense, and a complete accounting of the losses to each victim. Specifically, the victim impact statement should include the name of each victim; whether the victim has been contacted either directly or through a third party (e.g., the victim/witness coordinator); the outcome of such contact; and the type and amount of loss, separating losses involving property, bodily injury, social, psychological, or medical from other types of losses.

If the victim's losses are not ascertainable by 10 days prior to the sentencing date, 18 U.S.C. § 3664(d)(5) provides that the attorney for the government or the probation officer must notify the court and the court should set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. In certain circumstances, the victim may petition the court for an amended restitution order if the victim discovers additional losses.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
37

The victim impact statement should report on the status of loss, including whether any or all of the loss has been recovered or whether restitution has already been made by the defendant (or co-defendant or third-party compensator) and whether the defendant is to be held accountable for the loss for restitution purposes (i.e., whether the loss was sustained during offender conduct for which this defendant has been convicted, or if not, whether restitution for this victim is addressed in a plea agreement). The victim impact statement should also flag for the court any questions as to whether the loss should be considered part of a scheme, conspiracy, or pattern of criminal activities encompassed by the count(s) of conviction.

The impact statement should also note when there is no victim, along with the reasons (e.g., "There are no losses or injuries in this offense" or "The property offense was unconsummated or otherwise involved no actual victim loss or injury"). If there were victims, but the officer believes it is not practicable or possible to identify them or associate their losses with the offense, the victim impact statement should so note. If there were identifiable victims who sustained loss or injury but who have yet to be located, the report should so indicate, along with the status of the investigation to locate the victims (e.g., awaiting victim list from the United States attorney's office or unable to locate victims). If there are numerous victims, the listing can be provided to the court in an attachment and the victim impact statement should reference the attached listing. If the victim is an individual, in the interest of victim privacy, the victim impact statement should not specify contact information (e.g., the victim's address or telephone number), but such information should be provided to the clerk's office via separate cover for restitution disbursement purposes.

In order to assist victims, officers should be familiar with the victim compensation laws and victim assistance programs available in their districts. Money collected from federal fines fund state victim compensation and assistance programs through the Department of Justice. Victims of federal crimes are eligible to apply for compensation through the state programs, if the court does not order the defendant to make restitution.

Interview with the Victim

When interviewing victims, it is helpful for the probation officer to explain briefly who he/she is, the role of the officer and why the victim is being contacted. Inform the victim that the information provided will be included in the report to the court that the defendant also receives. The victim should also be provided with the sentencing date if known and reminded of his/her right to be present at sentencing and to be heard.

Possible questions for the victim (this list is not all inclusive and some of the answers may already have been provided on the Declaration of Victim Losses)**:**

- Have you been contacted by the Victim-Witness Coordinator of the U.S. Attorney's office?
- Were any injuries suffered?
- Have you attended counseling as a result of the offense?
- Do you know the defendant?

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
38

- Describe how this offense has affected your life.
- What was your total loss?
- Has your insurance company reimbursed you for your loss? Did you pay a deductible? What was the amount? Name of insurance company and agent.
- Where should restitution be sent?
- Do you wish to make any other comments?

Child Victims

Special rights for child victims and child witnesses are set forth in 18 U.S.C. § 3509. The term "child victim" is defined as a person who is under the age of 18, who is alleged to be:

> (A) a victim of a crime of physical abuse, sexual abuse, or exploitation; or
>
> (B) a witness to a crime committed against another person;[2]

The statute provides that a multi-disciplinary child-abuse team, composed of professionals from health, social service, law enforcement, and legal service agencies, shall be used when it is feasible to coordinate the assistance needed to handle cases of child abuse. In preparing the victim impact statement for the presentence report, the probation officer "shall request information from the multi-disciplinary child abuse team and other appropriate sources to determine the impact of the offense on the child and any other children who may have been affected." 18 U.S.C. § 3509(f).

The identity of a child victim is protected pursuant to 18 U.S.C. § 3509(d). Revealing the identity of a child victim is punishable as contempt pursuant to 18 U.S.C. § 403. Probation officers must take care to avoid revealing a child victim's identity in the presentence report.

Pretrial Adjustment

If, as a condition of release, the defendant has been under pretrial supervision, describe the defendant's performance. Positive adjustment, such as paying restitution to the victim, remaining drug free, or successfully completing a residential substance abuse program, is included as well as negative adjustment such as positive urinalysis results or failure to report to the pretrial services officer as directed.

[2] 18 U.S.C. § 3509(a)(2).

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
39

The Defendant's Criminal History

The officers gather information on all known convictions, juvenile adjudications, arrests, and pending cases. In addition, the officer gathers reliable information on any other criminal conduct, whether or not formally charged, that the court may rely upon when imposing sentence. This information allows the court to calculate the advisory sentencing guidelines, consider departures and determine the most appropriate sentence.

In making classification, designation, and programming decisions, the Bureau of Prisons relies on the criminal history information contained in the report. In particular, the Bureau of Prisons is interested in the defendant's adjustment to prior periods of custody and any conduct involving:

- bail jumping;
- sexual misconduct;
- weapons/firearms;
- escape;
- violence;
- gang affiliation;
- immigration; and
- threats against government officials.

Probation officers who subsequently supervise the defendant's probation or supervised release need to know the defendant's complete background for assessment of risk factors. This information is a major component of the Risk Prediction Index (RPI), which the probation officer supervising the offender uses to develop appropriate supervision strategies.

Federal, state, and local law enforcement agencies and court records provide most of the information about the defendant's criminal record. If available, pretrial services reports and files may contain useful information about an offender's criminal history. Information from the defendant may also provide useful clues about his record of previous crimes.

The starting point for most criminal history investigations will be automated record checks, such as the National Crime Information Center (NCIC). Some probation offices may also have automated access to state and local criminal records as well. However, the automated records typically do not contain all of the information that the court would need to impose a sentence. Therefore, officers should attempt to obtain records from law enforcement, the courts, and correctional agencies that provide details that may help the court understand the defendant's prior behavior. These include but are not limited to:

- arrest records/reports;
- complaints/indictments;
- plea agreements;
- judgments/docket sheets;

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
40

- previously prepared pretrial/presentence reports;
- institutional records;
- probation and parole records.

At the beginning of the investigation, the probation officer asks the defendant if there is any record of appearances in juvenile court, citations, arrests, or adult prosecutions. Additionally, defendants are asked to list every city where they have lived, so the officer can request criminal records searches from local law enforcement agencies in those jurisdictions. If there is an indication that the defendant has criminal history in another district, the probation officer requests collateral assistance from the other district early in the investigation. The collateral request explains why the officer suspects the defendant has a record in the other district. It also provides a detailed description of the defendant, any aliases the defendant is known to use, local or state criminal record identification numbers, and court action or docket numbers, if known.

Officers responding to collateral inquiries should report in the proper format all information that the probation officer will require for the presentence report. Additionally, the collateral investigator indicates the status of counsel, reporting whether the defendant was represented by counsel, waived counsel, appeared *pro se*, or was not represented by counsel; or references the state law requiring the right to counsel so the court can determine if the conviction was "uncounseled."

If there is substantial evidence that the defendant may have foreign arrests, the probation officer requests an arrest history check from INTERPOL. Requests for assistance from INTERPOL must be made early in the investigation, since responses usually take 30 days or more.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
41

Chapter III – Presentence Report for an Individual Defendant

Introduction

Chapter III discusses the necessary content of each section of the presentence report. As described earlier, the presentence report is a comprehensive document serving several purposes. First, it is used to assist the sentencing court in determining the appropriate sentence. It also aids the Bureau of Prisons in its inmate classification process. The U.S. Sentencing Commission uses the presentence report to obtain sentencing data necessary for policy considerations. The presentence report also facilitates the post-conviction supervision process.

Style and Composition

The presentence report is a legal document subject to review of the appellate courts. As a general rule, based upon the officer's conclusions from the presentence investigation, the report contains only information that the probation officer believes to be accurate. The objective is to produce information that the court may rely upon at sentencing. Inevitably there will be instances when an officer must present some information that the officer was unable to verify. Such information is clearly identified as unverified.

Care should be taken that facts are stated with accuracy, ambiguity is avoided, and non-technical language is used. Generalized terms and unsupported adjectives frequently fail to define the difference between persons, situations, and circumstances. When technical, psychiatric, psychological, or medical terms must be used in the report, an explanation should be included. Because the presentence report is a formal document, slang and abbreviations are avoided. When quoting a person, quotation marks are used only if the probation officer is prepared to state that these were the exact words of the person quoted. The process of compiling the report is one of selecting only those assertions that the probation officer will be prepared to defend in the event of a challenge from the defendant, the defendant's counsel, or the Government's attorney.

The presentence report is composed using numbered paragraphs for ease of reference by the judge and counsel. In Part B, The Defendant's Criminal History, each entry for an adjudication or conviction is numbered. The descriptive paragraphs under each entry are not numbered. Numbered paragraphs in the text of the report and numbered criminal history entries are useful in deliberations with attorneys during the disclosure and addendum process, for reference by the court in stating the reasons for imposing a sentence, and in the identification of controverted issues when a sentence is appealed.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
42

The page numbers begin on the second page of the face sheet which is numbered as page 2 of the report. The page numbers of the addendum may be sequential to the body of the report or may be numbered independently. When the final report is submitted to the court for the sentencing hearing, the organization of the main report, the addendum, and the recommendation page will depend on local court requirements.

Probation officers may receive letters from the defendant's friends and acquaintances, the victim(s), or the attorneys, urging a lenient or harsh sentence. Such letters and documents may provide the officer with investigative leads to information that might appropriately be included in the presentence report. They should rarely become part of the record or have evidentiary value at the sentencing hearing. Accordingly, the content of such documents is evaluated and investigated by the probation officer and the information that the officer believes to be reliable is included in the report. The actual letters and documents are not attached to the report as they would become a part of the record. If the court desires to receive such material, the letters and documents are forwarded to the court separately from the presentence report. Alternatively, attorneys for the defendant or the Government may separately submit such material to the court with their sentencing memoranda.

Standard of Proof

During the presentence investigation, a probation officer has access to information from numerous sources. Some information may be obtained from highly reliable sources, while other information may be highly speculative and potentially damaging to the defendant. The probation officer should carefully evaluate any allegation about the defendant, particularly when such information cannot be independently verified and is not particularly relevant to sentencing. While the court may consider a vast amount of information in determining an appropriate sentence,[1] it is important that the probation officer distinguish between information that is factual, inferred, or alleged. The court is not bound by the Federal Rules of Evidence at sentencing in considering whether a fact has been proven by a preponderance of the evidence,[2] but information should have a "sufficient indicia of reliability to support its probable accuracy." See, U.S.S.G. §6A1.3, comment.

[1] Section 3661 of Title 18 states that "[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence."

[2]The Supreme Court has determined that the preponderance of the evidence standard satisfies due process requirements at sentencing. See, e.g., *McMillan v. Pennsylvania*, 477 U.S. 79 (1986). See also, Commentary to U.S.S.G. §6A1.3, "The Commission believes that use of a preponderance of the evidence standard is appropriate to meet due process requirements and policy concerns in resolving disputes regarding application of the guidelines to the facts of the case."

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
43

The Supreme Court's holding in *U.S. v. Booker*, 125 S.Ct. 738 (2005), does not alter this approach. In *Booker*, the Court ruled that the mandatory nature of the sentencing guidelines subjected them to the jury trial requirements of the Sixth Amendment of the Constitution. The Court further held that since it was not Congress's intent to have sentencing facts decided by juries, the appropriate remedy was to strike those provisions of the Sentencing Reform Act of 1984 that made the sentencing guidelines mandatory. The remedy, however, did nothing to "suggest[...] that sentencing judges are required to find sentence-enhancing facts beyond a reasonable doubt under the advisory Guidelines regime." *U.S. v. Pirani*, 406 F.3d 543, 551 (8th Cir. 2005).

Most circuits have held that reliable hearsay evidence may be used at sentencing. See, e.g., *U.S. v. Petty*, 982 F.2d 1365 (9th Cir. 1993). Therefore, the probation officer may rely upon out-of-court statements made by someone other than the defendant in considering facts to be included in the presentence report. The hearsay evidence, however, must have some indicia of reliability. When evaluating potentially damaging allegations obtained during the course of the presentence investigation, the officer must consider factors such as the relationship between the defendant and the individual making the allegation, the nature of the allegation, the time frame in which the alleged conduct occurred, and the presence or absence of corroborating information.

In *U.S. v. Miele*, 989 F.2d 659 (3d Cir. 1993), the court found that because of the questionable reliability of an addict-informant, it was "crucial that a district court receive with caution and scrutinize with care drug quantity or other precise information provided by such witness." The officer should make a reasonable inquiry into the background of the person making allegations concerning the defendant. In some cases, it may be necessary to conduct a personal interview to observe the individual's demeanor. The officer may ask whether the individual is willing to commit his or her comments to writing or testify if called upon by the court. It is not necessary for the officer to investigate an individual making allegations about a defendant, but the officer should have some sense about the person's veracity. For example, in *U.S. v. Fennell*, 65 F.3d 812, 814 (10th Cir. 1995), the court concluded that "an unsworn out-of-court statement made by an unobserved witness and unsupported by other evidence form an insufficient predicate for a sentence enhancement."

The probation officer may obtain and review transcripts produced in connection with other proceedings to corroborate allegations about the defendant. The Supreme Court has permitted the use of conduct for which a defendant was previously acquitted. See, *U.S. v. Watts*, 519 U.S. 148, 117 S.Ct. 633 (1997). The probation officer therefore may wish to review transcripts from prior charges brought against the defendant, but for which he was acquitted. Several circuits have held that reliable evidence from the trial or hearing of a third party may be used in sentencing a defendant, as long as the defendant has notice and an opportunity to challenge it.

The probation officer can also conduct an additional interview with the defendant to obtain the defendant's perspective on an allegation. If the probation officer concludes that the allegation is reliable but could not be verified, the allegation may be included in the presentence report initially disclosed, but it should be noted clearly in the report that the information could not be verified and should include the defendant's account of the incident. When the probation officer cannot determine

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
44

the accuracy of an allegation and is unsure whether to include such information in the report, the officer should confer with the supervisor.

Format and Content

The Face Sheet

The cover page of the presentence report is the face sheet, which contains significant court-related information and offense data provided for ease of reference. Court-related information includes the court of jurisdiction, identification of the defendant, docket number, sentencing judge, probation officer, prosecutor, defense counsel, and sentencing date. The offense data displays the offense(s) of conviction, the statutory maximum penalty and any mandatory minimum penalty for custody and a fine.

Release Status

If the defendant is in custody when the presentence report is completed, state that the person is "Detained since (date)." If the defendant is in custody in another jurisdiction, identify it. If the defendant is not in custody but was detained for any period(s) of time in connection with the instant case, list the dates of custody.[3] It is important to accurately indicate the dates during which the defendant has been in federal custody in connection with the offense or acts for which sentence is to be imposed. Time spent in pretrial custody is critical information for the Bureau of Prisons in calculating the number of days of pretrial detention credited to any sentence of imprisonment. Information on pretrial custody may be obtained from the records of the U.S. Marshals Service or Bureau of Prisons.

If the defendant is granted pretrial release, indicate one of the following types of release:

personal recognizance:	The defendant is released upon personal or own recognizance (promise to appear in court) without an appearance bond.
unsecured bond:	The defendant is released on an unsecured appearance bond with a monetary amount that is secured only by the signature of the defendant.
percentage bond:	The defendant is required to execute an appearance bond in a specific amount and is required to deposit a set percentage of that amount with the clerk of the court, in cash or other security as directed by the judicial officer.

[3]The U.S. Marshals Service or the Pretrial Services Officer are good sources for this information.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
45

surety bond:	The defendant is required to execute a bail bond by the deposit of cash or the posting of a bail bond.
collateral:	The defendant is required to execute the bail bond by posting property of an equal or greater value to the bail set by the judicial officer.
third-party custody:	The court may place the person in the custody of another person or organization.

Detainers

The section for Detainers identifies any outstanding warrants, holds, or any other writ from another case or from a pending action in another jurisdiction that would authorize further detention.

Codefendants

If there are codefendants in the instant case (i.e., same docket number), their names and the status of their cases (e.g., pending trial, pending sentencing, sentenced) are identified for reference. The judge may use this information to consider previous court findings pertaining to role in the offense or other sentencing considerations.

Related Cases

A related case is another federal case with a different docket number that pertains to participants in the instant offense. As with codefendants, provide the name(s) and the status of the cases for the court's reference. Also include the federal docket number. Since the Related Cases section of the face sheet refers only to related cases available to the court to examine, do not refer to state cases associated with the federal case. Note that "related case" in this section of the presentence report has a different definition than the concept of "related cases" defined in the criminal history calculation procedures of the advisory guidelines.

Date the Report Is Prepared

The date the report is prepared is documented at the bottom of the face sheet. Following disclosure of the initial report, if the final report is revised before submission to the court, the date the report is revised is also displayed.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
46

Identifying Data

The second page of the presentence report displays identifying data. Demographic data are provided for the use of the sentencing judge, probation officer, U.S. Sentencing Commission, U.S. Parole Commission, and the Bureau of Prisons. While certain demographic data are precluded from consideration in the sentencing process both by statute and by the guidelines, the "Chief Judge of each district court shall ensure that, within 30 days following entry of judgment in every criminal case,[4] the sentencing court submits" a written report of the sentence to the U.S. Sentencing Commission, including in it the offense for which the sentence is imposed, the age, race, and sex of the offender, as well as other factors relevant to the guidelines. 28 U.S.C. § 994(w).[5] Accordingly, submission to the Commission of copies of the presentence report, judgment, statement of reasons, written plea agreement, indictment or information, and any other information required by the Commission will meet these statutory obligations.

The Identifying Data section contains the defendant's date of birth, age, race, sex, social security number, FBI number, U.S. marshal number, PACTS Client identification number, other identification number(s), level of education completed, number of dependents, citizenship, and legal address. The identifying data is largely obtained from the defendant and is verified by the probation officer from documentation obtained from the defendant, from contact with the primary source in person or by mail, or by colleagues in a collateral investigation. An optional photograph of the defendant is attached to this page.

Race	Definition [6]
American Indian	American Indian or Alaskan native -- A person having origins in any of the original peoples of North America.
Asian	Asian or Pacific Islander -- A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, i.e., China, Japan, Korea, the Philippine Islands, and Samoa.
Black	A person having origins in any of the black racial groups of Africa.

[4] The term "every criminal case" has been interpreted to mean any felony or class A misdemeanor, whether or not sentenced under the guidelines.

[5] "The Commission shall assure that the guidelines and policy statements are entirely neutral as to race, sex, national origin, creed, and socioeconomic status of offenders." 28 U.S.C. § 994(d).

[6] Source: Equal Employment Opportunity Commission.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
47

White	A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.
Other	A person not included above.

Hispanic Origin

Report the defendant's race and following a comma, whether the defendant is Hispanic or Non-Hispanic. An individual is defined as having Hispanic origins if that person has origins in any of the Spanish cultures regardless of race (e.g., Mexico, Puerto Rico, Cuba, Central or South America).

Part A. The Offense

Part A is intended to provide the court with all of the information necessary to understand the offense, to assess the impact on any victim, to calculate the offense level (the vertical axis of the Sentencing Table in U.S.S.G. Chapter Five, Part A), and to evaluate whether important elements of the offense have been taken into account by the sentencing guidelines. These tasks can be complex, since they require the officer to thoroughly investigate all aspects of the offense, anticipate potential applications of this information in sentencing, and present complex information in a coherent yet concise style.

Charge(s) and Conviction(s)

Charge(s)

The information in the Charge(s) and Conviction(s) section provides a brief chronological history of the prosecution of the case from the filing of the initial charges to the referral for a presentence report. The specific charges lodged against the defendant and any codefendants are identified and can be found in the charging instrument, namely the indictment, information, or complaint. In multi-count cases, it is appropriate to describe similar counts together. If there are superseding indictments or informations, the details of the specific charges that supplanted the original charges are identified or summarized. In this manner, the court receives a chronicle of the allegations lodged against the defendant.

Plea or Verdict

The method of the conviction is reported, identifying whether the conviction occurred as a verdict of a jury, verdict of a court trial, verdict of a stipulated facts trial, entry of a guilty plea, entry of a plea of *nolo contendere*, or any other method of establishing guilt. The count or counts of conviction are specified. If a special verdict sheet was used, the elements, drug quantities, amount of loss, or other factors found by the jury should be specified. If the presentence report is intended to be disclosed to the court prior to the establishment of guilt, the probation officer should cite Rule 32.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
48

Plea Agreements and Stipulations

Plea agreements may be documented in writing between the assistant U.S. attorney and the defense attorney and filed with the court; they may be documented in an agreement or letter between the attorneys; they may be documented in the file of the U.S. attorney; or they may exist only as an oral agreement. It is important to note whether the plea agreement is written or oral, because the U.S. Sentencing Commission needs this information for monitoring and research efforts.

If a guilty plea has been entered pursuant to a plea agreement, a synopsis of the agreement should be presented. It is important that the court be aware of any stipulations related to factors (e.g., drug quantities, amount of loss, role in the offense, etc.) that may impact the guideline imprisonment range or other sentencing provisions when considering the validity of the plea agreement. These stipulations will be weighed against the offense conduct and the defendant's background to evaluate the consequences and/or adequacy of the agreement.

If a guilty plea has been entered pursuant to a plea agreement, the probation officer should identify the type of agreement, unless it has been sealed by the court. Rule 11 of the Federal Rules of Criminal Procedure identifies three types of plea agreements:

1. Rule 11(c)(1)(A)-- in return for the defendant's guilty plea on a selected charge or charges, the parties agree that the government for the attorney will not bring, or move to dismiss other charges. In considering whether to accept a plea pursuant to Rule 11(c)(1)(A), the court will need to determine, for reasons stated on the record, that the remaining charges adequately reflect the seriousness of the actual offense behavior. See, U.S.S.G. §6B1.2(a), p.s.

   In some cases (e.g, drug offenses), the conduct underlying the dismissed counts is considered relevant conduct. Such information is included in the Offense Conduct section of the report and used in calculating the guidelines. In other cases (e.g., robbery offenses), the dismissed counts may not be considered relevant conduct. Such information is included in the Offense Behavior Not Part of Relevant Conduct section and is not used in calculating the guidelines. Such information may, however, be considered by the court in determining whether the plea agreement adequately reflects the seriousness of the actual offense behavior or if a departure is warranted per U.S.S.G. §5K2.21, p.s.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
49

2. Rule 11(c)(1)(B)-- in return for the defendant's guilty plea on a selected charge or charges, the parties agree that the government will recommend or not oppose the defendant's request for a particular sentence or sentencing range, or that a particular provision of the sentencing guidelines, or policy statement, or sentencing factor is or is not applicable to the case. Any such recommendation or request is not binding on the court.

3. Rule 11(c)(1)(C)- in return for the defendant's guilty plea on a selected charge or charges, the parties agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the sentencing guidelines, or policy statement, or sentencing factor is or is not applicable to the case. Such a plea agreement is binding on the court once it is accepted by the court.

The probation officer is not limited to the recommendations of the parties as to the application of the guidelines. Instead, the officer conducts an independent assessment and considers all relevant conduct in drafting a description of the offense and in calculating the guidelines. Any discrepancies between the guidelines independently calculated by the probation officer based on the offense conduct and those recommended by the parties in the plea agreement are explained in the Impact of the Plea Agreement section of the report. If the court accepts the plea agreement prior to receipt of the presentence report and the guideline application proposed by the probation officer is accepted by the court and is substantially different from the plea agreement, the court will consider allowing the defendant to withdraw his guilty plea.

Regardless of whether the court ultimately adopts the probation officer's version of the offense and guideline calculations, it is important that this perspective be provided. The probation officer's presentation of an independent version of the offense conduct helps limit the degree to which the parties may bargain away facts or charges. In addition, it provides the court with an independent basis upon which to assess the adequacy of the plea agreement, and provides valuable data to the Sentencing Commission, ultimately allowing the Commission to provide comprehensive federal sentencing data for use by all three branches of government in the formulation of federal sentencing policy.

The Plea Agreement may contain a stipulation that the assistant U.S. attorney may file a motion stating that the defendant has provided substantial assistance in the investigation or prosecution of another person and will accordingly seek a downward departure. Like other stipulations, this one should be summarized in a general sense in this section of the report and summarized again in Part E of the presentence report.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
50

If the court departs due to a substantial assistance motion, and if the motion was not reported in the Charge(s) and Conviction(s) section, it is important that such information be relayed to the U.S. Sentencing Commission in the written Statement of Reasons required to be submitted under 28 U.S.C. § 994(w)(1).

Pretrial Adjustment

If, as a condition of release, the defendant has been under pretrial supervision, describe the defendant's performance. Positive adjustment, such as paying restitution to the victim, remaining drug free, or successfully completing a residential substance abuse program, is included as well as negative adjustment such as positive urinalysis results or failure to report to the pretrial services officer as directed.

The Offense Conduct

The Offense Conduct section is a critical section of the report. Along with the advisory guideline applications themselves, it will be heavily scrutinized and potentially contested by the parties. Consequently, a premium is placed on the accuracy of information in this section and the style in which it is presented. The objective of the Offense Conduct section is to report what happened as established by the probation officer's investigation, using the officer's best judgment to resolve factual discrepancies among sources.

As an independent investigator, the probation officer has examined the case materials and conducted interviews of the defendant, case agents, witnesses, and victims in context with the applicable guidelines. It is in this section, that this information must be analyzed and presented in a chronological narrative format. A simple recitation of the government's version of events is inconsistent with the independent nature of this section. Additionally, this section should be written without regard to limitations or stipulations referenced in the plea agreement. The probation officer's presentation of an independent version of the offense conduct helps limit the degree to which the parties may bargain away facts or charges.

The offense conduct is a concise but complete description of the defendant's conduct and the conduct of co-defendants or other participants. It addresses all relevant conduct occurring during the offense of conviction, including the planning and preparation for the offense, and the circumstances leading to the arrest or summons of the defendant.

Any factual details of the offense behavior that support the determination of a base offense level, specific offense characteristic, cross reference, victim adjustment, role adjustment, obstruction of justice adjustment, or adjustment for acceptance of responsibility are included, as are any factual details that support the determination of where within the guideline range to sentence. For example, drug and fraudulent transactions need to be quantified so they can be aggregated; the number of victims need to be identified; the role of the participants needs to be determined; obstructive conduct should be outlined; the use of weapons or violence needs to be identified; and accompanying criminal conduct should be documented to support cross reference applications.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

In complex cases involving multiple defendants, offenses, and/or transactions, it may be useful to provide a table or chart summarizing the roles and quantitative transactions. When more than one officer is working on a case with codefendants, it is good practice for the officers to work together and coordinate the facts in the offense conduct so that the analysis of the conduct and roles of the codefendants is consistent. Lastly, a summary paragraph at the end of the offense conduct is beneficial to the court and other readers for quick reference.

The fundamental task throughout this process is one of weighing the evidence in support of various points of view based on the best available information, with the goal of understanding what happened during the course of an offense. During the investigation of the offense, the officer must explore all offense circumstances, but in writing the offense conduct section, extraneous information can be omitted. Post-offense behavior, such as obstruction of justice or acceptance of responsibility, is discussed under separate subheadings in this section, although, on occasion, it may be necessary initially to address some of the post-offense behavior in this section for clarity.

Victim Impact Statement

Rule 32 requires the probation officer to include in the presentence report a verified, non-argumentative assessment of the financial, social, psychological, and medical impact upon, and cost to, any individual against whom the offense has been committed. Monograph 114, *Criminal Monetary Penalties: A Guide to the Probation Officer's Role*, contains model mandatory victim restitution letters for violent crime and non-violent crime victims, and the Probation Form 72, *Declaration of Victim Losses*, which can be used by the probation office to solicit information from victims. Monograph 114 also provides useful information of methods to identify and confirm the identity of victims and their losses. Furnishing the outcome of victim-related investigations in a separate section of the report is intended to emphasize the full impact of the offense on the victim(s), regardless of whether losses have been recovered or the information affects guideline application.

The Victim Impact Statement should include all consequences of the offense conduct on any identifiable victim, an assessment of the financial, social, psychological, and medical impact upon any individual victim of the offense, any financial loss caused by the conduct of the offense, and a complete accounting of the losses to each victim. Specifically, the victim impact statement should include the name of each victim; whether the victim has been contacted either directly or through a third party (e.g., the victim/witness coordinator); the outcome of such contact; and the type and amount of loss, separating losses involving property, bodily injury, social, psychological, or medical from other types of losses.

If the victim's losses are not ascertainable 10 days prior to sentencing, 18 U.S.C. § 3664(d)(5) provides that the attorney for the government or the probation officer must notify the court and the court should set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. In certain circumstances, the victim may petition the court for an amended restitution order if the victim discovers additional losses.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
52

The victim impact statement should report on the status of loss, including whether any or all of the loss has been recovered or whether restitution has already been made by the defendant (or co-defendant or third-party compensator) and whether the defendant is to be held accountable for the loss for restitution purposes (i.e., whether the loss was sustained during offender conduct for which this defendant has been convicted, or if not, whether restitution for this victim is addressed in a plea agreement). The victim impact statement should also flag for the court whenever there are questions as to whether the loss should be considered part of a scheme, conspiracy, or pattern of criminal activities encompassed by the count(s) of conviction.

The impact statement should also note when there is no victim, along with the reasons (e.g., "There are no losses or injuries in this offense" or "The property offense was unconsummated or otherwise involved no actual victim loss or injury"). If there were victims, but the officer believes it is not practicable or possible to identify them or associate their losses with the offense, the victim impact statement should so note. If there were identifiable victims who sustained loss or injury but who have yet to be located, the report should so indicate, along with the status of the investigation to locate the victims (e.g., awaiting victim list from the United States attorney's office or unable to locate victims). If there are numerous victims, the listing can be provided to the court in an attachment and the victim impact statement should reference the attached listing. If the victim is an individual, in the interest of victim privacy, the victim impact statement should not specify contact information (e.g., the victim's address or telephone number), but such information should be provided to the clerk's office via separate cover for restitution disbursement purposes.

In order to assist victims, it is helpful if the officer is familiar with the victim compensation laws and victim assistance programs available in their districts. Money collected from federal fines funds state victim compensation and assistance programs through the Department of Justice. Victims of federal crimes are eligible to apply for compensation through the state programs, if the court does not order the defendant to make restitution.

Child Victims

Special rights for child victims and child witnesses are set forth in 18 U.S.C. § 3509. The term "child victim " is defined as a person who is under the age of 18, who is alleged to be:

> (A) a victim of a crime of physical abuse, sexual abuse, or exploitation; or
>
> (B) a witness to a crime committed against another person;[7]

[7] 18 U.S.C. § 3509(a)(2).

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
53

The statute provides that a multi-disciplinary child-abuse team, composed of professionals from health, social service, law enforcement, and legal service agencies, shall be used when it is feasible to coordinate the assistance needed to handle cases of child abuse. In preparing the victim impact statement for the presentence report, the probation officer "shall request information from the multi-disciplinary child abuse team and other appropriate sources to determine the impact of the offense on the child and any other children who may have been affected." 18 U.S.C. § 3509(f).

The identity of a child victim is protected pursuant to 18 U.S.C. § 3509(d). Revealing the identity of a child victim is punishable as contempt pursuant to 18 U.S.C. § 403. Probation officers must take care to avoid revealing a child victim's identity in the presentence report.

Obstruction of Justice

In the Obstruction of Justice section of the report, any effort of the defendant to impede the investigation, prosecution, or sentencing of the case is reported. Additionally, conduct that created a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement officer is reported. Conduct pertaining to the obstruction guidelines is separated from The Offense Conduct because the evaluation of behavior constituting obstruction is distinct from the analysis of the offense conduct. Obstruction conduct usually focuses on behavior occurring after law enforcement authorities have initiated an investigation or have arrested the defendant. Occasionally, the obstruction conduct occurred during the investigation of the offense and is initially discussed in The Offense Conduct. The factual basis for the decision whether to apply this adjustment is reported in this section, while the officer's conclusion about the behavior is illustrated in the Offense Level Computation.

Investigating obstruction requires the probation officer to understand the relevant guidelines in order to ask pertinent questions when interviewing the defendant, prosecuting attorney, defense attorney, the case agent, law enforcement, victims, and witnesses, and to analyze the information contained in the case agent reports. It is important to address all obstructive behavior because, even if the obstruction does not support an adjustment to the guidelines, it may be considered in selecting a sentence within the guideline range and in consideration of voluntary surrender.

If an adjustment for obstruction of justice is based on behavior in the presence of the court, such as giving untruthful testimony at trial, the probation officer is not expected to form an independent judgment about that kind of obstruction or try to determine the judge's views on the subject. If the judge is persuaded that the defendant testified untruthfully at the trial, the judge is in a position to take that into account, and there is normally no need to discuss this issue in the presentence report.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
54

Acceptance of Responsibility

Acceptance of responsibility is distinguished from the Offense Conduct because an assessment of the defendant's acceptance of responsibility focuses primarily on behavior occurring after law enforcement authorities have initiated an investigation or have arrested the defendant. In general, evaluation of acceptance of responsibility is an assessment distinct from the analysis of the offense conduct.

In this section, the officer identifies conduct, or lack thereof (omissions) that demonstrates the defendant's acceptance of personal responsibility for the offense. Evidence supporting the decision to grant or deny this adjustment to the offense level, including the defendant's statement, is included. To apply this adjustment, the officer must compare the defendant's behavior to the conduct that the advisory guidelines define as constituting evidence of acceptance of responsibility. The factual basis for the decision whether or not to apply this adjustment is reported in this section, while the officer's conclusion about the behavior is reported in the Offense Level Computation.

Information relevant to this provision includes the defendant's actions prior to, during, and after the prosecution of the case. Interviews of the defendant, prosecuting attorney, defense attorney, the case agent, law enforcement, victims, and witnesses in conjunction with reviewing case reports will assist in this assessment. Some areas of consideration are: whether the defendant attempted to terminate or withdraw from the offense before it was discovered; whether the defendant has paid restitution; timeliness of the defendant's admission of guilt; extent of the defendant's admission of guilt; the defendant's conduct and statements to law enforcement concerning the offense; expressions of remorse; statements made to the probation officer concerning the offense; or any other conduct that may be relevant to the assessment of this adjustment. If the defendant obstructed justice, the guidelines provide that the adjustment for acceptance of responsibility will not generally be appropriate. If there are extraordinary facts suggesting that both the obstruction and acceptance adjustments apply, the officer addresses these facts.

Offense Level Computation

While the remedial opinion in *Booker* struck the language in 18 U.S.C. § 3553(b) making the Guidelines mandatory, they kept intact the language in 18 U.S.C. § 3553(a), which requires the court to consider the guidelines and the policy statements when imposing a sentence. As such, while the post-*Booker* courts are not required to impose a sentence under the guidelines, judges must still consider, pursuant to 18 U.S.C. § 3553(a)(4), the kinds of sentences and sentencing ranges set forth in the guidelines.

The Offense Level Computation represents the officer's recommended findings in applying the advisory guidelines. It is possible that the offense level calculated by the probation officer will differ from that anticipated by the parties pursuant to stipulated facts or the terms of a plea agreement. In these instances, the probation officer should explain the reasons for the differences in the Impact of the Plea section.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
55

The factual basis for each decision by the officer is supported by presentation of the facts in the preceding sections of Part A. The Offense. With each guideline that is applied, a brief factual basis is presented, which is intended to provide the court with tentative factual findings that may become part of the record. Thus, the short statement of the factual basis is a synopsis of the previously reported facts. If no specific offense characteristic is applied, there is no entry for that specific offense characteristic. The categories of adjustments are listed, such as Adjustment for Role in the Offense and Victim Related Adjustments. If an adjustment applies, the guideline adjustment is referenced with a brief factual basis. If no adjustment is applied, the indication is "none," indicating that the adjustment(s) was considered but not applied. When "none" is the entry, no explanation is provided. The application for Acceptance of Responsibility and Obstruction of Justice is displayed in the same manner as the adjustments.

The section begins with identification of the edition of the *United States Sentencing Commission Guidelines Manual* that was used to apply the guidelines. This information is important for the court and attorneys to determine whether there are any ex post facto issues. As used in the law, ex post facto refers to statutes enacted, formulated, or operating retroactively as law. When guidelines have been amended, there may be an ex post facto question as to which sentencing guidelines apply.

In cases entailing multiple counts, the explanation for grouping counts may be addressed before the display of the application or immediately before the multiple-count adjustment, whichever placement, given the facts of the case, will be more helpful in understanding the application. If no counts are to be grouped, the officer reports that rules for grouping counts are not applicable.

In separate concise sentences, the officer briefly explains the foundation (tentative factual findings) for the guideline application decisions under the major topic headings displayed below, concluding with the numeric assignment for each guideline computation.

> **Base Offense Level:** Provide applicable guideline cite and list the appropriate statute and offense of conviction.
>
> **Specific Offense Characteristic(s):** If none apply, simply enter "none." Provide a separate entry for each characteristic that applies. Specific offense characteristics that do not apply are not listed.
>
> **Victim-Related Adjustments:** If none apply, simply enter "none." For adjustments that apply, use separate entries to provide the factual basis for each adjustment (e.g., vulnerable victim, official victim, restraint of victim, and/or terrorism).
>
> **Adjustment for Role in Offense:** If there is no role adjustment, enter "none." Enter the factual basis for a role adjustment and if more than one applies, such as an adjustment for an aggravating role and for an abuse of trust, provide separate entries.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
56

Adjustment for Obstruction of Justice: If there is no obstruction adjustment, enter "none." Enter the factual basis for the obstruction adjustment and if more than one applies, provide separate entries.

Adjusted Offense Level: Display the adjusted offense level.

Multiple-Count Adjustment: Exhibit multiple-count calculations, including the assignment of units and combined offense level. Omit if there are no multiple-count groups.

Chapter Four Enhancements: These enhancements include career offender, criminal livelihood, repeat and dangerous sex offender against minors, and armed career offender. If none applies, enter "none." This procedure advises the court that the officer has evaluated the applicability of these enhancements.

Adjustment for Acceptance of Responsibility: If there is no adjustment, enter "none." When applied, provide a synopsis of the facts for the factual basis.

Total Offense Level: This total displays the offense level without consideration of any chapter four enhancements that may override the basic guideline application.

The order of the entries for Offense Level Computation follows the worksheets provided by the U.S. Sentencing Commission with two exceptions. The Acceptance of Responsibility and Chapter Four Enhancements are displayed at the end of the calculation. Display of the guideline application in this fashion allows the court to follow the officer's analysis of the application.

The guideline total offense level is displayed based upon the basic application without any chapter four enhancements for two reasons: The final total offense level is determined by whichever calculation is higher; and, in the event that the court determines that a Chapter Four adjustment does not apply, the original calculation is readily displayed.

Offense Behavior Not Part of Relevant Conduct

In some cases, the offense behavior of the count(s) to be dismissed per Rule 11(c)(1)(A) is not considered part of relevant conduct. In those cases, the criminal conduct is included in this section rather than in the Offense Conduct. Discussion of the facts in this section makes it clear to the court that the conduct is not captured within the guideline application. Presentation of the information in this manner will assist the court in evaluating a plea agreement. If, however, the offense behavior of the dismissed counts constitutes relevant conduct, such information should be included in the Offense Conduct section of the report and used to calculate the guidelines.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
57

For example, a defendant pled guilty to one count of bank robbery with two counts of bank robbery to be dismissed. The conduct in the two bank robberies to be dismissed would not be considered relevant conduct to the count of conviction and would be presented in this section. In essence, the Offense Level Computation operates as a bright line between counts included in the calculation and those that may not be included. In addition to crimes of robbery, other offenses that may be pertinent to this section when charged in a count to be dismissed are assault, burglary, certain immigration crimes, and threatening communications.

There may also be instances in which related offense behavior that is not part of relevant conduct has not been included in the criminal charges. If sufficient reliable information is present to establish that the conduct took place, it may be included in this section. An assessment of the impact on any victim(s) of the conduct described in this section is included.

Information Covered By U.S.S.G. §1B1.8

The guidelines provide that when a defendant agrees to cooperate with the Government by providing information about the unlawful activities of others and an agreement provides that self-incriminating information will not be used against the defendant, such information shall not be used in determining the applicable guideline range. Accordingly, such information is included in this section, is clearly labeled as information covered by U.S.S.G. §1B1.8, and is not used to calculate the guideline range. Nor can this information be used to increase the defendant's sentence above the applicable guideline range by upward departure; however, consideration of such information is appropriate in determining whether and to what extent a downward departure is warranted pursuant to a motion under U.S.S.G. §5K1.1.

Additional Resources

- *Sentencing and Guidelines: Basic Application*, Federal Judicial Center Broadcast, January 2001.
- *Federal Sentencing After Booker*, Federal Judicial Center Broadcast, February 2005.

Part B. The Defendant's Criminal History

The purpose of Part B is to provide information about the offender's previous criminal behavior and determine the defendant's criminal history category in accordance with sentencing guidelines. This section partially meets the requirement expressed in Rule 32 of the Federal Rules of Criminal Procedure and 18 U.S.C. § 3553 that the sentencing court consider the history and characteristics of the defendant. Likewise, Part B greatly facilitates the Sentencing Commission's collection, analysis, and reporting of comprehensive federal sentencing data, thus providing invaluable information to all three branches of the government, and others, in the formulation of federal sentencing policy.

All known incidents of criminal behavior are reported in The Defendant's Criminal History. In the first two sections, Juvenile Adjudications and Criminal Convictions, the officer lists prior occasions

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
58

when a court has determined the defendant was guilty of criminal behavior. All sentences imposed prior to the instant sentencing are presented, even sentences for conduct that occurred concurrently with or subsequent to the offense conduct described in Part A. The probation officer includes all verifiable adjudications and convictions, even those that are assigned zero criminal history points due to their age, because the report must provide a basis for judging the adequacy of the guideline criminal history category. In making classification, designation, and programming decisions, the Federal Bureau of Prisons relies on information contained in the Criminal Convictions section of the report, particularly details about prior convictions, such as bail jumping, history of sexual misconduct, firearms, escapes, violence, immigration status, threats against government officials, and prior institutional adjustment. Additionally, probation officers who subsequently supervise the defendant's probation or supervised release need to know the defendant's complete background for assessment of risk factors.

In the Juvenile Adjudications and Criminal Convictions sections, points are assigned and reported for each prior sentence in accordance with U.S.S.G. Chapter Four. If there are separate entries for cases that are considered to be related cases as determined by chapter four of the guidelines, the points assigned are displayed in the first entry and the second entry is referenced. Additional points are assessed in the Criminal History Computation section if the instant offense was committed fewer than two years after the defendant's last release from imprisonment. Points are also assessed for being under a criminal justice sentence when the offense was committed. Such points are a measure of how recent the defendant's criminal history is.

In the Juvenile Adjudications and Criminal Convictions sections, it is important to report points applicable to each sentence even though no more than four points are counted under Guideline §4A1.1(c). Only four of those points will be included when the criminal history category is calculated in the Criminal History Computation section; however, reporting all points in these sections will help the court to determine the correct criminal history category if one or more of the convictions are subsequently disallowed. Additionally, the listing of all points in these sections may help the judge consider a structured departure addressing the adequacy of the criminal history category. In the same manner, there is a three-point limit for points added pursuant to U.S.S.G. §4A1.1(f) when a defendant received two or more prior sentences as a result of counts of conviction that are treated as related cases but did not arise from the same occasion. All counts in which such points are applicable are reported, although only three points will be included when the criminal history category is calculated.

In the Juvenile Adjudications and Criminal Convictions sections, the officer lists only those adjudications and convictions that the court can accept as proof the defendant was guilty. Adult prosecutions in which diversion was granted after a finding or admission in court of guilt are included in Criminal Convictions because they are eligible to receive criminal history points. Detentions and arrests that did not result in conviction or prosecution are included in Other Criminal Conduct, Pending Charges, or Other Arrests, depending upon the circumstances of the case and the information that is available.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
59

Generally, an entry is prepared for each conviction. However, if an offender has compiled a lengthy history of convictions for offenses that are not eligible for points for the criminal history category due to their minor nature, such as minor traffic violations and misdemeanors, the convictions may be summarized in a narrative in the presentence report.

Uncounseled Convictions

An "uncounseled conviction" is an adjudication or conviction in which a defendant was not afforded the right to counsel. Courts may not use uncounseled convictions for any felony, any misdemeanor that resulted in imprisonment, or any misdemeanor that resulted in a suspended sentence to enhance the defendant's sentence, because those convictions may violate the U.S. Constitution's Sixth Amendment right to be represented by counsel in criminal proceedings.

The question is not just whether a defendant had an attorney, but if not, whether he/she was offered the right to have an attorney. If an adult defendant intelligently waived counsel or appeared pro se, the conviction is constitutional in that the defendant was afforded the opportunity to exercise the right to counsel. Consequently, probation officers should address the issue of representation for prior convictions to assist the court in determining whether the conviction may be considered at the time of sentence.

The constitutionality of a juvenile adjudication or criminal conviction can be established by evidence that the defendant had an attorney, or waived the right to counsel, or appeared pro se. Verification of Sixth Amendment compliance may be established in several ways, which are listed in the order of the best evidence: verification by examination of the court record; verification by examination of the court record by an officer in another district; citation of a state law or state court rule that requires that all defendants have the right to counsel during the prosecution of the case; or the defendant's admission of attorney representation for the case.

If representation by counsel has been verified, the officer indicates that the defendant was represented by counsel, waived counsel, or appeared pro se. If the state law required counsel, the officer may cite the statute or source at the beginning of the section as the law will pertain to all convictions in that state during the applicable years. In providing collateral responses for criminal history information, it is important to cite the state law or rule so that it may be referenced in the report.

If the officer is unable to verify the Sixth Amendment compliance, he or she reports this fact to the court and documents the officer's attempts to determine the status of attorney representation in the case. The probation officer reports the conviction as if it were valid and criminal history points are assigned pursuant to U.S.S.G. Chapter Four. The defendant has the burden of establishing that a facially valid conviction is unconstitutional.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
60

If the officer determines that the defendant was not afforded the right to counsel in a prior conviction, the conviction is reported, but criminal history points are not assigned. The basis for the officer's belief that the conviction is uncounseled, and thereby may be unconstitutional, is reported.

For all convictions, it is important that the probation officer report the Sixth Amendment compliance so that the court may determine whether each conviction may be considered at sentencing. If the Sixth Amendment compliance is unclear or if the conviction appears to be uncounseled, the probation officer presents the available information to assist the court in making a finding if the issue should be raised by counsel. Documentation in such convictions is also important because defendants sometimes raise the constitutionality of a prior conviction as an issue on appeal.

Sealed and Expunged Records

If the juvenile or adult record (or any part of that record) was subsequently set aside, sealed or expunged, the use of that record in the presentence report depends upon the law that authorized that disposition. If the law provides that the record actually be expunged or sealed, then it technically should not have been available to the probation officer for use in the report. If the officer somehow obtains such information, principles of comity suggest that the Federal court respect state law and not use the information.

If the applicable law only prevents the record from being used for certain purposes, such as employment or applying for certain licenses, it may be used for other purposes, such as sentencing. In that situation, the description of the adjudication or conviction should include an explanation of the status of the record. When the applicable law is unclear as to the permissible uses of the record, the officer should describe the information in the presentence report, but include a full explanation so that the court may decide whether the information may be used.

Juvenile Adjudications

The probation officer reports all juvenile court adjudications involving acts that would, if committed by an adult, constitute a crime. If a sentence has not been imposed for a juvenile adjudication that would otherwise be eligible for criminal history points, and guilt has been established, the adjudication is reported in this section because the court may apply criminal history points to such adjudications pursuant to U.S.S.G. §4A1.2(a)(4).

Adjudications resulting solely from an offender's status as a juvenile (e.g., truancy) are not described in Part B. Such "status offenses" are more appropriately described in the most suitable section of Part C. Offender Characteristics. Since juvenile diversions are not considered when calculating the criminal history category, they are reported in the Other Criminal Conduct section. Juvenile records that have been legally purged or sealed are not described in the presentence report. (See previous discussion of "Sealed and Expunged Records.")

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
61

Each entry, in chronological order, lists the date of referral, the charge (as finally adjudicated) and adjudicating court, the date sentence was imposed and the disposition, and the applicable guidelines and points awarded. Following each entry, a paragraph provides details about the adjudication, reporting if the juvenile was represented by or intelligently waived counsel and describing the circumstances surrounding serious violations. If the juvenile was imprisoned, adjustment while incarcerated is reported, and the date of release included. If the disposition included a term of supervision, the defendant's performance is discussed. If a term of supervision was revoked, the disposition of the revocation and subsequent dates of imprisonment are also to be reported with the original entry.

Juvenile records are usually found in the office of the clerk of the local juvenile court or probation office. Some jurisdictions will not provide information from juvenile files to the probation officer. If a record is available, but is provided pursuant to a promise from the probation officer that the information will remain confidential, the information should be marked "confidential" in the presentence report. To highlight the confidentiality issue, the officer reports this fact by including a statement preceding the description of the offense such as:

> INFORMATION ABOUT THIS PROCEEDING WAS OBTAINED BY THE PROBATION OFFICER WITH AN EXPRESS PROMISE THAT IT WOULD NOT BE MADE PUBLIC.

Criminal Convictions

In this section, the probation officer reports all adult convictions, including cases in which guilt has been established but the sentence has not been imposed, and military convictions. Military status offenses, such as Absence Without Leave, tribal court convictions and foreign convictions are included in the Other Criminal Conduct section.

Each entry, in chronological order, lists the date of arrest, the charge of conviction and court, the date sentence was imposed, the disposition, and the applicable guidelines and guideline points awarded. If the defendant was not arrested, the offense date is used as the arrest date to ensure a chronological recitation of the defendant's criminal behavior. Following each entry, a paragraph provides details about the conviction, reporting if the defendant was represented by or waived counsel and describing the circumstances surrounding serious violations. If the defendant was imprisoned, the adjustment while incarcerated is discussed, including the date of release. If the disposition included a term of supervision, the defendant's performance is described. If a term of supervision was revoked, the disposition of the revocation and subsequent dates of imprisonment are reported with the original entry.

Criminal History Computation

In this section, the probation officer determines the defendant's criminal history category. Criminal history points assigned in the Juvenile Adjudications and Criminal Convictions sections are carried forward, and a determination is made whether additional points should be assigned due to the

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
62

recency of the prior record or release from custody. When determining points for recency, defendants with active probation or parole violation warrants and offenders granted unsupervised probation are considered to be under criminal justice control. If the defendant has more than four points assigned for sentences less than 60 days, a maximum of four points are added to the points assigned for longer sentences. In addition, there is a three-point limit for certain related counts of conviction in crimes of violence.

The report clearly describes how the criminal history category was determined in all cases. If the defendant is a career offender, as defined in U.S.S.G. Chapter Four, it will be necessary to calculate the total points and also state that the criminal history category is determined to be VI because the career offender enhancement applies. The criminal history category is calculated because the court may find that the career offender provision is not applicable. Similarly, if another chapter four enhancement affects the criminal history category, such as when the defendant is an armed career criminal, the officer calculates the criminal history category, then determines if the category should be increased in accordance with the guideline provisions.

Additional Resources

- *Sentencing and Guidelines: Criminal History Issues*, Federal Judicial Center Broadcast, July 2001.

Other Criminal Conduct

The information contained in this section assists the court in evaluating the adequacy of the criminal history category in reflecting the seriousness of the offender's past criminal behavior and in determining whether a departure may be warranted. The officer reports reliable information about other past criminal behavior that may indicate that the defendant's criminal history category does not adequately reflect the seriousness of the past criminal conduct, or the defendant's likelihood to commit future crimes.

Juvenile and adult diversion dispositions in which the defendant did not admit guilt[8] in court are included here, as are military status offenses, tribal court convictions, and foreign convictions. The officer reports unadjudicated criminal conduct that may be relevant in sentencing and can be persuasively established on the basis of reliable information. Finally, the officer reports reliable and persuasive evidence of other criminal conduct from sources other than law enforcement authorities. Examples include disciplinary actions by the Securities and Exchange Commission (SEC) for illegal conduct, or information that an offender embezzled from a former employer based upon materials provided by that employer.

[8]Diversionary dispositions for which the defendant admitted guilt are reported under the Criminal Convictions section. See, U.S.S.G.§ 4A1.2(f).

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
63

The mere fact that an offender was arrested is insufficient evidence of criminal conduct, but may prompt the officer to make further inquiries about the underlying conduct. Conduct is reported in Other Criminal Conduct only if there is reliable and persuasive information that the defendant committed a crime.

Though it is not used to determine the offender's criminal history category, the information reported in this section may be relevant to sentencing for several reasons. Unadjudicated conduct similar to the instant offense behavior may make the commission of the instant offense more blameworthy or may indicate a propensity to engage in such conduct. Unadjudicated conduct may also support an inference that the defendant committed the instant offense as part of a pattern of criminal conduct that provided a substantial portion of the offender's income. Unadjudicated conduct may indicate the offender's criminal history category is inadequate, and could be relevant to a decision to depart from the guidelines or impose a non-guideline sentence. Finally, unadjudicated conduct, such as history of bail jumping, sexual misconduct, firearms, escapes, violence, threats against government officials, military absence without leave, and foreign arrests, may be considered by the Federal Bureau of Prisons in making classification, designation, and programming decisions.

The key to the decision to include or exclude information about criminal conduct in this section is whether there is reliable information to support the allegation of criminal behavior. Entries in this section must be supported by "a sufficient indicia of reliability" (see Standard of Proof in this chapter). Court records and transcripts, reliable witness statements, official reports and other documentation may be considered. If there is no pertinent information to report, this section may be omitted. Additionally, arrests with no verifiable details or supporting documentation need not be reported.

Pending Charges

If a defendant has sustained a conviction but has not been sentenced, the conviction may receive a criminal history point. Accordingly, although the conviction is not final, it is reported in Criminal Convictions. (See, U.S.S.C. § 4A1.2(a)(4).) In Pending Charges, the officer lists all other criminal charges pending against the offender, even if they have been described earlier in the report. The jurisdiction, charges, and status of each pending case are reported. A brief synopsis of any pending charge is presented in order to assess the defendant's propensity to commit future crimes.

The information contained in this section of the report assists the court in evaluating the adequacy of the criminal history category in assessing the defendant's likelihood to commit future crimes and, as such, it is important in assessing risk factors and in determining whether a departure may be warranted. This section may be omitted if there are no pending charges.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
64

Other Arrests (if applicable)

Report all other arrests of the defendant, unless the arrest was based on mistaken identity. Report the date of arrest, charge(s), agency, and disposition. This informs the court about the defendant's contact with law enforcement authorities. Because no reliable information establishes that the defendant committed a criminal act, such information may not be considered for a departure and is separated from Other Criminal Conduct.

Part C. Offender Characteristics

The purpose of Part C is to provide information about the offender's history and present condition. This section, when coupled with Part B, fulfills the mandate expressed in Rule 32 of the Federal Rules of Criminal Procedure and 18 U.S.C. § 3553(a) that the sentencing court consider the history and characteristics of the defendant. Likewise, Part B greatly facilitates the Sentencing Commission's collection, analysis, and reporting of comprehensive federal sentencing data, thus providing invaluable information to all three branches of the government, and others, in the formulation of federal sentencing policy.

The informed exercise of the court's discretion demands that the presentence report include all information relevant to sentencing, whether or not the information is directly relevant to guideline application. Information regarding the defendant's personal background assists the court in selecting appropriate sentencing options and in determining the need for supervision as well as the length of the term and appropriate conditions. Such information is relevant in determining the defendant's ability to pay financial sanctions and may also be important in assessing risk factors. Community supervision of the offender depends upon an understanding of the defendant's personality and motivations, the extent of family and community support that can be anticipated, employment patterns, abuse of controlled substances, financial stability, and a variety of social factors that vary by case. These factors may be considered when determining a specific term within a guideline range or when determining sentencing options. In extraordinary cases, these factors may even be considered when determining if a departure is warranted.

The information in Part C is also important for implementing of various elements of the sentence. Officials with the Federal Bureau of Prisons rely on verified defendant background information, such as age, release plans, immediate family members, medical condition, education, mental health issues, employment history, special skills (e.g., pilot, locksmith, martial arts) and substance abuse history (such as type of drugs used, time periods of use, drug test results, prior treatment for drug use or role of drug use in instant offense). Probation officers supervising terms of probation and supervised release will also consult this information in assessing risk factors for supervision classification.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
65

Personal and Family Data

In the Personal and Family Data section, the probation officer describes present and historical social factors that have had a significant bearing on the defendant's personality and behavior. The information is presented in a narrative briefly summarizing the defendant's life history. Events are described in chronological order. Though information about an offender's past is included in this section, the focus is on the present, including only the information necessary to understand the offender in an effort to formulate an appropriate sentence, including consideration of potential grounds for departure.

The defendant's immediate family members are identified, including parents and/or guardians, siblings, marriages, divorces, and dependents. An analysis of the defendant's fulfillment of responsibilities toward the spouse, ex-spouse, children, or any other dependents is presented. Information about the offender's family obligations is relevant for a determination of the ability to pay a fine or restitution. The Bureau of Prisons considers other family information when considering where the defendant should be designated and in establishing a list of approved visitors.

The officer describes the defendant's usual living situation and current living situation, if different. For instance, a defendant who usually resides alone in an exclusive townhouse may reside with his parents in a modest apartment after arrest, or a defendant who usually lives with a spouse and their children may be incarcerated pending sentencing. In those cases, an understanding of the defendant is more dependent on knowledge of the usual living conditions than on knowledge of the present conditions. Information about the defendant's usual living situation is particularly important if his/her situation at the time of sentencing is uncharacteristic of the defendant's lifestyle, or the defendant requires shelter. If the defendant's living situation is subject to change after a period of confinement, include any residence plans for the future.

Since each defendant is a complex individual, it is impossible to specifically define other characteristics relevant in every case. In addition to the bare outline described above, this section should discuss any major factor affecting the defendant's present behavior.

Because childhood or adolescent experiences can affect adult behavior, information about the defendant's early life experiences may be relevant in some cases. Since a turbulent domestic situation can contribute to an offender's conduct, a description of the offender's marital history or present domestic relationship may be germane in another case. Familial loyalty and the offender's present relationship with family members may explain one offender's conduct, but could be completely irrelevant to an understanding of another defendant's case. The professional judgment of the officer is important in selecting facts and material that are relevant to understanding the defendant's present circumstances.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
66

Physical Condition

At the beginning of this section, the defendant's physical description is reported. The officer identifies the defendant's height, weight, hair and eye color, and a description of any scars, marks, or tattoos. The defendant's physical description is important for identification of the defendant at sentencing and while serving the sentence. A description of any past or present health problem that may have an impact on sentencing, institutional classification, or community supervision is provided. The treatment history of that condition is summarized, and the defendant's current prescriptions are listed. Medical terminology should be avoided but, if used, should be explained parenthetically. Include in the report only the information that is necessary to understand the defendant's present health.

Information regarding the defendant's physical health will help the court select appropriate sentencing options and determine whether conditions of supervision should be tailored to accommodate health conditions. This information is critical for officials in the Bureau of Prisons to correctly make designation and programming decisions (e.g., Does the defendant's medical condition require him to be housed at one of the Bureau of Prisons' medical facilities? Does the defendant's medical condition prevent him from performing certain job assignments?). Special note should be made if the defendant is physically infirm and will require special treatment during community supervision.

Mental and Emotional Health

In this section, the probation officer identifies any mental or emotional problem that may influence sentencing, institutional classification, or community supervision. A special note should be made if the defendant requires psychological or psychiatric care, especially if medication is required. Any history of treatment for mental, emotional or behavioral problems is summarized. In cases where studies or psychological examinations are received prior to the preparation of the presentence report pursuant to 18 U.S.C. § 3552(b) or (c), a summary of the findings is included.

Information regarding the defendant's mental and emotional health assists the court in selecting an appropriate sentence or special conditions, or in assessing whether a departure is warranted, and in determining the need for supervision as well as the length of the term and appropriate conditions. Such information may be critical in assessing any specific third-party risk for community supervision or potential risk to officers subsequently supervising the case. Also, the Bureau of Prisons relies on such information to assess whether the defendant should be designated to a particular facility (e.g., FCI Butner), requires medication, or poses a threat to himself or others.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
67

Substance Abuse

If the defendant presently abuses alcohol or uses controlled substances, and if treatment is currently required, the officer provides details in this section. Identification of the specific substances used and the pattern of use is frequently important for development of an appropriate sentence or treatment strategy. Since a correlation between alcohol or substance abuse and criminal behavior is common, any history of alcohol abuse or substance use, including the results of urinalysis by the pretrial services office or the probation office, should be reported. Any history of treatment for abuse of alcohol or controlled substances is summarized.

Information about the defendant's use or abuse of controlled substances may assist the court in selecting appropriate sentencing options and in determining the term and appropriate conditions for community supervision. Such information may also be critical in assessing third-party risk, or risk to the community or supervising probation officer during community supervision. In addition, 18 U.S.C. § 3621 creates an incentive program for qualifying prisoners convicted of nonviolent offenses who successfully complete a substance abuse program while incarcerated. The confinement period may be reduced by the Federal Bureau of Prisons, "but such reduction may not be more than one year from the term the prisoner must otherwise serve." The Federal Bureau of Prisons relies on information in the presentence report, such as admission by the defendant of past drug abuse, summaries of treatment records obtained during the presentence investigation, or positive drug testing results.

Education, Vocational and Special Skills

The officer summarizes the defendant's educational accomplishments, and describes his/her special training or skills in this section. Those skills that may have facilitated the commission of the instant offense are elaborated, especially if those skills were abused. If the defendant's conviction may result in the loss of a license or other certification, that fact should be noted here. Identify the defendant's primary language if it is not English. If the defendant is bilingual or multilingual, describe the fluency in other languages. Note if the defendant is illiterate, has little education, or requires vocational training. This information may help the court select appropriate sentencing options and determine an appropriate term and conditions for community supervision. The defendant's possession of vocational skills may indicate an ability to pay a fine or restitution or an ability to perform community service.

The Bureau of Prisons also considers this information in making classification and programming decisions about the defendant. For example, a defendant without a high school diploma may be enrolled in a GED program while incarcerated. A defendant who possesses a special skill, such as carpentry or machinery repair, may be given a position with UNICOR. Inmates who possess other skills, such as those of a pilot, locksmith, or martial artist, may pose a security threat. Skills of this nature should also be identified in this section of the report.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
68

Employment

In this section, the probation officer describes, in narrative or tabular form, beginning with the most recent employment and in chronological order, the defendant's prior employment record, including places and dates of employment, specific job descriptions, salary and reasons for separation from employment. Employment with a branch of military service is included chronologically. Significant periods of unemployment and other sources of income are also to be reported. The defendant's employment status at the time of the instant offense and at the time of sentencing is discussed, and a brief description of the defendant's usual occupation is given. The officer also notes whether if the offender needs employment assistance.

The following standard phrases may prove useful for describing the defendant's employment status at sentencing and at the time of the offense:

* employed full time
* employed part time
* unemployed, temporarily looking for work
* unemployed seasonal worker
* unemployed and not looking for work
* unemployed with a history of extensive unemployment
* unemployed temporarily due to physical condition
* unable to work due to handicap, physical or mental
* incarcerated or confined
* student
* retired
* homemaker

The officer describes the defendant's usual occupation. Types of employment include general laborer, seasonal worker, waiter, doctor, lawyer, clerk, or auto mechanic. The defendant's employment history is then summarized. The summary details employment for the 10 years previous to sentencing, and describes earlier employment more generally unless the earlier employment history is directly relevant to sentencing.

Information about the defendant's employment may assist the court in selecting appropriate sentencing options and determining an apt term and appropriate conditions for community supervision. A defendant's employment status or history may be important in assessing the defendant's ability to pay financial sanctions or the ability to perform community service. The employment history may provide information necessary to determine if criminal livelihood sanctions should be applied. Additionally, the employment history may reveal the need to impose occupational restrictions upon the defendant as a condition of probation or supervised release.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
69

Financial Condition: Ability to Pay

The financial condition of an offender has become increasingly important for purposes of sentencing and supervision. While the Mandatory Victims Restitution Act of 1996 requires the imposition of restitution in certain offenses regardless of the defendant's ability to pay, and special assessments are mandatory, other penalties (e.g., discretionary restitution, fines, and community restitution) and the collections of criminal monetary penalties (whether imposed mandatorily or not) require the investigation and analysis of an offender's ability to pay.

Moreover, the statute requires the defendant to prepare and file with the probation officer a listing of all assets owned or controlled as of the date of the defendant's arrest, along with the defendant's financial needs and earning ability and the financial needs and earning ability of dependents and any other information that the court may require relating to such other factors as the court deems appropriate. 18 U.S.C. § 3664(d)(3). "Controlled" generally refers to assets that the defendant may not own, but that contribute to his or her ability to maintain a certain lifestyle, or assets from which the defendant reaps benefit.

In this section, the probation officer reports detailed, verified information about the defendant's financial condition, along with the sources used to verify the financial information. The court may consider "any resources" available to the defendant and their value and may refer to them on the record in determining the defendant's ability to pay. The provisions of 18 U.S.C. §§ 3663(a)(1)(B)(i), 3664(d)(3), 3664(f)(2), and Rule 32 all support the principle that the assets owned, jointly owned, or controlled by the defendant; liabilities; and the financial needs and earning ability of the defendant and the defendant's dependents are all relevant to the court's decision regarding the defendant's ability to pay. Officers are frequently confronted with defendants using assets that are in family members' names, and now have the duty and increased authority to request such information. The Second Circuit has noted these changed provisions and the importance of financial information in the presentence report in *United States v. Conhaim*, 160 F.3d 893 (2d Cir. 1998).

However, courts may run into difficulties ordering the liquidation of specific assets. Circuit courts seem to draw a distinction between the court's authority to order criminal monetary penalties in a particular amount and the authority to order the liquidation of specific assets, since collection enforcement is a duty of the Attorney General. Nevertheless, the presentence report should contain specific information on the defendant's financial resources, including assets the defendant may agree to voluntarily liquidate to satisfy any criminal monetary penalties, since such information is needed to assist the court in making determinations on the record regarding the defendant's ability to pay. Most circuits look for evidence in the record that the court considered the defendant's ability to pay. Some circuits have insisted that the sentencing court make specific findings on the record in every case. Others have held that, so long as the record reflects that the court considered the defendant's financial resources, no special findings are required.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
70

Regardless of the circuit's stand on specific findings, it is clear that the presentence investigation report is crucial. That is, where the court must make specific findings, the presentence report and its addendum provide baseline information upon which the court can base such findings after considering the views of the defense and those of the government. The government has the burden of demonstrating losses sustained by victims. In the majority of circuits, where specific findings are not required, the court's adoption of the presentence report usually provides the necessary indication that the court has considered the defendant's financial resources.

Therefore, the presentence report should detail the investigation and document the defendant's financial resources, including the needs and earning ability of the defendant and the defendant's dependents and such other factors as the court deems important. See, Rule 32 and 18 U.S.C. § 3664(d)(3). This will not only assist during appellate review, but will help in collection efforts as well. Statute requires that the presentence report go to the financial litigation unit. See 18 U.S.C. § 3552(d). In cases where the defendant claims assets in the names of the spouse or other family members, the officer should consider asking the court to require additional information or evidence, pursuant to 18 U.S.C. § 3664(d)(3), and, if necessary, ask the court to delay the restitution determination up to 90 days, pursuant to 18 U.S.C. § 3664(d)(5).

Officers are discouraged from simply reporting assets and liabilities claimed by the defendant in his/her net worth or monthly cash flow statements and should review supporting documentation requested from the defendant (see Probation Forms 48A, 48C, and 48F). Officers should never hesitate to question defendants about their financial condition, and should routinely seek clarification when information on the net worth or monthly cash flow statement is not supported by documentation or other discrepancies are discovered.

Organization of the Information in the Report

Relying on interviews, the *Net Worth Statement* (Probation Form 48) (or the *Net Worth Short Form Statement* (Probation Form 48EZ)) and the *Monthly Cash Flow Statement* (Probation Form 48B), supporting documentation, and comparative analysis, the officer uses a table format to detail the defendant's financial condition. This should include assets and liabilities to determine the defendant's ability to make an immediate (lump sum) payment at the time of sentencing and monthly net cash flow to determine the defendant's ability to make maximum monthly payments. If a defendant has no assets, liabilities, income, and expenses, a table is not necessary and a simple statement of fact is all that is required.

Net Worth Summary

The presentence report should summarize the defendant's net worth, including all assets, such as bank accounts, securities, other unencumbered assets (e.g., mortgage loans owed to the defendant, jewelry, cash on hand, art, paintings, coin/stamp collections, antiques, copyrights, patents, etc.), business holdings, and equity in other assets (e.g., motor vehicles or real estate) and liabilities, including charge accounts, loans, mortgages, and other debts.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
71

Monthly Cash Flow Summary

The presentence report should also summarize the defendant's monthly income, including all salary/wages of the defendant, cash advances, bonuses, commissions, business income, interest or dividends income, rental income, trust income, income in the form of alimony or child support, social security, other governmental benefits, pensions and annuities, allowances, gratuities and tips, spouse (or significant other) and dependent salary/wages, other joint spousal or dependent income, gifts from family members, gifts from others, loans from business(es), mortgage loans, other loans, and other sources of income and all necessary monthly cash outflows, including all rent or mortgages, groceries, utilities, transportation, insurance, clothing, loan payments, credit card payments, medical expenses, alimony or child support payments, co-payments, and any other monthly payments.

Analysis

In the Analysis subsection, the officer analyzes the defendant's financial condition and reports the maximum fine or restitution payment the defendant could make immediately, and the maximum installment payments the defendant could make toward a fine or restitution. The analysis also reports the shortest feasible time in which fine and restitution payments could be completed. It indicates if a waiver of interest penalties or a complete waiver of a fine, restitution, or both would be appropriate pursuant to the guideline provision regarding ability to pay. This statement is not a recommendation about fines or restitution; it is only an analysis of the defendant's ability to pay.

The analysis considers what assets the defendant could reasonably be expected to give up, the feasibility of converting those assets to cash, the urgency of the defendant's unsecured debts and the likelihood of converting other assets to cash to satisfy those debts. It also evaluates what installment payments would be reasonable in view of the cash flow, and what additional assets and income are available for the support of the defendant's dependents. The probation officer identifies any resource at the defendant's disposal that might have a bearing on ability to pay, and determines if the defendant's assets and expenditures are consistent with the employment history and legitimate sources of income. Finally, the officer determines if the defendant has made any attempt to conceal or dissipate an asset which should be brought to the court's attention.

Part D. Sentencing Options

At the end of Part A, the offense level has been determined and at the end of Part B, the criminal history category has been determined. With both the vertical and horizontal axes of the guidelines' Sentencing Table determined, the next step is to display the advisory guideline range. The options for sentencing that are available to the court are determined by two sources: the statutes applicable to the counts of conviction and the sentencing guidelines. If there is a conflict between a statutory provision and a guideline provision, the statutory provision will override.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
72

Example:

A defendant is convicted of 21 U.S.C. § 841(b)(1)(B)(ii), Possession of 505 grams of cocaine with intent to distribute. The statutory penalty is a mandatory minimum of 5 years to 40 years. The offense level is 26, but the defendant accepts responsibility, so that the offense level is 24. With a Criminal History Category I, the advisory guideline range is 51-63 months. However, the statute calls for a mandatory minimum of 5 years, so the advisory guideline range is limited to 60-63.

Listing the statutory provisions adjacent to the guideline provisions allows comparison of sentencing options that are statutorily available versus those that are available within the guidelines. In general, the statutes of conviction, as well as sentencing provisions at 18 U.S.C. §§ 3551 through 3586, address the statutory provisions. Chapter Five of the *Guidelines Manual* addresses available guideline sentencing options. This section of the report delineates the statutory and guideline provisions for Imprisonment, Impact of the Plea Agreement, Probation, Supervised Release, Fines, Restitution and, for drug offenses, Denial of Federal Benefits.

Custody

Statutory Provisions:

The statutory imprisonment provisions and the offense classification for each count of conviction are displayed. The officer researches the statutes of conviction -- an important task because of the variations in penalties. For example, 18 U.S.C. §§ 924(c) and 929(a) require a mandatory minimum term of imprisonment, while 21 U.S.C. § 841(b) lists several different penalties based on the type and amount of the illegal substance and the defendant's prior record. Because of the increase in mandatory minimum sentence provisions in recent years, it is important that officers routinely consult statutory sentencing provisions. Additionally, if the Government has filed a motion for an enhanced penalty, this fact should be noted with the enhanced penalty.

Guideline Provisions:

The guidelines for imprisonment are found in U.S.S.G. Chapter Five, Part A (the Sentencing Table). A sentence conforms with the guidelines for imprisonment if it is within the minimum and maximum terms of the guideline range. Present one guideline range for all counts of conviction, unless a count requires a mandatory consecutive term of confinement. It is important to highlight any required separate sentence. An example is a mandatory consecutive sentence as in violations of 18 U.S.C. § 924(c) for being armed during the commission of a violent crime or 18 U.S.C. § 3147 for commission of an offense while on release.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
73

Impact of the Plea Agreement

In this section, the probation officer briefly describes the impact of the plea agreement as a result of counts to be dismissed (F.R.Crim.P 11(c)(1)(A)), non-binding recommendations (F.R.Crim.P. 11(c)(1)(B)), binding agreements (F.R.Crim.P. 11(c)(1)(C)), or any other factors in the plea agreement that may affect the guideline range or sentence to be imposed (e.g., plea under 18 U.S.C. § 924(c); applicability of U.S.S.G. §1B1.8). The guideline range pursuant to such plea agreements should be displayed to assist the court in evaluating the impact of the plea agreement on the ultimate sentence.

When counts are to be dismissed, the officer should identify the counts and statutory penalties for each. Any mandatory penalty that would have been required is highlighted. The officer should also note whether the conduct in the dismissed count(s) was considered relevant conduct and taken into account in the officer's guideline calculations. If the offense behavior was not considered pursuant to U.S.S.G. §1B1.3 (e.g., dismissed robbery counts), then the officer displays the guideline range that would have resulted had the defendant been convicted on all counts.

The probation officer also should display alternative guideline calculations pursuant to other conditions in a plea agreement (if they exist) and discuss the reasons for any discrepancies between the preliminary guideline range calculated by the officer and the guideline range anticipated pursuant to a plea agreement. For example, if the defendant pleaded guilty pursuant to Rule 11(c)(1)(B) and the plea agreement recommends a mitigating role adjustment, but the officer concludes no adjustment is warranted, the officer will explain why the adjustment is not warranted, but nevertheless display the alternative guideline range recommended by the plea agreement.

Likewise, the officer should explain any discrepancies between the guideline range calculated by the officer and the guideline range anticipated under Rule 11(c)(1)(C). However, the court may have accepted this binding plea agreement prior to receipt of the presentence report. Therefore, it would be helpful to alert the court of the impact of this binding plea agreement because if the court chooses to adopt the officer's guideline calculation, the defendant must be given an opportunity to withdraw the guilty plea. Suggested language might be:

> There is a plea agreement in this case, pursuant to Rule 11(c)(1)(C). If the court adopts the terms of the plea agreement, the guideline calculations would be as follows (display alternative guideline calculations). These calculations differ from those prepared by the probation officer. If the court determines that there are no valid grounds for a departure or a sentence outside of the guidelines, and wants to adopt the probation officer's guideline calculation, the court may need to consider giving the defendant an opportunity to withdraw the guilty plea.

This section should also briefly describe the information obtained pursuant to U.S.S.G. §1B1.8 that was not used to calculate the guidelines. The probation officer should display the alternative guideline calculation that would have resulted in the absence of such a limitation.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
74

Supervised Release

Statutory Provisions

Supervised release is authorized by 18 U.S.C. § 3583, which provides that the court may order supervised release as part of a sentence for all felonies and most misdemeanors (other than petty offenses), and with the exception of Title 21 drug offenses and Title 46 maritime offenses, committed on or after November 1, 1987. The wording of the statute makes imposition of supervised release discretionary for the court in most cases. The statute also provides the authorized terms of supervised release, which are determined by the classification of the offense.

Statutory provisions for supervised release in Title 21 drug offenses and Title 46 maritime offenses are found in the penalties section of each specific offense. The effective date for supervised release in Title 21 offenses is October 27, 1986.

Certain statutes, primarily in Title 21 drug offenses or Title 46 maritime offenses, require a minimum term of supervised release. Accordingly, the probation officer consults the statutes of conviction to determine whether supervised release is mandated by statute. Definitions for the classification of offenses are found at 18 U.S.C. § 3559.

Title 18 U.S.C. § 3583(d) provides as an explicit condition of supervised release that the defendant not commit another federal, state, or local crime during the term of supervision and that the defendant not unlawfully possess or use a controlled substance. The court shall also order as an explicit condition of supervised release for a defendant convicted for the first time of a domestic violence crime that the defendant attend a public, private, or private nonprofit offender rehabilitation program.

In addition, most defendants are required to submit to one drug test within 15 days of release or placement of probation and at least two periodic tests thereafter, but this mandatory condition can be suspended by the court if the defendant's presentence report or other reliable sentencing information indicates a low risk of future substance abuse by the defendant.[9] Certain defendants are also required to cooperate in the collection of a DNA sample as directed by the probation officer and/or to register with the state sex offender registration agency in any state where the defendant resides, is employed, carries on a vocation, or is a student, as directed by the probation officer.

[9] Several circuits have ruled that the court, and not the probation officer, must set the number of random drug tests to be administered during the term of supervised release. See, *U.S. v. Stephens*, 2005 WL 2106158 (9th Cir. 2005), *U.S. v.Melendez-Santana*, 353 F.3d 93 (1st Cir. 2003), *U.S. v. Bonanno*, 146 F.3d 502 (7th Cir. 1998).

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
75

The statute further provides that the court can impose additional conditions if they are reasonably related to the factors the court considers in imposing sentence, limit liberty no more than reasonably necessary, and are consistent with any pertinent policy statements issued by the U.S. Sentencing Commission. Standard conditions include those listed below, which are described at U.S.S.G. §5D1.3 and contained in the judgment form AO 245B. Courts are discouraged from adding additional conditions to the list of standard conditions, such as substance abuse testing and/or treatment, since they impose an obligation on the probation office that has implications for both staffing and law enforcement costs. The standard conditions are:

- The defendant shall not leave the judicial district without the permission of the court or probation officer;
- The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- The defendant shall support his or her dependents and meet other family responsibilities;
- The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
76

- The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

- The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

- As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

In addition to the standard conditions applicable to all defendants, special conditions are tailored to each case. The court may impose the same discretionary conditions for supervised release as for probation, except intermittent confinement. These conditions are found at 18 U.S.C. § 3563(b).

Other special conditions of supervised release the court may wish to impose include a prohibition against the possession of weapons, a ban on new debt obligations, financial disclosure, community confinement, home detention, community service, occupational restrictions, curfew restrictions, or participation in mental health or substance abuse programs. Title 18 U.S.C. § 922(g) provides that it is unlawful for a convicted felon to possess a firearm. Title 18 U.S.C. § 3583(g)(2) requires mandatory revocation of supervised release if a defendant is in possession of a firearm. Refer to the section on the Sentencing Recommendation for more on special conditions.

Guideline Provisions

The guideline provisions for supervised release describe sentencing ranges that require supervised release or leave imposition of supervised release to the discretion of the court. Certain minimum terms in a guideline range allow the court to impose imprisonment, alternate sanctions, a combination of sanctions, or substitute sanctions. The availability of sanctions entailing supervised release is presented in this section. In addition to the standard conditions applicable to all defendants, the guidelines allow for special conditions to be tailored to each case.

Probation

Statutory Provisions

The officer reports whether the defendant is statutorily eligible or ineligible for probation. If the defendant is ineligible, the reason is reported. The probation statute, 18 U.S.C. § 3561, provides:

> [a] defendant who has been found guilty of an offense may be sentenced to a term of probation unless:

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
77

(1) the offense is a Class A or B felony and the defendant is an individual;

(2) the offense is an offense for which probation has been expressly precluded; or

(3) the defendant is sentenced to a term of imprisonment at the same time for the same or a different offense that is not a petty offense.

The statutorily authorized terms of probation are not less than 1 nor more than 5 years for a felony; not more than 5 years for a misdemeanor; and not more than 1 year for an infraction. 18 U.S.C. § 3561(b). Mandatory conditions of probation described at 18 U.S.C. § 3563 include:

(1) for a felony, a misdemeanor, or an infraction, that the defendant not commit another Federal, State, or local crime during the term of probation;

(2) for a felony, that the defendant also abide by at least one condition set forth in subsection (b)(2), (b)(3), or (b)(13),[10] unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more of the other conditions set forth under subsection (b); and

(3) for a felony, a misdemeanor, or an infraction, that the defendant not unlawfully possess a controlled substance.

Title 18 U.S.C. § 3563(a) provides as an explicit condition of probation that the defendant not commit another federal, state, or local crime during the term of supervision and that the defendant not unlawfully possess or use a controlled substance. The court shall also order as an explicit condition of probation for a defendant convicted for the first time of a domestic violence crime that the defendant attend a public, private, or private nonprofit offender rehabilitation program and is prohibited from possessing a firearm if the court so orders at the time of sentencing.

In addition, most defendants are required to submit to one drug test within 15 days of release or placement of probation and at least two periodic tests thereafter, but this mandatory condition can be suspended by the court if the defendant's presentence report or other reliable sentencing

[10] As a result of a statutory amendment, 18 U.S.C. §3563(b) was misnumbered; however, the corresponding provisions in 18 U.S.C. §3563(a)(2) were not amended. As such, the statute literally authorizes restitution, requires notice to victims, and provides for restrictions of the defendant's residence. The Office of the General Counsel recommends that unless determined otherwise by the court, literal compliance is not appropriate and the appropriate conditions include payment of a fine or restitution or community service work.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
78

information indicates a low risk of future substance abuse by the defendant.[11] Certain defendants are also required as a mandatory condition of probation to cooperate in the collection of a DNA sample as directed by the probation officer and to register with the state sex offender registration agency in any state where the defendant resides, is employed, carries on a vocation, or is a student, as directed by the probation officer.

Title 18 U.S.C. § 922(g) provides that it is unlawful for a convicted felon to possess a firearm. Title 18 U.S.C. § 3565(b) requires mandatory revocation of probation if a probationer is in possession of a firearm. This provision applies to probation imposed for felonies as well as to probation imposed for misdemeanors. In order for mandatory revocation to apply to misdemeanor cases, the Office of the General Counsel has concluded that the court must have imposed a special condition prohibiting possession of a firearm. Accordingly, the probation page of the judgment form, AO 245B, contains a provision that the defendant not possess a firearm or destructive device. This condition provides notice to all probationers of this provision.

Standard conditions of probation are the same as the standard conditions enumerated in supervised release. They are described at U.S.S.G. §5B1.3 and listed in the judgment form AO 245B. Courts are discouraged from adding conditions to the list of standard conditions, such as substance abuse testing and/or treatment, as they impose an obligation on the probation office that has implications for both staffing and law enforcement costs. The court may order, as discretionary conditions of probation, any of the standard or special conditions available for supervised release, plus intermittent confinement. Title 18 U.S.C. § 3563(b).

Special probation, also referred to as prejudgment probation, or a form of diversion, is available to certain persons convicted of personal possession of controlled substances. 18 U.S.C. §3607. If a person found guilty of an offense described in section 404 of the Controlled Substances Act (21 U.S.C. § 844):

(1) has not, prior to the commission of such offense, been convicted of violation of a Federal or State law relating to controlled substances; and

(2) has not previously been the subject of a disposition under this section;

the court may, with the consent of such person, place him on probation for a term of not more than 1 year without entering a judgment of conviction.

[11] Several circuits have ruled that the court, and not the probation officer, must set the number of random drug tests to be administered during the term of supervised release. See, *U.S. v. Stephens*, 2005 WL 2106158 (9th Cir. 2005), *U.S. v. Melendez-Santana*, 353 F.3d 93 (1st Cir. 2003), *U.S. v. Bonanno*, 146 F.3d 502 (7th Cir. 1998).

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
79

Guideline Provisions

Eligibility for probation is determined by the minimum term of the guideline range. Certain minimum ranges allow for probation, other minimum ranges allow for probation with community confinement as a condition of probation, while other ranges preclude probation. Chapter Five of the *Guidelines Manual* is referenced for determination of eligibility. All options available to a defendant with probation are reported. If probation is not allowed by the guidelines, the officer reports that the defendant is ineligible, citing the relevant guideline.

Fines

Statutory Provisions

The probation officer specifies the statutory provisions of the fine amount. *Criminal Monetary Penalties: A Guide to the Probation Officer's Role*, Monograph 114, lists and defines all of the various criminal monetary penalties, including fines, that defendants may be ordered to pay and includes step-by-step guidance in determining fine amounts, highlighting the key fine determinations necessary. In any event, probation officers must verify the offense of conviction and be aware of the date on which the offense occurred to determine the appropriate fine amount, procedures for collection, the amount of interest that can be charged, and other specifics. The statutory maximums for the majority of title 18 offenses are found in 18 U.S.C. § 3571.

Alternative fine amounts based on gain or loss may be imposed when a defendant derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant. The defendant may be fined not more than the greater of twice the gross gain or twice the gross loss, unless imposition of the fine would unduly complicate or prolong the sentencing process. 18 U.S.C. § 3571(e).

Cost of Imprisonment/Supervision

The additional fine amounts for costs also created confusion over how they should be handled once they were imposed. Most people erroneously assumed that the costs were used to reimburse the Federal Bureau of Prisons or the probation system for the costs they incurred. To the contrary, the additional amounts to cover the costs for imprisonment and supervision are just additional fine amounts and the money collected for that portion of the fine does not go back to the Federal Bureau of Prisons or the office charged with monitoring the defendant's post-conviction confinement or supervision. Instead, the costs for imprisonment and supervision are included in the fine amount and deposited into the Crime Victims Fund, like nearly all other fines. As such, the expected costs of imprisonment and/or supervision should be considered as part of the regular fine amount, but no separate fine is imposed to cover these costs. Each year, the Administrative Office of the U.S. Courts, through the Office of Probation and Pretrial Services, publishes the daily, monthly, and average per capita costs for confinement in federal prison facilities, community corrections centers, and supervision. 18 U.S.C. § 3572(a)(6).

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
80

Guideline Provisions

The *United States Sentencing Commission Guideline Manual* at U.S.S.G. §5E1.2 sets forth procedural requirements for determination of the fine penalty. Officers calculate and present the fine guideline range to the court in the presentence report. The officer displays the fine range established for the offense(s) of conviction. Prior to November 1, 1997, the United States Sentencing Guidelines provided authority for the courts in the sentencing process to impose "an additional fine amount that is at least sufficient to pay the costs to the government of any imprisonment, probation, or supervised release ordered." U.S.S.G. §5E1.2(i). Effective November 1, 1997, the guidelines were amended to eliminate the requirement for an additional fine amount to cover these costs and indirectly addressed circuit conflicts regarding whether a court could impose a fine for costs of imprisonment and/or supervision when it had not imposed any punitive fine.

The amendment deleted U.S.S.G. §5E1.2(i). Recognizing that a fine for costs of imprisonment and/or supervision is not statutorily required and rarely is imposed, the Commission elected to dispense with the requirement that courts determine a separate, additional fine for such costs. Even though the separate cost of imprisonment and/or supervision component of the fine has been eliminated, the sentencing court must nevertheless consider the expected cost to the government of any term of probation, imprisonment, or supervised release in determining the proper amount of the fine to be imposed. U.S.S.G. §5E1.2(d)(7).

Restitution

Statutory Provisions

The probation officer specifies the statutory provisions of the restitution amount. *Criminal Monetary Penalties: A Guide to the Probation Officer's Role*, Monograph 114, lists and defines all of the various criminal monetary penalties, including restitution, that defendants may be ordered to pay and includes step-by-step guidance in determining restitution amounts, highlighting the various types of restitution, including mandatory, discretionary, and community restitution and key restitution determinations necessary.

Guideline Provisions

Chapter 5, Section E of the *Guidelines Manual* sets forth the restitution guidelines. Restitution is required by the guidelines. If both a fine and restitution are ordered, restitution is to be paid first.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
81

Denial of Federal Benefits (Drug Cases Only)

Statutory Provisions

For individuals convicted of a drug offense, the court may order that the defendant be ineligible for certain Federal benefits. The length of such ineligibility may range from 1 year for possession of controlled substances to 5 years for a first conviction for distribution. A second conviction may result in a 10-year period of ineligibility and permanent ineligibility will result from a third conviction. Benefits that may be denied do not include social welfare related programs or programs requiring contributions such as social security or retirement programs. This penalty does not apply to a defendant who cooperates or testifies with the government or who is in the Witness Security program. There are provisions in the statute for reinstatement of eligibility. See 21 U.S.C. § 862 for specific requirements and details.

Guideline Provisions

Denial of Federal benefits is a sentencing option for drug offenses cited in Chapter Five, Section F of the *Guidelines Manual*.

Sentences Outside of the Guideline Range

After *Booker*, courts continue to consult and consider the sentencing guidelines together with other sentencing goals in deciding the appropriate sentence. Under the advisory guideline system, the court may depart and impose a sentence outside of the range established by the applicable guidelines if the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines. Such a sentence is authorized by the guidelines and therefore is within the advisory guidelines system.

Having considered the sentencing options within the guidelines, including any departures authorized by the Guidelines Manual, the court then has the discretion to sentence outside the advisory guideline system based on the factors set forth in 18 U.S.C. § 3553(a). The following guidance will help officers distinguish between factors that may warrant a departure within the guideline system (Part E) and factors that may warrant a sentence outside of the guideline system (Part F).

Part E. Factors That May Warrant Departure

The Factors That May Warrant Departure section of the report is an important one. Any factor that may permit consideration of a sentence outside the guideline range is identified by the officer. Reporting all factors that the officer believes warrant a consideration of departure serves two purposes: It provides notice to the court and to counsel that the officer has considered each factor before making a sentencing recommendation; and it allows the court to independently consider and analyze each factor. Discussion of all factors that the officer interprets as having the potential to

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
82

form the basis for a departure provides the defense and prosecution with notice of all areas that can be considered.

The Supreme Court has held in *Burns v. United States*, 111 S.Ct. 2182 (1991), that Rule 32 requires a sentencing court to notify the defendant and the Government of a contemplated departure from the applicable guideline range before such a departure may be ordered. The notice, which may be given in the presentence report, in a presentence submission by the Government, or by the court prior to sentencing, must specifically identify the ground on which the court is contemplating departure. This decision makes it all the more important that the officer identify in the presentence report all factors that could reasonably warrant a departure.

Chapter 5, Section K of the *Guidelines Manual* provides various grounds for departure identified by the U.S. Sentencing Commission. Various other guidelines and policy statements throughout the *Guidelines Manual* discuss circumstances that might warrant an upward or downward departure. As officers apply the guidelines, it is important to pay attention to departure references to determine whether the circumstances of the case meet the criteria specified. Any time the circumstances of the offense or the background or behavior of the defendant may warrant consideration of a departure, the factor is included in this section along with the relevant guideline or policy statement language. In addition, any extraordinary aggravating or mitigating circumstance not adequately taken into consideration within the guidelines is also included for the court's consideration.

Inclusion of such information in this section of the report does not signal that the officer will, in fact, recommend a departure. In order to prevent misunderstanding by counsel, when factors are included in this section of the report, it is important that this section begin with the admonition that:

> Presentation of information in this section does not necessarily constitute a recommendation by the probation officer for a departure.

This admonishment is intended to focus attention on potential areas for departure, irrespective of whether or not the officer recommends a departure.

New facts are not introduced in this section; rather, the officer analyzes factual information previously addressed in the presentence report to determine if any of the information could potentially be considered by the court for departure purposes. Information in the preceding sections of the report is presented factually, without evaluative comment. The Factors That May Warrant Departure section of the report requires that the officer analyze facts, compare them to the law (*Guidelines Manual* and case law for the circuit), and present an analysis of any factor that the court may consider as the basis for a departure. When the guidelines provide specific guidance for departure or identify specific grounds for departure, the probation officer cites the guideline authority to depart (the specific guideline, policy statement or commentary) in this section.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
83

Guided and Unguided Departures

A factor that may be considered for a departure is guided when the *Guidelines Manual* provides specific guidance for the extent of a departure. For example, under U.S.S.G. §4A1.3(b)(3)(A) (Limitation on Extent of Downward Departure for Career Offender), the extent of a downward departure for a career offender may not exceed one criminal history category.

A factor being considered for departure is unguided in two instances: (1) If the guidelines identify a factor as a basis for departure but do not provide specific guidance for the extent of the departure, it is unguided. Examples are the departure grounds identified in U.S.S.G. Chapter Five, Part K; and (2) if there is an "aggravating or mitigating circumstance of a kind or to a degree, not adequately taken into consideration by the Sentencing Commission,"[12] the departure is unguided.

When the guidelines do not provide guidance, the process of determining which factors might justify a departure is more difficult. A five-step process is suggested for the analysis of an unguided departure:

1. List all of the mitigating and aggravating factors in the case.

   This step requires a comprehensive review of all of the relevant sentencing factors related to the offense conduct as well as to the behavior and background of the defendant.

2. What factors on the list do the guidelines identify as ordinarily not a basis for departure?

   Such factors are eliminated unless they are extraordinary. This second step ensures that a factor identified by the guidelines or case law in the circuit as an inappropriate basis for departure is not considered.

   Example: The lack of any prior criminal record would not be a basis for a departure in view of the Sentencing Commission's policy statement at U.S.S.G. §4A1.3, which provides, "The lower limit of the range for a Category I criminal history is set for a first offender with the lowest risk of recidivism. Therefore, a departure below the lower limit of the guideline range for a Category I criminal history on the basis of adequacy of criminal history cannot be appropriate."

3. Of the remaining factors, are there any which the guidelines have not considered or that exist in a degree not taken into consideration by the Sentencing Commission?

   The third step eliminates factors already taken into account by the guidelines.

[12] 18 U.S.C. § 3553(b).

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
84

4. Does any guideline, commentary, or policy statement authorize or support the factors identified in step 3?

   The fourth step requires a search of the *Guidelines Manual* and case law in the circuit to find any authority or support for a departure based on the identified factors in step 3. Part K of chapter five of the *Guidelines Manual* provides various grounds for departure and other guidelines, commentary, and policy statements throughout the manual also discuss circumstances that might warrant a departure.

5. Are there any factors identified in step 3 that would not warrant a change in the offense level or criminal history category if the guidelines had taken them into account?

   The fifth step ensures that the identified departure factor would actually warrant a change in the sentencing range. For instance, an aggravating factor may be identified that was not taken into account by the guidelines, but if it had been considered, neither the offense level nor the criminal history category would change.

The five-step procedure is provided to assist in developing a well-reasoned identification and analysis of factors that may warrant departure.

Part F. Factors that May Warrant a Sentence Outside of the Advisory Guideline System

The Supreme Court ruled in *U.S. v. Booker*,125 S.Ct. 738 (2005), that the mandatory nature of the sentencing guidelines subjected them to the jury trial requirements of the Sixth Amendment of the Constitution. The Court further held that since it was not Congress's intent to have sentencing facts decided by juries, the appropriate remedy was to strike those provisions of the Sentencing Reform Act of 1984 that made the sentencing guidelines mandatory. The result is a system in which the sentencing courts are required to consider the sentencing options recommended by the sentencing guidelines, but the judges are free to impose any sentence authorized by Congress. In some parts of the country, such sentences are known as "variances."

In Part F., officers should identify any facts or circumstances addressed in the report that may be relevant to sentencing that were not otherwise considered in the guideline calculations or departure analysis.[13] Since most grounds will have already been considered by the guidelines or policy statements (i.e., departures), officers should be cautious when identifying these factors.

In imposing a sentence outside of the advisory guideline system, the court is expected to identify the factor(s) in 18 U.S.C § 3553(a) that warrant a sentence outside the guideline system. If the officer identifies facts in this section, the specific provisions from § 3553(a) should be cited as well.

[13]Identifying the grounds for sentences outside of the guideline system in the presentence report will serve as notice to the parties, and is consistent with the treatment of grounds for departures. See, *Burns v. United States*, 111 S.Ct. 2182 (1991).

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
85

Chapter IV - Disclosure and the Addendum Process

Disclosure of the Presentence Report

Rule 32 of the Federal Rules of Criminal Procedure requires that the presentence investigation report be disclosed to the defendant, the defendant's counsel, and the attorney for the Government at least 35 days before sentence is imposed, unless this minimum period is waived by the defendant. The court may, by local rule or in individual cases, order the disclosure of the probation officer's recommendations. Within 14 days after receiving the report, the parties must submit their written objections to the presentence report. No fewer than seven days before the sentencing, the probation officer must submit the presentence report to the court, defendant, the defendant's counsel, and the attorney for the Government.

The primary purpose of Rule 32 is to provide for resolution of disputed material facts and guideline applications before the sentencing hearing. A secondary purpose is to ensure that those disagreements that cannot be resolved are identified for the sentencing judge. Beyond the statutory provision cited above, each court is free to establish its own timetable and procedures for disclosure of the presentence report. The probation officer must meet the deadlines and requirements of the district local rule.

Information Potentially Exempt From Disclosure

Rule 32 identifies three types of information that must be excluded from the presentence report: (A) any diagnoses that, if disclosed, might seriously disrupt a rehabilitation program; (B) any sources of information obtained upon a promise of confidentiality; and (C) any other information that, if disclosed, might result in physical or other harm to the defendant or others.

If the probation officer believes that information meets the above criteria and should be withheld from the presentence report, prior to completing the report and disclosing it to the defendant and counsel, the officer must provide the court with a written statement of the facts to be withheld from the report and a proposed summary of the facts. If the court agrees the information should be withheld, the court is required to provide a written summary of the factual information that will be relied upon in determining sentence. Additionally, the court must provide the defendant and the attorney for the government an opportunity to comment. The court may order that the summary of the excluded information be included in the presentence report. If so ordered, the summary is preceded with this comment: "The following is the court's summary of information withheld pursuant to Rule 32 of the Federal Rules of Criminal Procedure."

This section should be used with caution under guideline sentencing. If information is not to be disclosed to the defendant or the Government in sufficient detail to permit response, it is arguable that it should not be used by the court in establishing the guideline range or in determining a possible departure.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
86

Probation officers should be cautious about promising a source of information that his or her identity will remain confidential from the defendant and prosecution. Even if confidential information has been summarized according to this procedure, it may ultimately be disclosed, if it is to be used in sentencing and the defendant challenges its reliability.

The Probation Officer's Role in Addressing Objections

Throughout the course of the investigation, the officer identifies gaps in information and communicates with the parties about disputed issues (i.e., if the officer's investigation suggests a different application of the sentencing guidelines than anticipated in the plea agreement, the officer may wish to inform the parties and seek an explanation for the discrepancy). The probation officer attempts to narrow or eliminate any disputed issues prior to writing the report. At least 35 days before sentencing (or more if required by the court), the probation officer discloses a copy of the presentence report to the defendant, the attorney for the defendant, and the attorney for the Government. Unless otherwise required by the court, the initial report is not delivered to the judge. Within 14 days of the initial disclosure, the officer may receive written objections to the presentence report from the parties. The officer then has 14 days to resolve any objections and present the court with a final report.

In considering disputed issues, the officer is impartial and open to opposing views. The officer may have to further evaluate whether certain information in the presentence report is factual and reliable, inferred, or alleged and whether such information will reach a preponderance of evidence standards courts rely on at sentencing. Moreover, the officer should be open to additional information presented by either party that rebuts or corroborates allegations about the defendant which the officer may have included in the report, but could not verify. The officer's role is not one of negotiation by "tradeoffs" between the opposing sides regarding the facts, by choosing a course of compromise, or by taking a middle position. Instead, the officer considers all reliable and relevant information, recognizing that, while some contested issues may not affect guideline calculations they could affect the defendant's classification, designation, or programming options at the Bureau of Prisons, and makes an independent judgment about material facts or guideline calculations included in the report.

The process of dealing with disputed issues begins with communication with the defense counsel and the attorney for the government regarding any material fact or information inferred or alleged in the report, both guideline and non-guideline related. The officer listens to the view of each party, weighs all documentation that either party might submit, asks questions, explains the rationale for inclusion of specific information or the application of the guidelines, and encourages the attorneys to consider all available evidence and facts. In many cases this may be done by telephone or written correspondence; however, in some cases, it may be necessary to meet in person to discuss and resolve an issue.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
87

It may be necessary to re-interview the defendant, family members, victims, witnesses, or case agents to obtain additional information or clarify information obtained during the investigation. Failure to resolve non-guideline-related issues could be detrimental to the defendant. While Rule 32 of the Federal Rules of Criminal Procedures provides that, if the defendant alleges factual inaccuracies in the presentence report, the judge shall make finding as to the matter controverted, the court may not resolve non-guideline-related statements in the report and instead choose not to take them into account at sentencing. Unless such issues are resolved, the Bureau of Prisons will rely on the information in the report when making classification, designation, or programming decisions. Therefore, the officer should strive during the review process to obtain additional evidence to resolve disputed non-guideline-related issues prior to sentencing. The officer's understanding of applicable case law, the types of information admissible in sentencing hearings, and non-guideline-related factors considered by the Bureau of Prisons will aid in the process of resolving many disputes. When further investigation is no longer needed, the officer makes any necessary corrections to the presentence report and discloses the report to the court and the parties. Any issues which remain unresolved should be summarized in an addendum. The final resolution of such disputes is the responsibility of the court.

The Addendum

The addendum alerts the court to those issues that the judge will have to resolve at sentencing in summary fashion. While it is possible that an attorney will raise an objection to the presentence report at the sentencing hearing, the officer can help avoid surprises by communicating with the parties about the report's content before and after the initial disclosure.

The addendum is not intended to replace sentencing memoranda from counsel. Rather, it is intended to provide the court with a summarized reference, detailing the issues that need to be resolved at sentencing. In some courts, counsel will likely submit a separate and detailed sentencing memorandum. Where such a document is submitted to the probation officer, it may be forwarded to the court separately from the presentence report.

The addendum provides a synopsis of the unresolved objections by counsel and the officer's position as to each objection. The probation officer should be prepared to explain how the conclusions presented in the presentence report were reached. For factual disputes, whether or not they affect the guidelines, the officer should summarize the information relied upon in making a determination. For disputes related to the tentative guideline calculations, the officer should identify any provisions from the guidelines manual which support the officer's application. Depending on the court, officers may cite case law to support their position.

If the parties object to non-guideline-related facts in the presentence report, the officer should identify whether the facts are those which the Bureau of Prisons may rely upon to make classification, designation, and programming decisions.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
88

Sentencing Factors Germane to Inmate Classification and Designation

The Federal Bureau of Prisons assigns a custody classification to an inmate and designates that inmate to an institution based upon numerous factors. In making designation decisions, prison staff will examine the judgment, the statement of reasons, the presentence report, and any addenda to the report. If there are any inconsistencies in the information in these documents which cannot be resolved by the prison staff, the probation officer may be called to seek clarification.

Therefore, the probation officer should be aware that although a controverted fact may not be relevant to the application of the guidelines, it may be important in processing the defendant within the Bureau of Prisons. This includes determinations as to which facility should house the defendant, what special needs or skills the defendant possesses, or whether the defendant poses a security threat to prison staff or other inmates. A finding by the court as to controverted facts will ensure that the Bureau of Prisons receives reliable information for classification and designation purposes.

Some of the general areas that are important considerations in classification, designation, and programming are:

Current Offense Conduct, including:

- the date of offense;
- descriptions of the basis for sentencing enhancements (such as organizer/leader);
- amounts of drugs for which the defendant is held responsible;
- international connections;
- ties to terrorist organizations or gangs;
- descriptions of the offender's use of violence;
- threats to government officials or other security threats;
- use or possession of firearms; or
- sexual misconduct.

Prior and Pending Criminal Offenses, including:

- offense dispositions involving firearms;
- actual or threat of violence;
- threats to government officials or other security threats;
- escape;
- military absence without leave;
- sexual misconduct;
- bail jumping; and
- alien status, including immigration detainers.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
89

Verification of offender-provided information, including:

- age;
- release residence area;
- medical condition;
- education;
- financial resources;
- mental health issues;
- immediate family members;
- employment history;
- special skills (e.g., pilot, locksmith, martial arts); and
- substance abuse history (such as types of drugs used, time periods of use, drug test results, prior treatment for drug use or role of drug use in instant offense).

Voluntary surrender for instant offense.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
90

Chapter V - Sentencing Recommendation and Justification

The sentencing recommendation and justification are critical components of the presentence report. The process of making a recommendation begins with a careful assessment of all of the facts pertaining to the defendant and the case, followed by a determination, based on the applicable statutes and guidelines, as to what the officer believes to be an appropriate sentence. The justification is the officer's explanation of the facts and laws that shaped the recommendation.

Facts not reported in the body of the report, except for those excluded under Rule 32, should not be referenced in the recommendation. Rule 32 presumes that the officer's recommendation will be disclosed to the parties, but allows for the court to limit such disclosure through local rule or an order in a specific case.

When recommending a sentence, the officer should keep in mind the factors identified in 18 U.S.C. § 3553 that are considered by the court when imposing a sentence:

(a) Factors to be considered in imposing a sentence. -- The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider --

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed --
  - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
  - (B) to afford adequate deterrence to criminal conduct;
  - (C) to protect the public from further criminal conduct;
  - (D) to provide the defendant with needed educational or vocational training, medical care, or other corrective treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines that are issued by the U.S. Sentencing Commission pursuant to 28 U.S.C. § 994(a)(1) and that are in effect on the date the defendant is sentenced;
- (5) any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. § 994(a)(2) that is in effect on the date the defendant is sentenced;
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
91

The presentence report is constructed so that Part A (The Offense), Part B (The Defendant's Criminal History), and Part C (Offender Characteristics) will meet the requirements of 18 U.S.C. § 3553(a)(1). Part D Sentencing Options will provide the information required by 18 U.S.C. §§ 3553(a)(3), (4), and (5), and in doing so, fulfill the requirements of 18 U.S.C. § 3553(a)(6).

Any sentence recommended must be "sufficient, but not greater than necessary, to comply with" the statutory sentencing purposes. It is important, therefore, for the officer to assess the information contained in the presentence report in this light. Officers may wish to consider the following questions during the assessment. The questions are not exhaustive, but are designed to stimulate and inform the process:

In assessing the seriousness of the offense:

- What was the duration and extent of the offense? Was it an isolated incident or of fairly short time frame or did the offense occur over a long period of time: months or years?

- What was the level of sophistication or complexity of the offense, planning or concealment? Was the offense relatively simple or easily discoverable?

- Was it a violent crime? Was there a weapon and how was it used? What type of weapon(s)?

- How many victims were affected by the offense? To what degree or extent (monetary, psychologically, physically; temporary, permanent)? Were any victims particularly vulnerable? What is the likelihood of restoring the victim through restitution?

In assessing respect for the law:

- Does the defendant have a history of aggressive or non-compliant behavior, particularly with law enforcement or authorities (e.g., resisting arrest, assaulting police, failure to appear or escape, etc.)?

- Has the defendant been cooperative?

- Have there been successful or unsuccessful prior periods of supervision?

- Has the defendant demonstrated by words and actions acceptance of responsibility for his/her offense?

- What is the defendant's attitude toward the system (e.g., arresting agents, probation/pretrial, prosecuting attorney, court, etc.)?

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
92

- Has there been any attempt to obstruct justice?
- Has the defendant had few or many encounters with the criminal justice system?
- Does the defendant have gang affiliations or other long-term criminal associations?
- Does the defendant have any pending criminal matters, including outstanding warrants, revocations, additional offenses?

In assessing just punishment:

- Does the defendant have a past pattern for similar conduct?
- What was the defendant's role in the offense in comparison to co-conspirators or other participants?
- What were the motivations of the defendant for committing the offense?
- What sentences were imposed on like-situated co-conspirators?
- Has the defendant cooperated with law enforcement and to what degree?
- Does the defendant have insight into his/her criminal conduct? Is the defendant genuinely motivated to change?

In assessing adequate deterrence:

- Have there been prior incarcerations and for what duration?
- Were there prior periods of supervision and if so were they successful or unsuccessful?
- What does this defendant need to keep from re-offending? What is the best place for the defendant to receive that assistance: prison or the community?
- Does the defendant have any untreated addictions or other serious impediments?
- What kind of support network does the defendant have from family, friends or the community? Are those positive or negative influences?
- Is the defendant currently in treatment? Has the defendant had past successes or failures with treatment?

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
93

In assessing protection of the community:

- Does this defendant pose a physical danger to the community at large, to certain types of individuals (e.g., children, the elderly, minorities, etc.) or to specific individuals?

- Does this defendant pose any other danger or risk to the community, to certain types of individuals or to specific individuals? For example did the offense involve child pornography, cyber crimes, identity thefts, investment scams, etc.?

In assessing the needs of the defendant:

- Educational level: Does the defendant have any language barriers? Does the defendant have any learning disabilities? Does the defendant have at least a high school diploma or GED? Has the defendant expressed an interest in acquiring more education?

- Vocational training: Does the defendant have any verifiable special skills or training that he or she can rely on to obtain future employment? Does the defendant have a stable, legitimate work history? Does the defendant have a history of underemployment? In what area has the defendant expressed an interest?

- Physical Health: Does the defendant have serious physical problems? Does the defendant require medication or treatment? Does the defendant have any physical challenges that require special accommodations?

- Mental Health: Does the defendant have a history of psychiatric or psychological problems? Does the defendant require medication? Does the defendant have a history of suicide attempts or ideations? Does the defendant have a history of aggression toward others?

- Other Correctional Treatment: Does the defendant have a documented history of alcohol and/or drug abuse? Is the defendant amenable to treatment? Is the defendant eligible for the Residential Drug Abuse Treatment Program? Is there a financial obligation the defendant will need to pay?

- Would the defendant benefit from a life skills or parenting course?

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
94

Choosing Among the Kinds of Sentences Available

Custody

In certain cases, a term of imprisonment will be required by statute or the guidelines. In other cases, the court may have an alternative to imprisonment to choose from. It is important to note that pursuant to 18 U.S.C. § 3582, "imprisonment is not an appropriate means of promoting correction and rehabilitation." Officers should consider the appropriateness of any available alternatives before deciding to recommend a term of imprisonment.

If imprisonment is recommended, the officer will generally select a term of months within the advisory guideline range. In deciding a point within the range to recommend, it may help the officer to visualize a continuum. Defendants with more aggravating factors and presenting a high-risk recidivism and/or danger to the community should have sentences falling toward the high end of the guideline range. Defendants with more mitigating factors and presenting low risks should fall toward the low end of the range. Departures are reserved for extraordinary cases at either end of the guideline range that can be supported by the policy statements. Sentences outside of the guideline system will rarely be recommended by the officer. If, however, after considering all of the options available under the advisory guidelines -- including departures under the policy statements -- the officer believes that the purposes of sentencing set forth in 18 U.S.C. § 3553(a) can only be achieved by a sentence outside of the guideline system, the officer should recommend another sentence authorized by statute and clearly cite the facts that support their recommendation in the justification.

The officer will want to consider the following questions in recommending a term of imprisonment:

- Are there any statutory consecutive sentences required, such as 18 U.S.C. § 924(c) or 18 U.S.C. § 3147?
- Does the defendant have an undischarged term of imprisonment? How will U.S.S.G. §5G1.3(a), (b) or (c) affect the recommended sentence?
- Does the defendant have a pending sentence?
- What programs offered by the Bureau of Prisons will benefit this defendant? The local Bureau of Prison's Community Corrections Manager or the Bureau of Prison's website are valuable resources for researching the most current programming options available, the eligibility requirements for these programs (e.g., immigration status), and the names of the facilities at which the programs are offered. Examples of some of the Bureau's programs include:

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
95

1. Residential Drug Abuse Program (RDAP)-- Residential drug abuse treatment is available at selected Bureau of Prisons institutions. It is a course of individual and group activities provided by a team of drug abuse treatment specialists and the drug abuse treatment coordinator in a treatment unit set apart from the general prison population, lasting a minimum of 500 hours over a six- to twelve-month period. Inmates enrolled in a residential drug abuse treatment program shall be required to complete subsequent transitional services programming in a community-based program and/or in a Bureau institution. Some inmates who successfully complete the program may qualify for a twelve-month reduction in their sentence.

2. Occupational Education Programs-- The Bureau of Prisons offers eligible inmates the opportunity under its occupational education programs to participate in occupational education courses for the purpose of obtaining marketable skills designed to enhance post-release employment opportunities.

3. Parenting Programs-- This program is designed to: (1) promote positive relationships, family values, and mutual support and nurturing, which may be sustained after release; (2) provide opportunities to counteract negative family consequences resulting from his/her incarceration; (3) improve the institutional social environment through opportunities for inmates to maintain positive and sustaining contacts with their families; and (4) establish contacts with social service and community-based organizations.

The officer will want to keep in mind that the programming inside the institution may have an impact on the conditions needed upon release to ensure continuity of services. Consultation with supervisors and specialists may be helpful in this regard. For example, a defendant completing the Residential Drug Abuse Treatment Program may not need contract treatment while on supervision, and may benefit from a 12-step program or similar support group.

Finally, in recommending a term of imprisonment, the officer should keep in mind that in some cases, a recommendation from the court may affect the Bureau's designation of the defendant to a particular facility. For example, if the court believes that the defendant will benefit from participation in the Bureau's sex offender treatment program, the Bureau will consider the judge's recommendation among other designation factors. When appropriate, the officer may want to consider addressing designation issues in the recommendation and justification.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
96

Supervision[1]

The recommendation and justification section should address: (1) the need for any term of supervision to be imposed; (2) the length of any term of supervision; and (3) the types of conditions, if any, needed to address identified risks or needs.

Assess the Need for Supervision

In certain cases, a term of supervision may be required by statute (e.g., certain drug offenses) or the guidelines (e.g., U.S.S.G. §5D1.1(a) requires that a term of supervised release be imposed when "a sentence of imprisonment of more than one year is imposed, or when required by statute."). In such cases, officers need to note whether mechanisms such as cooperation agreements, safety valve, or departures are applicable. For example, Application Note 1 of the Commentary to U.S.S.G. §5D1.1 says that the "court may depart from this guideline and not impose a term of supervised release if it determines that supervised release is neither required by statute nor required for any of the following reasons:

1. To protect the public welfare;

2. The enforce a financial condition;

3. To provide drug or alcohol treatment or testing;

4. To assist reintegration of the defendant into the community; or

5. To accomplish any other sentencing purpose authorized by statute."

If supervision is not required by statute or the guidelines, the officer should assess whether a term of supervision is necessary. In making this determination, officers should consider the risks the defendant poses to community safety, and whether supervision can effectively reduce those risks. Among the factors that an officer can consider in deciding not to recommend supervision are:

1. Stability in the community, home, and employment;

2. Compliance with the terms and conditions of any pretrial services supervision;

3. No aggravating role in the offense of conviction, particularly in large drug or fraud cases;

[1]Refer also to *The Supervision of Federal Offenders*, Monograph 109, for additional guidance on supervision issues.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
97

4. No history of violence (e.g., sexually assaultive, predatory behavior, or domestic violence);

5. No recent arrests (other than the count of conviction), and no pending charges;

6. No recent evidence of alcohol or drug abuse;

7. No recent psychiatric episodes;

8. No identifiable risk to the safety of any identifiable victim; and

9. No identifiable risk to public safety based on the Risk Prediction Index (RPI) (if prepared by the pretrial services officer).

The above list is not exhaustive, but it is designed to assist the officer in assessing the need for any period of supervision. Also, the presence of a single factor, by itself, may not sufficiently justify a recommendation for supervision. For example, the fact that restitution is due or that a fine is recommended may not by itself mean that a term of supervision is necessary. Ultimately, a recommendation that includes a term of supervision should be based on a careful evaluation of all the circumstances in the individual case.

Supervision should not be recommended if the only offense of conviction is an infraction. Similarly, using the above criteria, officers should scrutinize whether it is appropriate to place on supervision a defendant whose only offense of conviction is a class B or C misdemeanor.

Assess the Length of Any Term of Supervision

It is important to recommend an appropriate term of supervision to the court, one that is "sufficient, but not greater than necessary" to satisfy the statutory purposes of sentencing. In many cases, the minimum term of supervision as required by statute or the guidelines will be sufficient. If, however, the defendant presents significant issues, a longer period of supervision may be required. In determining the appropriate length to recommend, officers should keep in mind the sentencing purposes set forth in 18 U.S.C. § 3553(a)(2), and the distinctions between a sentence of probation and a term of supervised release. One of the sentencing purposes of probation is to "provide just punishment," while punishment is not one of the purposes of supervised release. As such, it would not be appropriate to recommend that a term of supervised release go beyond the minimum set forth in statute or in the guidelines based on a justification citing just punishment. A recommendation on the length of a term of supervision should be based on the applicable law and a careful evaluation of all the circumstances in the individual case.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
98

Assess the Need for Any Special Conditions

Once an officer has determined the term of supervision that will be recommended, the next step is to determine what, if any, special conditions are necessary. Before recommending special conditions, officers should consider all of the mandatory and standard conditions that may already address a particular risk or need. If the officer determines that the mandatory and standard conditions do not adequately address the defendant's risks and needs, he or she should consider recommending a special condition.

When considering special conditions, officers should avoid presumptions or the use of set packages of conditions for groups of offenders; and keep in mind that the purposes vary depending on the type of supervision. Ask first whether the circumstances in this case require such a deprivation of liberty or property to accomplish the relevant sentencing purposes at this time. For defendants facing lengthy terms of imprisonment, the officer should consider whether the risks and needs present at the time of sentencing will be present when the defendant returns to the community. In some cases, it may be appropriate to avoid recommending special conditions until such time as the defendant is preparing to re-enter the community from prison.

The most common special conditions include additional sanctions for probation cases (e.g., community service), restrictions on location/movement/associations (e.g., community confinement, home confinement), correctional interventions (e.g., substance abuse or mental health treatment, financial counseling); or conditions that provide additional monitoring tools (e.g., substance abuse testing; financial disclosure).

Specifically crafted conditions may be imposed to address particular types of risks/needs presented in the individual case. In recommending a unique special condition to the court, officers should consult with a supervisor or specialist to ensure that the recommended wording is clear, legally sound, and meets the intended purpose. In addition, the use of certain screening and assessment tools may help officers determine the types of special conditions that may be needed. For example, reference to a recent Axis I diagnosis from the DSM-IV may reflect the need for mental health treatment. A TCUDS-II score of 3 or higher may reflect that the defendant is a good candidate for drug and alcohol treatment. Alternatively, the absence of an Axis I diagnosis or a TCUDS-II score of 0 to 2 may indicate that treatment is not necessary at this time. Also, a TCUDS-II score of 0 to 2 may help determine whether a waiver of the mandatory drug testing provisions of the Violent Crime Control Act of 1994 should be recommended.

If an officer recommends a special condition that would require the expenditure of court funds (e.g., treatment, electronic monitoring), the officer should consider whether a co-payment condition is appropriate. Offender co-payments for monitoring and treatment services are not criminal penalties and are therefore outside the schedule for payment of special assessments, restitution, fines, other penalties, and costs. Co-payments may be collected concurrently with payments for criminal monetary penalties, but should not impede a defendant's ability to make restitution.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
99

Criminal Monetary Penalties[2]

Recommendations on the type and amount of criminal monetary penalties should be guided by the circumstances surrounding each offense and the circumstances of each defendant. The recommendation and justification for criminal monetary penalties are based on facts and evidence contained in the body of the presentence report; no new information is presented in the recommendation and justification. The presentence report's presentation of the statutory and guideline provisions governing criminal monetary penalties and information concerning losses sustained by victims provide essential information about the circumstances of each particular offense. The findings contained in the presentence investigation report on the financial condition of the defendant and the ability to pay are also critical for developing recommendations for criminal monetary penalties. The officer's logic and rationale for recommending criminal monetary penalties stem from facts and evidence contained in the body of the presentence report.

Mandatory Monetary Penalties

Special Assessment

Under 18 U.S.C. § 3013, special assessments are mandatory and are imposed for every count of conviction, except forfeiture counts. When special assessments are the only criminal monetary penalty likely to be imposed, officers should recommend that the assessments be paid immediately. Special assessments may also be paid prior to sentencing, pursuant to terms of a plea agreement. Amounts collected through payment of special assessments are deposited into the Crime Victims Fund. These funds are distributed by the Department of Justice, Office for Victims of Crime, through formula grants to support state victim compensation and victim assistance programs.

Mandatory Victims Restitution

With limited exceptions,[3] the imposition of full restitution is mandatory, without consideration of a defendant's ability to pay, for the following offenses, if committed after April 24, 1996:

Offenses listed in § 3663A(c)

- crimes of violence (defined in 18 U.S.C. § 16)
- all property offenses under title 18
- controlled substance manufacturing offenses (21 U.S.C. § 856(a))
- tampering with consumer products (18 U.S.C. § 1365)

---

[2]Refer also to *Criminal Monetary Penalties*, Monograph 114, for additional guidance.

[3]Exceptions include cases in which the court finds that the number of identifiable victims is so large to make restitution impracticable or the issues of fact are complex and would unduly prolong the sentencing process. See, 18 U.S.C. § 3663A(c)(3).

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
100

Specific title 18 provisions

- sexual abuse (§§ 2241 - 2245; restitution at § 2248)
- sexual exploitation of children (§§ 2251 - 2258; restitution at § 2259)
- domestic violence (§§ 2261 - 2262; restitution at § 2264)
- Child Support Recovery Act (§ 228)
- human trafficking (§ 1593)
- also -- cleanup of clandestine laboratory sites (21 U.S.C. § 853(q))

The amount of restitution is limited to the losses resulting for the offense(s) of conviction, unless another amount is agreed to in the plea agreement.

Discretionary Monetary Penalties

Discretionary Restitution

For certain offenses under title 18 and air piracy offenses that are not covered by the mandatory restitution provision, the imposition of restitution is discretionary, under 18 U.S.C. § 3663. Community restitution for victimless drug offenses is also authorized under 18 U.S.C. § 3663(c), based on the amount of public harm caused by the offense, but the amount of community restitution cannot exceed the amount of a fine imposed. For offenses prosecuted under titles other than title 18 that do not fall under restitution categories provided in 18 U.S.C. §§ 3663A or 3663, restitution can be ordered to a victim as a discretionary condition of probation or supervised release. When recommending discretionary restitution, it is appropriate to consider the amount of loss sustained by each victim harmed by the offense, the financial resources of the defendant, and the financial needs and earning ability of the defendant and the defendant's dependents.

Fines

In the body of the presentence report, officers verify the offense of conviction, are aware of the date on which the offense occurred to determine the appropriate fine amount, and determine the amount of interest that can be charged and other specifics. Statutory maximums for the majority of title 18 offenses are found in 18 U.S.C. § 3571. Recommendations for the imposition of a fine should always be based on the defendant's ability to pay. However, both 18 U.S.C. § 3572 and U.S.S.G. §5E1.2(d) note that a fine should never impair a defendant's ability to make restitution.

Repayment Terms

When considering repayment terms of criminal monetary penalties, officers should recommend lump-sum payments and/or payment schedules designed to collect the maximum amount of money reasonably possible in the shortest period of time, as provided at 18 U.S.C. § 3572(d)(2). Also, unless otherwise specified by the court, payments received for outstanding criminal monetary penalties are applied in the following order:

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
101

- special assessments
- restitution
  - to private victims (individuals, organizations, corporations)
    - interest
  - to third-party compensators (e.g., insurance companies)
    - interest
  - to the United States as a victim
    - interest
- fine principal
  - including fine interest
- community restitution
- penalties and other costs (including costs of prosecution and court costs)

Under 18 U.S.C. § 3664(h), when more than one defendant is liable for restitution, courts may make each defendant liable for payment of the full amount of restitution (jointly and severally). This section also allows courts to apportion restitution among defendants according to varying levels of culpability or economic circumstances of each defendant, so long as the maximum likelihood of the victim being fully compensated is ensured. Where multiple victims are to receive restitution, courts may order restitution to be distributed in a proportional manner, according to a predetermined order of priority, or on the basis of a percentage formula. However, according to 18 U.S.C. § 3664(i), non-federal victims should always be compensated before federal victims.

Once an officer has assessed ability to pay and identified the applicable criminal monetary penalties, the officer recommends the manner in which, and the schedule according to which, criminal monetary penalties will be due. The order of payment options listed under 18 U.S.C. § 3664(f)(2)(B) forms the basis of how the payment options appear in the Judgment in a Criminal Case (Form AO 245B):

A	☐	Lump sum payment of $_____due immediately, balance due • not later than _____, or • in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
B	☐	Payment to begin immediately (may be combined with ☐C, ☐D, or ☐F below); or
C	☐	Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
D	☐	Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $_____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
E	☐	Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
F	☐	Special instructions regarding the payment of criminal monetary penalties:

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
102

It is a mandatory condition of supervision that the defendant comply with the payment schedule contained in the Judgment. Special conditions such as financial disclosure and prohibitions against incurring new credit can be recommended when necessary to help the officer set appropriate collection parameters for monetary conditions; deter and detect economic crimes; verify and monitor self-employment; or assist disorganized, impulsive offenders to gain control of their financial situation.

Inmate Financial Responsibility Program

When recommending the imposition of a prison term, officers should also consider that unless a court expressly orders otherwise, payment of criminal monetary penalties is due during imprisonment. The Bureau of Prisons' Inmate Financial Responsibility Program (IFRP), under Program Statement 5380.07, assists inmates in developing financial plans for meeting financial obligations. In helping to develop an inmate's financial plan, BOP staff ordinarily prioritize obligations to be paid in the following order: special assessments; court-ordered restitution; fines and court costs; state or local court obligations; and other federal government obligations. The financial plan considers an inmate's financial resources earned at the institution as well as non-institutional developed financial resources. However, a certain amount per month is excluded from consideration to allow an inmate the ability to better maintain telephone communication. Inmates who refuse to participate in the IFRP or fail to comply with a developed financial plan face certain effects noted in Program Statement 5380.07(d).

Writing the Sentencing Recommendation

The Recommendation section of the report consists of four components:

1. A sentencing chart displaying the statutory, guideline, and any plea agreement provisions, along with the probation officer's recommended sentence for custody, probation, supervised release, fine, restitution, and special assessment;

2. A justification for the recommended sentence, including the sentencing purposes the sentence is designed to satisfy;

3. An assessment for the suitability of voluntary surrender; and

4. The recommended sentence restated in Model Sentencing Form language.

The sentencing chart is designed for ease of comparison among the statutory, guideline, and, if applicable, plea agreement provisions and the recommended sentence. The statutory and guideline provisions are abbreviated from the Sentencing Options section of the report. The plea agreement provisions can be excerpted from the plea agreement or the Impact of the Plea section of the report. In this manner, the court can easily compare these provisions, determine if there is any conflict among them, and identify any grounds for a departure, if necessary. Recommended special

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
103

conditions of probation or supervised release are presented in the formal presentation of the recommendation at the end of this section. The need for each special condition is introduced and addressed in the justification.

Voluntary Surrender

The third part of the sentencing recommendation includes an assessment of the defendant's suitability for voluntary surrender. Voluntary surrender is a procedure by which a defendant sentenced to serve a period of custody is permitted to voluntarily report, unaccompanied by a U.S. marshal, to the designated institution for service of the sentence. Eligible individuals normally would include those who have been on pretrial release, have complied with the conditions of their release, are not subject to mandatory detention upon conviction as described in 18 U.S.C. § 3143, and are deemed worthy of this procedure in the opinion of the court.

Mandatory Detention

In determining whether mandatory detention upon conviction is applicable, 18 U.S.C. § 3143(b)(2) provides that a defendant found guilty of certain offenses must be detained awaiting imposition or execution of sentence unless:

1. The judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted, or

2. An attorney for the Government has recommended no sentence of imprisonment be imposed, and

3. The judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.

The offenses for which mandatory detention are applicable are defined in 18 U.S.C. § 3142(f)(1)(A)-(C) as follows:

* A crime of violence;

* An offense for which the maximum sentence is life imprisonment or death;

* An offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. § 801et. seq.), the Controlled Substances Import and Export Act (21 U.S.C. § 951 et. seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et. seq.);

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
104

Individuals subject to mandatory detention may be released, under appropriate conditions, by the judicial officer, if it is clearly shown that there are exceptional reasons why such person's detention would not be appropriate. 18 U.S.C. § 3145(c).

Pretrial Release Compliance

Analysis of a defendant's eligibility for voluntary surrender entails evaluation of the defendant's adjustment in the community during the pretrial stage of the criminal proceedings in order to assess the defendant's suitability. Release or detention of a defendant pending sentence or appeals is addressed in 18 U.S.C. § 3143(a) and provides:

> Release or detention pending sentence.--(1) Except as provided in paragraph (2), the judicial officer shall order that a person who has been found guilty of an offense and who is awaiting imposition or *execution of sentence*, other than a person for whom the applicable guideline promulgated pursuant to 28 U.S.C. 994 does not recommend a term of imprisonment, be detained, unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c). If the judicial officer makes such a finding, such judicial officer shall order the release of the person in accordance with section 3142(b) or (c).[4]

Analysis of the defendant's compliance with conditions of release pertains to all defendants released to the community, whatever the condition of release. This analysis is inherently a responsibility of pretrial services.

Seriousness of the Offense

Analysis of a defendant's eligibility for voluntary surrender also entails consideration of the facts of the offense and the harm to victims in order to assess whether the defendant is worthy of the benefit of voluntary surrender. This analysis is inherently a responsibility of the probation officer who investigated the case.

While the recommendation regarding suitability for voluntary surrender is contained in the presentence report as part of the sentencing recommendation, the voluntary surrender recommendation is a joint responsibility. The probation officer and pretrial services officer assigned to the case should collaborate to develop an informed recommendation.

[4] Emphasis added.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
105

Model Sentencing Language

The final portion of the recommendation is a formal presentation of the recommendation in the language of the Model Sentencing Forms (also known as bench book language). The language conforms to the requirements for sentencing and for preparing a Judgment in a Criminal Case, AO Form 245B. Appendix F contains model sentencing language that officers may use in drafting their recommendations.

Statement of Reasons

Judges are required to provide a "statement of reasons" for imposing a sentence. The Statement of Reasons form was first introduced as a stand-alone form in 1988 (*Report of Statement of Reasons for Imposing a Guideline Sentence*, AO 247) to meet the guideline sentencing requirements of 18 U.S.C. § 3553(c). Courts are required to state the reasons for a sentence in open court. If the sentence is within a guideline range that exceeds 24 months, the statement must include the reason for choosing a particular point within the guideline. If the sentence departs from the sentencing guidelines, the statement must include the reason(s) for departure. If restitution is not ordered, or only partial restitution is ordered, the statement must include an explanation. Accordingly, the recommendation should include the reasons that the officer is recommending a sentence at a particular point in the range and/or an explanation when full restitution is not recommended.

Additional Resources

- *PROTECT Act: Statement of Reasons*, Federal Judicial Center Broadcast, February 2004.
- *Preparing the Sentencing Recommendation and Justification*, Federal Judicial Center, Spring 2004.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
106

Chapter VI -- Court-Ordered Corrections, Confidentiality and Other Postsentence Issues

Court-Ordered Corrections

Before the sentencing hearing, the probation officer may modify the presentence report as often as necessary to make any revisions identified by the probation officer or supervising probation officer to improve the report. It may also be revised as part of the addendum process. Once the report has been submitted for the sentencing hearing, the report should not be altered. The report becomes part of the record and, if the case should be appealed, the presentence report becomes part of the record. In limited cases, the court may direct that the presentence report be changed to reflect his or her findings on contested issues, particularly if a process has not been adopted by the court to ensure that all findings -- both guideline and non-guideline related-- are routinely transmitted to the Bureau of Prisons using the Statement of Reasons. If the presentence report is changed, the probation officer can hand-write the changes in the original report or revise the sections in the report resolved by the court and label the report "Amended by Order of the Court."

Statement of Reasons

The Statement of Reasons form was first introduced as a stand-alone form in 1988 (*Report of Statement of Reasons for Imposing a Guideline Sentence*, AO 247) to meet the guideline sentencing requirements of 18 U.S.C. § 3553(c). Courts are required to state the reasons for a sentence in open court. If the sentence is within a guideline range that exceeds 24 months, the statement must include the reason for choosing a particular point within the guideline. If the sentence departs from the sentencing guidelines, the statement must include the reason(s) for departure. If restitution is not ordered, or only partial restitution is ordered, the statement must include an explanation.

Title 18 U.S.C. § 3553(c) specifically requires the court to "provide a transcription or other appropriate public record of the statement of reasons" to the probation office and the Bureau of Prisons, and over time the Statement of Reasons form has evolved to serve not only the requirements of section 3553(c), but a number of other purposes. As a result of the low response rate and expressions of judges, clerks, and others, in July 1990, the Judicial Conference Committee on Criminal Law adopted a Sentencing Commission recommendation to include a one-page Statement of Reasons in the judgment form.

The Statement of Reasons is now also used by many districts to include findings of disputed issues required by F.R.Crim.P. 32, reasons for departures or sentences outside of the advisory guidelines system, and findings that may not be required for sentencing purposes, but may be very relevant for other post-sentencing purposes. Since the Statement of Reasons is included in the judgment, it is now routinely received by the Federal Bureau of Prisons and Sentencing Commission in those cases in which the judgment is received. Courts are encouraged to adopt procedures to ensure that the Statement of Reasons is used to transmit all findings – both guideline and non-guideline related – to the Bureau of Prisons.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
107

The Statement of Reasons, together with the presentence report, is relied upon by staff at the Federal Bureau of Prisons in making inmate classification, designation, and programming decisions. Bureau staff look to the Statement of Reasons for court findings that differ from the tentative findings in presentence reports as they relate to controverted guideline applications (e.g., specific offense characteristics or other adjustments) and non-guideline-related (e.g., prior history of sexual misconduct, escapes, violence, immigration status, threats against government officials) issues.

At its September 2000 session, the Judicial Conference approved additional changes to the judgment form, including a request that the Statement of Reasons be expanded to two pages to allow adequate space for the court to document its findings. Since the judgment is a public document and information contained in the Statement of Reasons form has evolved to include sensitive information, such as the defendant's address, social security number, and cooperating witness information that might be gleaned from references that a defendant's substantial assistance is the basis for a sentence departure, the Judicial Conference also agreed to place reasonable restrictions on public access to the two-part Statement of Reasons form attached to the Judgment in a Criminal Case. These restrictions are occasioned by considerations of the safety of defendants and others, such as family members of defendants.

In June 2005, in response to the Supreme Court's decision in *Booker*, the Statement of Reasons was modified further to account for sentences outside of the advisory guideline system. The form was structured to facilitate post-*Booker* sentencing in that it captures: (1) the court's findings on the calculation of the advisory guidelines and the resolution of disputed facts contained in the presentence report; (2) the court's findings on any grounds for departure; and (3) the court's findings on any grounds for a sentence outside of the guidelines system.

Courts are encouraged to use the most current version of the judgment forms to avoid difficulties that can occur by using outdated forms. Probation offices are encouraged to review draft Judgments in a Criminal Case, including the Statement of Reasons, prior to judicial officer review to ensure that the forms are complete and accurate. The courts will determine which court unit, the clerk's or probation office, is responsible for the preparation and distribution of the judgment and the Statement of Reasons. It is also important that the Statement of Reasons and the judgment form be made available promptly to defense counsel, government attorneys, financial litigation units of the United States attorneys' offices, probation and pretrial services offices, the United States Sentencing Commission,[1] and, if a term of imprisonment is imposed, the Federal Bureau of Prisons. Unless the Statement of Reasons is filed under seal with the clerk's office, the probation office is asked to maintain the official version of the Statement of Reasons (as well as the presentence report) and make those documents available to the clerks' offices for appeals, other post-conviction matters, and any other legitimate disclosures as authorized by the court.

[1]Pursuant to 28 U.S.C. § 994(w), the written Statement of Reasons must be provided to the Sentencing Commission, along with the presentence report, judgment, written plea agreement, and the indictment or information, within 30 days of the entry of the judgment.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
108

Confidentiality: Disclosure of the Report to Third Parties and Outside Agencies

The presentence report is a confidential document. Rule 32 provides that copies of the presentence report be provided to the prosecution and the defense attorneys for the purpose of the sentencing hearing. The attorneys may retain these copies. The attorney for the Government may also retain the presentence report for use in collecting financial penalties. 18 U.S.C. § 3552(d). Rule 32 does not appear to restrict the disclosure of the presentence report by counsel or the defendant. Some courts have local rules that limit redisclosure. Pursuant to 28 U.S.C. § 994(w), the presentence report must be provided to the Sentencing Commission, along with the statement of reasons, judgment, written plea agreement, and the indictment or information, within 30 days of the entry of the judgment.

The Freedom of Information Act (FOIA) and the Privacy Act do not apply to the Federal Judiciary. See, *Cook v. Willingham*, 400 F.2d 855 (10th Cir. 1968). When the presentence report is in the possession of the Parole Commission, however, the report is considered an "agency document" for purposes of the Freedom of Information Act, and therefore can be disclosed. In *United States Department of Justice v. Julian*, 486 U.S.1, 108 S. Ct. 1606 (1988), the Supreme Court held that subjects of presentence reports may obtain those reports from the Bureau of Prisons or the United States Parole Commission under the provisions of the Freedom of Information Act. Courts, however, are excluded from the definition of "agency," and therefore FOIA requests may still be denied.

Investigative or prosecutorial use of the report is incompatible with its purpose. As a general rule, the presentence report is unavailable to anyone other than as described above, without permission of the court. The presentence report is primarily for court use, and court policies should be rigidly followed in revealing the contents of the report beyond the court. Except for the provisions noted above, the court has complete discretion as to the disclosure of the presentence report and consent of the court should be sought before other disclosures are made. Some courts have delegated responsibility to the probation officer for determining what information should be disclosed to third parties that request information about the defendant. The U.S. Court of Appeals for the Second Circuit, however, has held that a district court must exercise its own discretion and should not defer the decision to release information to the probation service. See, *U.S. v. Charmer Industries Inc.*, 711 F.2d 1164, (2nd. Cir. 1983); and *U.S. v. Charmer Industries, Inc.*, 722 F.2d 1073, (2nd. Cir. 1983).

In instances where the court orders that the court/probation records remain confidential and specifically directs that the probation officer decline to testify or produce any records if subpoenaed in a state hearing, the officer is precluded from disclosing such information. The Supremacy Clause bars a state from compelling such disclosure. Thus, when a court declines to permit the disclosure of court records in a state hearing, the officer may not disclose the information. Circumstances warranting disclosure of probation records are rare and are determined by the sentencing judge. Among the considerations of the court when deciding whether to waive the confidentiality of such records are:

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
109

(1) If the subpoenaed information pertains to a criminal trial and is material and exculpatory (bearing on an individual's guilt or innocence) or if for impeachment purposes when there is a substantive likelihood of affecting the trier of fact, it should be disclosed.

(2) If the Federal court concludes that disclosure of the subpoenaed information is necessary to "meet the ends of justice," confidentiality, at the court's discretion, may be lifted. It is consistent with the concept of "ends of justice" that a court may release favorable information about an individual, usually with that individual's consent, although disclosure should be denied when the requested information is available by another means since the "ends of justice" do not include mere convenience. Where the court instructs the probation officer not to disclose the information, the assistance of the United States attorney's office should be obtained to communicate this instruction to counsel or the state court.

Probation officers involved in reciprocal working arrangements with Federal, state, and county law enforcement offices, particularly state and county probation offices, should use caution when disclosing information from the presentence report and supervision files. While the exchange of information is necessary in order to maintain those working arrangements, discretion should be exercised to maintain the essential confidentiality of those records. Where substantial information must be disclosed or where an ongoing relationship calling for relatively open disclosure is contemplated, officers should approach the court for approval. Disclosure of information on unsentenced defendants should be avoided except to prevent harm to the defendant or others.

Additional Resources

- J-Net: Home > Probation and Pretrial Services > Legal Opinions and Articles > Disclosure.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
110

Appendix A

Sample Standard Guideline Presentence Investigation Reports

IN UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ATLANTIS

UNITED STATES OF AMERICA	)	
	)	
vs.	)	**PRESENTENCE INVESTIGATION REPORT**
	)	
Robert Crenshaw	)	**Docket No.** CR 05-111-01-KGG

Prepared for: The Honorable Kelly G. Green
U.S. District Judge

Prepared by: Craig T. Doe
U.S. Probation Officer
Breaker Bay, Atlantis
(123) 111-1111

Assistant U.S. Attorney
Mr. Robert Prosecutor
United States Courthouse
Breaker Bay, Atlantis
(123) 111-1212

Defense Counsel
Mr. Arthur Goodfellow
737 North 7th Street
Breaker Bay, Atlantis
(123) 111-1313

Sentence Date: April 5, 2006

Offense:

Count 1:	Engaging in Racketeering Enterprise (18 U.S.C. § 1961) 20 years/$250,000 fine
Count 2:	Racketeering Conspiracy (18 U.S.C. § 1962) 20 years/$250,000 fine
Count 3:	Narcotics Conspiracy (21 U.S.C. § 846) 20 years/$250,000 fine
Count 4:	Continuing Criminal Enterprise (21 U.S.C. § 848) 20 years to Life/$2,000,000 fine

Release Status: Detained without bail since 11/04/2004

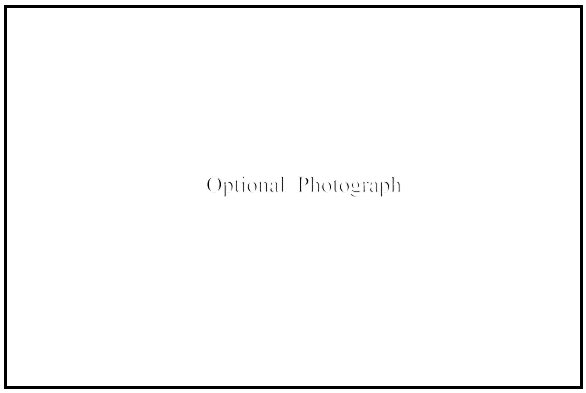
Detainers: None

Codefendants: See Page 2

Related Cases: See Page 2

Date Report Prepared: 1/31/2006 **Date Report Revised:** 2/21/2006

Identifying Data:



Date of Birth:	01/11/73
Age:	33
Race:	White
Sex:	Male
S.S. #:	111-11-1111
FBI #:	444-44-44B
USM #:	11111-111
State ID #:	1414BB
PACTS ID #:	14444
Education:	GED
Dependents:	Four
Citizenship:	U.S.
Legal Address:	10 Baybridge Plaza Breaker Bay, AT 99993
Aliases:	Bob Crenshaw, "Cren" "Boss"

Codefendants:	Michael Ross -	CR 05-111-02
	Gregory Michaels -	CR 05-111-05
	David Ross -	CR 05-111-03
	Sidney Wilson -	CR 05-111-06
	Charles Dixon -	CR 05-111-04
	Bertha Robinson -	CR 05-111-07
Related Cases:	Barbara Jenkins -	CR 05-115-01
	Kathy Crenshaw -	CR 05-115-03
	Denise Hart -	CR 05-115-02
	Martin Van Joseph -	CR 05-115-04

Restrictions on Use and Redisclosure of Presentence Investigation Report. Disclosure of this presentence investigation report to the Federal Bureau of Prisons and redisclosure by the Bureau of Prisons is authorized by the United States District Court solely to assist administering the offender's prison sentence (*i.e.,* classification, designation, programming, sentence calculation, pre-release planning, escape apprehension, prison disturbance response, sentence commutation, or pardon) and other limited purposes, including deportation proceedings and federal investigations directly related to terrorist activities. If this presentence investigation report is redisclosed by the Federal Bureau of Prisons upon completion of its sentence administration function, the report must be returned to the Federal Bureau of Prisons or destroyed. It is the policy of the federal judiciary and the Department of Justice that further redisclosure of the presentence investigation report is prohibited without the consent of the sentencing judge.

PART A. THE OFFENSE

Charge(s) and Conviction(s)

1. Robert Crenshaw, Michael Ross, Gregory Michaels, David Ross, Sidney Wilson, and Charles Dixon were originally indicted on eight counts by a Western District of Atlantis grand jury on November 9, 2004. The most serious charge alleged operation of a continuing criminal enterprise in violation of 21 U.S.C. § 848(a). On April 5, 2005, a nine-count superceding indictment was filed against the original defendants. On May 31, 2005, a one-count superceding information was filed which named only defendant Bertha Robinson, and on August 28, 2005, a second superceding indictment was filed which named Crenshaw, Ross, Michaels, and Wilson in seven counts.

2. In the second and final superceding information pertaining to Robert Crenshaw, Count One charges that from 2000 to November 9, 2004, Robert Crenshaw, also known as "Bob" "Cren," and "Boss," and Sidney Wilson, also known as "Sid," and "Snake," engaged with others in a racketeering enterprise in violation of 18 U.S.C. §§ 1961 and 1962(c).

3. Count Two charges that from 2000 to November 9, 2004, the above-named defendants conspired to conduct a racketeering conspiracy through the commission of multiple acts of racketeering, including murder, conspiracy to murder, conspiracy to distribute narcotics, and the possession and distribution of narcotics, in violation of 18 U.S.C. §§ 1962 and 1963.

4. Count Three charges that from 2000 to November 9, 2004, the above-named defendants conspired with others to violate the federal narcotics laws, in violation of 21 U.S.C. § 846.

5. Count Four charges that from 2000 to November 9, 2004, Robert Crenshaw engaged in a continuing criminal enterprise with at least five other persons with respect to whom he occupied the position of organizer, supervisor, and manager and, through a continuing series of violations of the Federal statute, the defendant obtained substantial income and resources, in violation of 21 U.S.C. § 848(a).

6. Counts Five, Six and Seven charge that on the below-listed dates, Sidney Wilson distributed and possessed with intent to distribute heroin, a Schedule I narcotic drug controlled substance, in the amounts specified below, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A).

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

Count	Date	Amount	
Five	April 3, 2004	one quarter bag	Note: 1 quarter bag equals approximately 1/4 ounce of heroin
Six	April 3, 2004	24 quarter bags	
Seven	May 2, 2004	51 quarter bags	

7. Robert Crenshaw and Sidney Wilson underwent a jury trial before the Honorable Kelly G. Green which began on October 31, 2005, and ended on November 9, 2005. Crenshaw and Wilson were each found guilty by jury verdict as charged.

8. On May 31, 2005, Bertha Robinson pled guilty to the superceding information that charged her with a narcotics conspiracy, and on July 18, 2005, she was sentenced to six years imprisonment. On September 14, 2004, Michael Ross pled guilty to Count One, engaging in a racketeering enterprise, and count three, a narcotics conspiracy, and on January 17, 2005, he was sentenced to 20 years on Count One, to run consecutive to his 50-to-life State sentence, and 15 years on count three to run concurrent to count one. On August 16, 2005, David Ross pled guilty to Count One, engaging in a racketeering enterprise, and he currently awaits sentencing. On July 14, 2005, the Government moved to dismiss all charges against Charles Dixon, who is currently awaiting trial in state court for the murder of Marvin Lewis. Gregory Michael is a fugitive.

9. Barbara Jenkins, Kathy Crenshaw, Denise Hart, and Martin Van Joseph have each been named in indictment CR 00-115-JLC, which is now pending before the Honorable John L. Clark. On December 8, 2005, Barbara Jenkins pled guilty to a currency violation and is awaiting sentence. Martin Van Joseph is pending extradition from Germany, while Kathy Crenshaw and Denise Hart are both awaiting trial.

The Offense Conduct

10. In early 2000, Robert Crenshaw organized a West Breaker Bay narcotics enterprise which distributed heroin in the vicinity of Bodega Boulevard and Breaker Avenue, the neighborhood where Crenshaw was residing at the time. Crenshaw supervised and supplied heroin for the organization which eventually controlled the street-level distribution of heroin in that area. The organization distributed heroin in the form of "quarter bags," packets of approximately one-quarter of an ounce of heroin, which sold for approximately $50 each. Crenshaw's narcotics enterprise also formed retail operations in other areas of Breaker Bay and consigned wholesale quantities of heroin to other distributors. Crenshaw obtained an overseas source of supply and began importing heroin for distribution. In addition to trafficking in narcotics, the organization also participated in murder, which protected and furthered the organization by eliminating and intimidating competitors, informants, and actual or potential witnesses.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
115

11. The enterprise was hierarchically organized with Robert Crenshaw as the overall leader and numerous members performing a variety of tasks. According to the evidence presented at the trial, over 40 individuals were identified as participants in this enterprise over the course of its operation. The jobs assigned to particular persons depended on the length of time they had been associated with the organization and the degree of trust that Crenshaw and his lieutenants placed in them.

12. At the bottom level of the organization were "lookouts" and "steerers," who had little or no contact with the leaders of the group. Lookouts were neighborhood boys, generally in their early teens, who would walk or ride bicycles around the perimeter of the organization's territory and watch for the police in exchange for a share of the narcotics proceeds. Many lookouts were later promoted to street sellers as they grew older and became more trusted. "Steerers" were heroin addicts who would act as intermediaries between the street sellers and the customers in exchange for drugs. The addicts also assisted the organization by injecting samples of diluted heroin to test its potency.

13. Other tasks in the organization included selling the drugs, maintaining strategically located stash locations for the narcotics and the proceeds, processing and packaging the narcotics, delivering narcotics from stash locations to the street workers or from processing locations to stash locations, delivering narcotics proceeds to Crenshaw and his lieutenants, smuggling money out of the country, and transporting heroin into the country from Europe.

14. Over a period of years, Bertha Robinson was one of several individuals who stored narcotics and the proceeds in her apartment at 359 Bodega Boulevard, located around the corner from the locations on Breaker Avenue from which the organization distributed heroin. On a typical day, one of Crenshaw's lieutenants would deliver several hundred quarter bags of heroin to Robinson. She would store the heroin bags and dispense them to various organization members responsible for selling the drugs on Breaker Avenue. When the sellers needed to replenish their allotment of drugs, they would take their proceeds to Robinson's apartment and receive a new supply of narcotics. At the end of the day, a trusted member of the enterprise would pick up the day's drug proceeds.

15. This arrangement, for which Robinson received approximately $300 a week, served a very practical purpose. By storing narcotics in nearby stash locations, the enterprise reduced the street seller's exposure to severe criminal sanctions in the event of an arrest, since the large quantities of narcotics that the dealers sold would never be found on the dealers all at one time. The arrangement also reduced the organization's potential exposure to thefts and robberies of narcotics or money.

16. Mark Summers, who is currently serving a 7- to 22- year Atlantis State sentence for a manslaughter conviction, joined Crenshaw's organization in late 2003 or early 2004, and worked initially as a street seller. Crenshaw, who was 30 or 31 years old by this time, did not engage in street sales. He used Chuck Willis as an intermediary between himself and the other workers in order to insulate himself from arrest. Willis received heroin from Crenshaw

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
116

and distributed it to the sellers; he also collected proceeds from the drug sales and delivered them to Crenshaw.

17. Matthew Wilson joined the organization after his release from State prison in March 2000. During the summer of that year, Wilson received a gold hatchet necklace from Crenshaw. According to the trial testimony, Crenshaw gave the hatchets to his closest criminal associates as a symbol of loyalty and unity, as well as to signify that, should any of those persons ever turn against him, that individual's "head would be on the chopping block." Other recipients of hatchets included Chuck Willis, Mark Summers, Alfred Jasper, and John Ross. Crenshaw also wore a hatchet necklace.

18. During the conspiracy time frame, Sidney Wilson served as an overseer for the organization. He provided security for the group's main distribution location (in the vicinity of Breaker Avenue and Bodega Boulevard) and he assisted in collecting money owed for heroin consignments. In addition, he sometimes received his own quarter bags of heroin to sell. In 2001, Wilson was arrested for possession of heroin; as a result, he was returned to State custody until his parole on December 22, 2003.

19. John Ross, who is currently under Atlantis State parole supervision, joined the organization after his release from State prison in late 2000. In time, he became the street manager of the Breaker Avenue distribution outlet. Ross also provided quarter bags to another distribution location on Island Street and picked up the proceeds. John Ross was arrested in March 2002 with nearly five pounds of the organization's heroin, which had been diluted for street distribution, but not yet packaged into quarter bags. As a result of that arrest, Ross was sentenced to a term of six years to life; he was released on September 2, 2003. Eventually, other members of the Ross family, most notably Moses, Michael, and David, also joined the enterprise.

20. In August 2000, Chuck Willis was killed in a motorcycle accident and Mark Summers assumed the role as Crenshaw's main lieutenant. Summer's responsibilities included transporting heroin from the organization's processing "mills" to the distribution locations, collecting proceeds of narcotics sales and delivering them to Crenshaw, conveying messages between Crenshaw and other members of the organization, and dealing directly with the local heroin supplier in Crenshaw's absence. In late 2001, Crenshaw informed Summers that he had obtained an overseas connection and planned to begin importing heroin from Europe. He showed Summers a postcard from Thailand which he said had been sent by the supplier, and indicated that a good method of smuggling heroin into the United States was through the mail. Summers served as Crenshaw's main lieutenant until 2002, when he withdrew from the group to manage his own heroin operation.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
117

21. After Summers left the organization, Sidney Wilson took over as Crenshaw's main lieutenant. In that role, Wilson managed the organization's operations in the area of Bodega Boulevard and Breaker Avenue. In 2004, a confidential informant introduced Wilson to an undercover Breaker Bay police officer, who was posing as a wholesale purchaser of heroin and the two had several meetings. Wilson's dealings with the undercover officer formed the basis for the three heroin distribution charges in counts five, six and seven. In each instance, Wilson negotiated with the undercover officer, and instructed a co-conspirator, Felix Perez, who is now deceased, to conduct a narcotics transaction in apartment 22 in 360 Bodega Boulevard.

22. On the first occasion, April 3, 2004, the undercover officer told Wilson that he wanted to purchase 25 quarters of heroin; Wilson told him that the price would be $675, and then directed the officer to Perez, who sold the officer one quarter of heroin for $25. Before leaving the area, the officer informed Wilson that he had purchased a sample for testing and would return for the other 24 quarters if the sample was good.

23. Approximately one-half hour later, the undercover officer returned and met with Wilson again on Bodega Boulevard. The officer told Wilson that the sample was good and that he had returned to purchase the additional 24 quarters. Wilson again directed the officer to Perez, who sold the officer the 24 quarters for $650. Similarly, on May 2, 2004, the officer returned to Bodega Boulevard and told Wilson he wanted to buy 51 quarters of heroin. Wilson referred the officer to Perez, who met with the officer a short time later. After negotiating a price for the heroin, Perez sold the police officer 51 quarters of heroin for $1,375.

24. After purchasing heroin from Wilson and Perez, the officer also began dealing with other members of the organization, primarily Seymour Stewart, John Boyd, and Marcus Wells, who worked in the organization's Breaker Avenue distribution location. The officer met Wells through Wilson, who introduced Wells to the officer and instructed Wells to handle the officer's future drug transactions. On one occasion, the officer met with Perez, who explained he and a number of other individuals worked for Wilson in the drug business. He also said that Wilson obtained drugs from "the big man," that is, Robert Crenshaw, and that they were all one big family.

25. On another occasion, Wilson told the undercover officer that he had no heroin available to sell, but "the package just arrived in America today, I'll be able to help you soon." Three days later, on June 8, 2004, the officer purchased 50 quarters of heroin from Felix Perez and Seymour Stewart. Shortly thereafter, on June 18, 2004, Perez sold him an additional 50 quarters. In total, the undercover police officer made approximately 18 purchases of heroin from various members of the enterprise.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
118

26. According to evidence presented at the trial, Crenshaw began importing heroin from Thailand in early 2000. From the fall of 2000 until his arrest in December 2004, Crenshaw used Barbara Jenkins, a flight attendant, to smuggle large amounts of cash from the United States to his supplier, Martin Van Joseph, in Thailand. Jenkins estimated that on average she transported approximately $50,000 to $60,000 per trip. In January 2002, Jenkins began transporting heroin concealed in skin-cream jars from Van Joseph to Crenshaw. Jenkins made repeated trips between Thailand and the United States as a heroin and money courier for Crenshaw. Her last trip was in September 2004.

Drug Seizures

27. During the course of this conspiracy, law enforcement officials seized a total of approximately 4.3 kilograms of heroin from various members of the organization. That amount includes nearly five pounds of heroin seized from John Ross in March 2001, over 1,000 quarters of heroin purchased by the undercover Breaker Bay police officer in 2004 and 2005, as well as other drugs from other arrests and undercover operations. The testimony at trial showed that these 4.3 kilograms represent a fraction of the heroin distributed by the organization.

28. When Mark Summers served as Crenshaw's main lieutenant, he delivered approximately 1,100 -1,300 quarter bags of heroin to the neighborhood drug distribution crew two to three times a week. Each quarter weighed approximately 1.4 grams (based upon the average weight of quarter bags that law enforcement officials obtained from various members of the organization). It can therefore be estimated that Crenshaw's organization distributed from three to five and a half kilograms of diluted heroin a week during that period. Summers also testified that, as a street seller for Crenshaw, he worked seven days a week and sold an average of 150 quarter bags of heroin a day.

29. Summers' testimony about the high volume of heroin distributed by the organization was corroborated by David Ross and Troy Presley, who sold heroin for the organization. The undercover operations of various law enforcement officials also demonstrated that the organization was capable of supplying large quantities of heroin.

30. Finally, Barbara Jenkins transported heroin from Thailand to the United States approximately 20 times between January 2002 and September 2004. On most occasions, the heroin was concealed inside face cream jars, which held at least 75 grams of heroin each. Jenkins generally transported between 10 and 12 jars on each occasion, which represents a total of 750 to 900 grams of heroin per trip.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
119

Murder of John McDonald

31. According to testimony, on August 3, 2001, a heroin dealer named Elvis Dupont was shot to death. On April 3, 2001, Crenshaw, accompanied by Mark Summers, approached John McDonald on Island Drive and accused him of "running (his) mouth" about Dupont's murder. Crenshaw and John McDonald had a short argument, which ended when Crenshaw shot him in the face with a .38 caliber derringer. Shortly after the shooting, Crenshaw and Mark Summers met with Chuck Willis. Crenshaw, concerned that McDonald might still be alive, instructed Willis and Summers to return and make certain he was dead. Willis and Summers then returned to Island Drive, where John McDonald lay critically injured, and Willis shot the victim in the head with Crenshaw's derringer, while Summers stood nearby as a lookout.

Murder of Donnie Mitchell

32. According to testimony, Donnie Mitchell was a major heroin distributor in the same neighborhood where Crenshaw did business, and Mitchell sometimes gave quarters to Mark Summers to sell when Crenshaw was out of heroin. On one occasion, Mitchell shot Crenshaw in the arm. Crenshaw informed Summers that he intended to kill Mitchell; he asked Summers to set Mitchell up, and Summers agreed to do so. Crenshaw apparently wanted Mitchell dead both to avenge the shooting and to eliminate a narcotics competitor. On September 21, 2001, Summers, in accordance with Crenshaw's directives, and Chuck Willis went together to Mitchell's apartment building in the Bodega Bay area. After Summers gained admittance to Mitchell's apartment, Willis entered and shot Mitchell twice with a .38 caliber revolver. Summers then shot him another time with Willis' .38 caliber derringer.

33. That night, Summers met with Crenshaw on Bodega Boulevard and Crenshaw warned him that the police would probably question him about the murder. Crenshaw instructed Summers to acknowledge that he and Willis were friends of Mitchell's but to deny knowing anything about the victim's murder. Later, when questioned by police, Summers followed Crenshaw's instructions.

Conspiracy to Murder Archie Porter
Murder of Cisco Porter

34. On August 30, 2001, Crenshaw had an argument with Archie Porter, who managed a heroin operation on Island Drive. Porter had intervened as Crenshaw attempted to collect a narcotics debt from one of Porter's workers, Scott Carter. At the conclusion of this argument, Crenshaw threatened Porter. Later that night, Porter opened fire on members of Crenshaw's organization on Breaker Avenue, wounding Moses Ross and "Wee Wee," another member of Crenshaw's organization.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
120

35. Following this incident, Crenshaw ordered members of his organization to murder Archie Porter as soon as possible. Crenshaw and other members of his organization attempted to ambush Porter the night of the shooting but they were unable to locate him. When organization members were unable to find Archie Porter right away, Crenshaw and Chuck Willis ordered them to kill his brother Cisco instead. On September 5, 2001, Chuck Willis, Michael Ross, Johnny Sanders (who is currently in State custody on drug charges awaiting trial), and Jon Boyd ambushed Cisco Porter outside the housing project where he lived and shot him to death.

36. After Cisco Porter's murder, Robert Crenshaw did not rescind his order to kill Archie Porter. That same fall, members of Crenshaw's organization lay in wait for Porter outside a Breaker Bay nightclub. After Porter and a companion emerged from the club, Michael Ross and Johnny Sanders positioned themselves on either side of their car and emptied their guns into the passenger compartment. Porter was wounded but survived the murder attempt.

Murder of Kevin Allen

37. On December 11, 2001, Kevin Allen was murdered by Michael Ross, David Ross, and Todd Mattox (who is currently serving a 3½ to 7-year Atlantis State prison sentence) on the orders of Robert Crenshaw. For approximately a year, Allen sold heroin for Crenshaw. In 2001, he and two other members of Crenshaw's enterprise were arrested and charged with murder. Allen cooperated with the prosecuting authorities, and testified against the other members of Crenshaw's crew at trial. When Crenshaw learned of their cooperation, he told members of his organization that Allen was a "snitch" who was to be killed when he was released from prison.

38. In late 2001, Allen was released and returned to the vicinity of Breaker Avenue. When Crenshaw learned of this, he renewed his order that Allen be killed. Crenshaw specifically instructed Michael Ross to murder Allen when the opportunity presented itself. Ross then lay in wait for Allen on several occasions, but was unable to kill him because of the presence of potential witnesses.

39. In early December 2001, Allen and his bodyguard had an altercation with one of Crenshaw's workers on Breaker Avenue. Michael Ross confronted Allen and told him to take the fight out of the Crenshaw territory. Ross and Allen became engaged in a heated argument, which resulted in Ross and the bodyguard exchanging gunshots. The shootout was reported to other members of the organization, including Crenshaw and Mark Summers. Crenshaw directed Summers, who was his main lieutenant at the time, to make sure that the narcotics business was not disrupted by any further such incidents. He also said that Ross was to continue his efforts to kill Allen.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
121

40. On December 11, 2001, Allen drove through Crenshaw's territory on his way home. Mark Summers, Todd Mattox, and Michael and David Ross followed Allen and met him on the corner of Bodega Boulevard and Island Drive. Summers spoke to Allen about the shootout with Ross and received his assurance that there would be no further problems between Allen and the Crenshaw organization. In the middle of the conversation, Michael Ross suddenly drew his gun and shot Allen in the head. David Ross and Todd Mattox then began shooting, too. Allen was struck numerous times, and was pronounced dead at the scene.

41. That night, Summers reported to Crenshaw that Allen was dead. A few days later, Crenshaw met with Summers and Michael and David Ross and commended them for the murder. He also instructed them that the organization was to carry on with the drug business as usual. Michael and David Ross were convicted of Allen's murder after trial in Atlantis Supreme Court. Todd Mattox was convicted of possession of a weapon, but acquitted of murder.

Murder of Simon Morgan

42. In 2003, Michael Ross was arrested and charged with the murder of John Nicholas, who was shot to death on October 15, 2002, on Bodega Avenue. Ross' trial was scheduled for that fall. On November 14, 2003, the prosecution disclosed the names of its eyewitnesses. The principal witness was a heroin addict named Simon Morgan. The other witness was a Crenshaw organization member, who had given police a statement implicating Ross.

43. That evening, Robert Crenshaw and Ross' attorney, Raymond Stein, met on Bodega Boulevard. Stein interviewed the Crenshaw organization member and confronted him with the signed statement he had given to the police. Crenshaw met with Ross and asked him if he knew who Simon Morgan was. After checking with other members of the enterprise, Ross informed Crenshaw that Morgan had tested heroin samples of John Boyd and Marcus Wells and that they wanted to kill Morgan because they feared that he might be cooperating against them as well as against Michael Ross. Crenshaw said that he did not want Boyd and Wells to carry out the murder because he did not trust them, and told David Ross to kill Morgan.

44. After speaking to Crenshaw, Ross organized Boyd, Wells, and Stewart in a plan to kill Morgan. In the meantime, Crenshaw sent Morris Village (who was later murdered in July 2004) and Alfred Jasper, who had arrived on the block with Sidney Wilson, to alert members of the drug crew in that neighborhood. Once all the arrangements had been made, Ross, Boyd, Wells, and Stewart found Morgan and killed him by shooting him twice in the head. Seymour Stewart, John Boyd, and Marcus Wells are each serving State prison sentences in connection with this murder.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
122

45. After the murder, Ross met again with Crenshaw and reported that Morgan was dead. Crenshaw gave him $100 and directed Sidney Wilson to drive him out of the area. He also instructed Ross to stay away from the area, and promised Ross that he could begin working again soon in the heroin business in Bodega Bay. Wilson and Jasper then drove Ross home.

46. A few days after the murder, David Ross was subpoenaed to testify at a state court hearing. He met with Sidney Wilson and asked him to inform Crenshaw of the subpoena. Thereafter, Wilson relayed a message to Ross that Crenshaw wanted to meet him at a local restaurant. At that meeting, Crenshaw told Ross what he wanted him to say at the hearing. He instructed Ross to acknowledge knowing him but to deny that he saw him on the night of the murder. Ross followed Crenshaw's instructions and committed perjury at the hearing.

Victim Impact

47. All of the individuals murdered in this offense are victims. Immediate family members of the victims were interviewed by the probation officer. Each family member explained, in substance, that they recognized that their loved ones were, in most cases, involved in very serious drug trafficking activities. Nevertheless, the families expressed anger toward Crenshaw for ordering the victims' execution. Some of the family members indicated that they have limited resources and were required to borrow money to cover the victims' funeral expenses. Funeral home receipts confirmed the following cost for funeral expenses: John McDonald – $5,000; Donnie Mitchell – $4,500; Cisco Porter – $3,800; Kevin Allen – $7,900; and Simon Morgan – $10,400.

48. Archie Porter is also a victim in this offense, having suffered multiple gunshot wounds. He was hospitalized for 5 weeks and underwent extensive physical rehabilitation. Mr. Porter was interviewed by the probation officer and indicated that he was emotionally traumatized by the defendant's conduct. He explained that not only was he severely wounded, which has caused permanent damage to his liver and kidneys, but that he has also received psychiatric counseling for the loss of his only brother, Cisco. Mr. Porter does not have medical insurance. Itemized expenses in connection with his medical and psychological treatment totaled $975,000. Mr. Porter is unemployed.

Adjustment for Obstruction of Justice

49. The probation officer has no information to suggest that the defendant impeded or obstructed justice in connection with this prosecution.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
123

Adjustment for Acceptance of Responsibility

50. The defendant was interviewed by the probation officer in the presence of his attorney, Arthur Goodfellow. Upon advice of counsel, Crenshaw declined to discuss the circumstances surrounding his conviction in view of a planned appeal.

Offense Level Computation

51. The 2005 edition of the Guidelines Manual has been used in this case.

52. **Base Offense Level:** The guideline for an 18 U.S.C. §§ 1961 and 1962 offense is found in USSG §2E1.1(a)(2). That section provides that the base offense level shall be 19, unless the offense level applicable to the underlying racketeering activity is greater. Pursuant to the commentary under USSG §2E1.1, where there is more than one underlying racketeering offense, each act shall be treated as if it is contained in a separate count of conviction. Moreover, in determining the greater offense level, the commentary further provides that all of the adjustments in Chapter Three, Parts A, B, C, and D, should be applied to both USSG §§2E1.1(a)(1) and 2E1.1(a)(2), and that the greater offense level applies. As detailed below, the base offense level for the underlying racketeering activity is 52. Pursuant to Chapter 5, Part A (comment n.2), in those rare cases where the offense level exceeds 43, that level will be treated as an offense level of 43. 43

Racketeering Acts Number One, Two, Four, Five, and Six –
Murders of McDonald, Mitchell, Porter, Allen, and Morgan

53. **Base Offense Level:** Pursuant to USSG §3D1.2(d), Racketeering Acts Number One, Two, and Four through Six cannot be grouped together with each other, or with any of the other racketeering acts. Racketeering Act Number Three, Conspiracy to Murder Archie Porter, is grouped with Act Number Four under USSG §3D.12(a). The higher offense level calculated for Act Four is controlling. The guideline for murder is found in USSG §2A1.1. That section provides that the base offense is 43. Therefore, each of the above-mentioned racketeering acts has a base offense level of 43. 43

54. **Specific Offense Characteristics:** None 0

55. **Victim-Related Adjustment:** None 0

56. **Adjustment for Role in the Offense:** The defendant was the organizer and leader of this extensive racketeering enterprise, which involved well over five participants. In each instance of murder, Crenshaw ordered and directed various members of his organization to execute the above victims, whom he perceived to be among other things, competitors, informants, and actual or potential witnesses. Therefore, pursuant to USSG §3B1.1(a), four levels are added to the base offense level of each racketeering act. +4

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
124

57. **Adjustment for Obstruction of Justice:** None. 0

58. **Adjusted Offense Level for each Racketeering Act above**: 47

Racketeering Acts Number Seven, Eight and Nine, and Counts Three and Four:
Narcotics Conspiracy, Distribution of Heroin, and Continuing a Criminal Enterprise

59. **Base Offense Level:** Pursuant to USSG §3D1.2(c), the Continuing Criminal Enterprise offense, Count Four, is grouped together with the other narcotics offenses since it embodies conduct that will be considered in the guideline applicable to the narcotics counts. In addition, pursuant to USSG §3D1.3(a), the offense level will be determined in accordance with Chapter Two and Parts A, B, and C of Chapter Three, and based on the highest offense level of the counts in the group. Moreover, pursuant to USSG §3D1.2(d), all of the other narcotic offenses, Racketeering Acts Number Seven through Nine, and Count Four, are grouped together into a single group since the offense is largely determined by the quantity of narcotics involved. In addition, pursuant to USSG §3D1.3(b), the offense level applicable to the group will be based on the aggregated quantity, determined in accordance with Chapter Two and Parts A, B, and C of Chapter Three.

60. The guideline for a 21 U.S.C. § 841 offense is found in USSG §2D1.1(a)(3). That section provides that offenses involving more than10 kilograms, but less than 30 kilograms of heroin have a base offense level of 36. During the course of its existence, this narcotics organization distributed well in excess of 10 kilograms of heroin; therefore the base offense is 36. 36

61. **Specific Offense Characteristic:** None 0

62. **Victim-Related Adjustments:** None 0

63. **Adjustment for Role in the Offense:** This extensive narcotics enterprise was highly structured and Crenshaw served as the overall leader. Crenshaw made most of the decisions, recruited participants, exercised control over jobs assigned to particular members in the organization, and awarded those that were loyal to him. Moreover, Crenshaw appeared to receive the largest share of the proceeds. As such, pursuant to USSG §3B1.1(a), four levels are added. +4

64. **Use of a Minor to Commit a Crime:** Pursuant to USSG §3B1.4, a two-level increase is recommended because the defendant used minor teens to serve as lookouts and steerers for his criminal activity. +2

65. **Adjustment for Obstruction of Justice:** None 0

66. **Adjustment Offense Level for racketeering acts and counts above:** 42

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

Multiple-Count Adjustment (See section 3D1.4)

67.

Racketeering Acts	Adjusted Offense Levels	Units
Act 1	47	1
Act 2	47	1
Act 4	47	1
Act 5	47	1
Act 6	47	1
Acts 7-9; counts 3 and 4	42	½

68. Total Number of Units: 5 ½

69. **Greater of the Adjusted Offense Levels Above:** 47

70. **Increase in Offense Level:** (see Section 3D1.4) +5

71. **Combined Adjusted Offense Level:** 52

72. **Chapter Four Enhancements:** None 0

73. **Adjustment for Acceptance of Responsibility:** None 0

74. **Total Offense Level:** As previously noted, pursuant to Chapter 5, Part A (comment n.2) in those rare instances where the total offense level is calculated in excess of 43, the offense level will be treated as a level 43. 43

PART B. THE DEFENDANT'S CRIMINAL HISTORY

Juvenile Adjudication(s)

75. None

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
126

Adult Criminal Convictions

76. The defendant was represented by legal counsel on all criminal convictions.

	Date of Arrest	Conviction/ Court	Date Sentence Imposed/Disposition	Guideline/ Points	
77.	04/02/93 (Age 20)	Criminal Possession of a Weapon/ Breaker Bay Criminal Court, Breaker Bay, AT Dkt. # 55501	06/25/93, Indefinite term of probation	4A1.1(c)	1

According to a copy of a presentence report prepared in Breaker Bay Supreme Court, the defendant was arrested at 840 Bodega Avenue, after he and another unidentified individual assaulted Arthur Wilson with their fists and feet. Crenshaw was found to be in possession of a loaded .25 caliber automatic pistol that discharged when he threw it in the air. According to available information, the defendant was discharged from probation supervision on June 2, 1996, despite the new arrest on May 31, 1996.

78.	05/31/96 (Age 23)	Criminal Possession of a Weapon/ Breaker Bay Supreme Court, Breaker Bay, AT, Dkt.# 58112	07/26/97, 5 years probation	4A1.1(c)	1

According to the presentence report prepared in Breaker Bay Supreme Court in connection with this offense, Crenshaw was arrested on May 31, 1996, after Breaker Bay police officers observed him driving a BMW passenger vehicle, with three passengers inside, in excess of the speed limit. Crenshaw refused to stop and a high-speed chase ensued, reaching speeds in excess of 90 miles per hour. After weaving in and out of traffic, Crenshaw's vehicle was finally blocked by two unrelated vehicles.

A search of the Crenshaw vehicle incident to his arrest yielded a .38 caliber, two-shot derringer, secured in a "jock" holster under the defendant's pants. According to a later ballistics report, the weapon was operable and showed evidence of having been discharged, although it was not known to have been used in connection with any other crimes. Its serial number had been partially defaced.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
127

According to a review of the defendant's probation supervision file, prior to his sentencing in this case, Crenshaw was first placed on interim supervision with the Breaker Bay Department of Probation on January 26, 1997. His initial adjustment to supervision was considered unsatisfactory since he missed half of his scheduled appointments, but his adjustment eventually significantly improved and he was sentenced on July 26, 1997, to a five-year term of probation supervision.

However, during 1999 Crenshaw stopped reporting regularly, moved from his residence of record without notifying the probation department, and failed to keep a number of scheduled appointments. While the defendant had previously provided probation authorities with a letter, purportedly from Country Time Productions, verifying his employment, attempts by the probation department to locate this business proved futile. Crenshaw stopped reporting to the probation department altogether on September 27, 1999, and a bench warrant was issued for his arrest on February 29, 2000.

On March 17, 2000, Crenshaw appeared at the probation department and explained that he had no reason for failing to report, other than that he was too busy at work and forgot about reporting to probation. The bench warrant was vacated and Crenshaw was scheduled for a violation of probation hearing and released on his own recognizance. Crenshaw subsequently reported to the probation department and provided a letter from Mary Allen Smith, director of national promotions for ABC Records, indicating that Crenshaw was employed as an independent record promoter and earned $600 a month. While Crenshaw continued to maintain that he was employed by Country Time Productions, there is no indication that he ever provided probation officials with verification of this employment or income, although according to his probation supervision file, Crenshaw "...did well financially and traveled around promoting music groups...." On April 28, 2000, Crenshaw appeared in Breaker Bay Supreme Court and was restored to probation supervision, and he later satisfactorily completed same on July 25, 2002.

Criminal History Computation

79. The above criminal convictions result in a criminal history score of 2. Although probation officials were not aware of the defendant's criminal conduct, Crenshaw was under probation supervision in Breaker Bay Supreme Court during a portion of this instant offense, and pursuant to USSG §4A1.1(d), two points are added.

80. The total of the criminal history points is 4. According to the sentencing table (Chapter 5, Part A), 4 to 6 criminal history points establish a criminal history category of III.

Other Criminal Conduct

81. According to a presentence report prepared in Breaker Bay Supreme Court, the defendant was referred to Breaker Bay Juvenile Court on a matter that was adjusted at intake on

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
128

September 27, 1985, when the defendant was approximately 12 years old. While records are no longer available, the defendant told local authorities that he was found in possession of a BB gun.

82. On April 6, 1990, at approximately 10:00 a.m., at the corner of Broadway and Island Drive in Breaker Bay, Crenshaw was arrested after he was found to be in possession of a loaded .25 caliber pistol. Crenshaw was charged with possession of a weapon, and in view of his youth, was placed on pretrial diversion supervision, which terminated successfully on July 29, 1990.

PART C. OFFENDER CHARACTERISTICS

Personal and Family Data

83. Robert Crenshaw was born on January 11, 1973, in Breaker Bay, Atlantis, to the union of William and Roberta Crenshaw (nee Holmes.) The defendant's parents were not legally married and separated when the defendant was approximately 15 years old. The defendant's mother, who is a native of South Kelogo Bay, was previously married to Thomas Wilson, whom she states she divorced shortly after their marriage. According to the defendant's mother, the defendant's father, who was employed as a dock worker, had a nervous breakdown and was committed to a local hospital in 1978. In the years that followed, he was in various mental health facilities and nursing homes. On March 17, 1994, the father died at the age of 82.

84. The defendant has three sisters. Carolyn Rivers (nee Crenshaw) is 38 years old and has been married for over 14 years. She currently resides in Breaker Bay, and is employed by the Breaker Bay Telephone Company. Dorothy Crenshaw, age 37, is divorced and has two children, and has been residing with her mother for the past five years. She is employed as a nurse's aide and, according to the defendant, she has been arrested on credit card charges in the past and spent some time in a mental hospital. Katy Crenshaw, age 34, is currently under indictment and awaiting trial in this court for narcotics charges. She currently resides in Bodega Bay with her consensual mate, Charles Arlington, and is purported to be employed as a promoter for a local record company. In addition, Crenshaw has two maternal half siblings, as a result of his mother's previous marriage, who reside in South Kelogo Bay. Martin Holmes, who is now age 44, is reported to be employed as an accountant, and Cindy Holmes, who is now age 42, is believed to be employed by a program funded by the local city government. Both of the defendant's half siblings were reared by their maternal grandmother in South Kelogo Bay, and the defendant states that he has not had much contact with them in recent years.

85. The defendant and his siblings were reared under marginal economic conditions in Breaker Bay. After the parents separated, the defendant and his siblings lived in a rooming house and later moved to an apartment, but, according to the defendant's mother, they were forced

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
129

to move after the landlord failed to provide heat and hot water, and the overall conditions of the building drastically deteriorated. The defendant's mother states that since November 16, 1994, she has resided at 10 Baybridge Plaza, apartment 3J, Breaker Bay, Atlantis. She is currently 69 years of age and has been employed for over 24 years as a practical nurse at Breaker Bay Hospital. In addition, while the defendant and his siblings were in their early adolescence, the mother worked a second full-time job at a local department store.

86. As a result of the mother's need to work two jobs, the defendant was primarily reared by his older sisters, Carolyn and Dorothy, who had frequent physical altercations with the defendant. The defendant's sister, Dorothy, acknowledged that during a fight, she slashed his face with a broken bottle. Although the defendant appeared to lack parental supervision, his mother states that he was never a disciplinary problem in the home. She added that a significant male figure, whom Crenshaw met at the local YMCA, took a real interest in him and provided fatherly guidance.

87. The defendant is the father of three out-of-wedlock children, who range in age from19 to 14. The first child, Marcus Crenshaw, age19, resides in Breaker Bay, and is the product of a casual relationship with the former Marsha Jones, whom the defendant believes is now married. Ms. Jones, who is now age 33, was reported to have a drug problem, according to the defendant, and Marcus was raised by his maternal grandmother, Amenda Jones, in Breaker Bay. The defendant states that he regularly provided financial assistance. At the age of 15, Marcus moved to the defendant's apartment in Bodega Bay, Atlantis, and reportedly completed Bodega Bay High School. After Crenshaw was arrested, his son returned to his maternal grandmother's home, where he currently resides. Our attempts to contact and interview Ms. Jones have been unsuccessful.

88. The defendant's daughters, Alisa and Diane Crenshaw, ages 14 and 16, respectively, are the products of the defendant's consensual relationship with the former Mary Ann DeSanchez, who is now married, but separated from her husband Michael Malone, a Breaker Bay stockbroker. Mrs. Malone, age 35, provided general information concerning her relationship with the defendant.

89. Crenshaw met Mrs. Malone in 1991 and the two dated casually until she became pregnant with their first child. The defendant then left his mother's residence and moved with Mary Ann to an apartment in Bodega Bay where the couple lived for approximately one year. According to Mrs. Malone, the couple then moved to a condominium in Bodega Bay, where they lived until approximately 1998, when the couple separated and Crenshaw moved out. While Crenshaw indicated to us that he then returned to his mother's residence, according to his mother, Crenshaw never returned to her residence after he moved out in 1992, nor did he use either of her addresses as a mailing address.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
130

90. According to the defendant's Breaker Bay Supreme Court probation supervision file, at the time of his arrest for possession of a weapon in May 1996, Crenshaw was reportedly residing on Bodega Boulevard with his mother. After he was placed on probation in July 1997, Crenshaw told probation authorities that he lived with the former Ms. DeSanchez in an apartment in Upper Bristol, Atlantis, a home the couple shared with Ms. DeSanchez' sister.

91. Mary Ann Malone reported that she initially enjoyed a happy relationship with Crenshaw and described him in loving and supportive terms, adding that she now considers him to be like a brother. Mrs. Malone explained that while she was involved with the defendant, she wanted to get married but he did not. Eventually they simply "grew apart. I couldn't keep up." Mrs. Malone added that she became extremely depressed near the end of their relationship and recalled that she cried frequently. Mrs. Malone claims that she remained in the Bodega condominium long after she and Crenshaw separated and he provided her with full financial support until she managed to become self-sufficient.

92. Since approximately 1996 until recently, Mrs. Malone lived with her husband in Mt. Vernon, Atlantis and they have a two-year-old son. She explained that the relationship between the defendant, her husband and the defendant's two teenaged children was extremely good but that her own relationship with her husband has recently deteriorated because Crenshaw, prior to his most recent arrest, generously provided them with financial support for their two daughters. As a result, she felt her husband did not feel the financial burdens of raising two other children that were not his own. Since Crenshaw's arrest, the couple's financial situation has taken a turn for the worse and both the defendant's daughters currently work part-time jobs to assist their mother since her husband has left the home.

93. On September 12, 2002, in Breaker Bay, the defendant married the former April Moon, who was pregnant with their only child, Justice. According to the defendant, in approximately 2001, he met Ms. Moon, who originally lived in San Juan, Atlantis, and she agreed to move to Breaker Bay. The couple initially shared an apartment, then moved to a single family home in Bodega Bay. According to Crenshaw, Ms. Moon did not have many friends and frequently accused him of being "unable to separate [his] job from [his] home." The defendant explained that his wife wanted him to spend more time at home, and that in January 2003, while he was away on a business trip, his wife deserted him and took their son to an apartment the couple had previously rented in San Juan. According to an affidavit, later filed in an Atlantis court in connection with his divorce, Crenshaw claimed that his wife retained jewelry and furs, valued at approximately $58,500, which included a diamond ring valued at $45,000, other jewelry valued at $9,500 and a fur coat valued at $4,000.

94. Also according to the affidavit, Crenshaw further claimed that he paid his wife a total of $4,900 after she abandoned him through October 26, 2003; purchased clothing valued at $1,653.15 for his wife and son; and paid medical expenses in excess of $1,000. Crenshaw corroborated these statements during his presentence interview and explained that he paid his wife's bills and the expenses in connection with the apartment until approximately

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
131

October 2003 and attempted over the course of several visits to San Juan to reconcile their relationship. Crenshaw's former wife reportedly became delinquent in her financial obligations after Crenshaw stopped assisting her and she moved to Argentina, Atlantis, with friends. The defendant was granted a divorce on July 12, 2004 in the Superior Court of Atlantis.

95. The defendant's former wife, who now lives just outside Village Springs, Atlantis, was contacted and interviewed by a U.S. Probation Officer in the Northern District of Atlantis. She was also interviewed by telephone by the undersigned. She explained that her first year of marriage to the defendant was quite happy, but that the marriage began to deteriorate after stories circulated linking her husband to illegal activities and organized crime. Crenshaw and she were banished from regular social contact with friends after stories of the defendant's drug activities surfaced. The allegations by the media, the defendant's ex-wife explained, put pressure and strain on their relationship, and she added that because he never discussed his activities or the allegations by the media with her, she had no direct knowledge of his drug activities during the time of their marriage.

96. According to the defendant's ex-wife, during their marriage she did not maintain employment, although she briefly attempted a modeling career. Crenshaw paid for all their living expenses during this time and they never purchased property during their marriage. Ms. Crenshaw expressed her belief that her ex-husband is a very wealthy man and is presently hiding assets. While she now denies that any "serious" abuse took place during the course of their marriage, she noted that there was some limited physical abuse but she declined to explain further or elaborate. According to an affidavit filed by Ms. Crenshaw in court, in connection with a motion for temporary support, she indicated that she fled with the couple's child from their Bodega Bay residence because she feared for her physical safety and the well being of their son who had observed the defendant's violent behavior towards her.

97. After the defendant stopped providing financial assistance for his son, the defendant's ex-wife retained counsel and filed a motion in Superior Court in Atlantis seeking child support payments from Crenshaw. On December 14, 2003, the defendant was ordered to pay child support in the amount of $450 per week and all of his son's medical expenses. According to the defendant's ex-wife, no child support payments have been received from Crenshaw since prior to his arrest. Ms. Crenshaw further added that her son was staying at Crenshaw's residence when Crenshaw was arrested and since that time, her son has had nightmares and needs professional attention which she cannot afford at the present time. Although she explained that she "basically does not like Crenshaw any more," she has allowed him to call collect since his arrest to talk to their son.

98. Since September 2003, the defendant has maintained an intimate relationship with Marsha Douglass, age 28. Douglass is an immigrant from Germany, who came to the U.S. in 2001 and is now a permanent resident alien. Ms. Douglass appears to be very supportive of Crenshaw and described him as "being larger than life." Ms. Douglass stated that the

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
132

defendant has a "presence" about him and she believes him to be straightforward and forthright. Ms. Douglass does not believe that the defendant was involved in any criminal wrongdoing and vowed to remain faithful to him throughout his legal difficulties.

99. According to Ms. Douglass, she has a college education and has completed two years of medical school. She is an aspiring actress currently employed as a paramedic with the Breaker Bay Emergency Services since April 2004. She resides with a roommate, although prior to Crenshaw's arrest, she reportedly stayed frequently at his Bodega Bay residence, which has subsequently been seized by the Government. At the present time, Crenshaw plans to reside with his mother at 10 Baybridge Plaza, Breaker Bay, Atlantis, upon his release. He plans to marry Ms. Douglass in the immediate future, although he intends to await the outcome of his appeal on his conviction before finalizing his future plans.

Physical Condition

100. Robert Crenshaw, a white, non-Hispanic male, is 5'11" tall and weighs 180 pounds. He has brown eyes and short brown hair, and at the time of the interview he wore a light mustache and goatee. The defendant has a scar on his left cheek which, as mentioned, is the result of his sister hitting him with a bottle in February 1981. In addition, Crenshaw has a scar on his right arm, which is the result of a gunshot wound he received in July 1991. Crenshaw declined to discuss the circumstances surrounding this shooting, but indicated that he was treated at Breaker Bay General Hospital. According to the Government, the defendant was shot by Donnie Mitchell, who was reportedly ordered killed by Crenshaw and is now deceased. The defendant describes his overall physical health as good, but according to his mother, Crenshaw has suffered from migraine headaches for the past four to five years.

Mental and Emotional Health

101. The defendant states that he was briefly seen by a psychiatrist shortly before he separated from his wife, but was unable to recall the psychiatrist's name. At the present time, Crenshaw describes his mental and emotional health as problem-free with the exception of normal stress in connection with his current legal difficulties. During the interview with the defendant, there was no indication of mental or emotional health problems. He denied any family history of mental or emotional problems.

Substance Abuse

102. The defendant states that he drinks alcohol socially, and prefers champagne. He states that he has never used narcotics, although he acknowledged that he has smoked marijuana since the age of 18, and last smoked marijuana in November 2001.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
133

Educational and Vocational Skills

103. The defendant attended Breaker Bay High School until October 12, 1991, and completed the 11th grade. Crenshaw received his High School Equivalency diploma on April 30, 1995, and completed a 13-week paralegal course at the Paralegal Institute in Breaker Bay on April 2, 1996, but, according to this school's records, Crenshaw failed to take the comprehensive final exam.

104. The defendant enrolled in Atlantis University undergraduate school in June 1996 and completed several courses, but he withdrew the following autumn semester of 1996-1997. The defendant states that he has no other formal education. Crenshaw communicated effectively during the presentence interview and he appears to be of average intelligence.

Employment Record

105. Since 1997, the defendant has been self-employed as the owner and operator of a significant number of various music promotion, production and publishing companies. While the corporation papers for a number of these various companies are not available, and corporate income tax information cannot be readily provided on most of the companies, the Probation Office has confirmed that the defendant incorporated, or had interest in approximately 35 different companies. In 2000, Crenshaw retained an entertainment attorney, Michael Moran, who was paid on an hourly basis to assist Crenshaw in the negotiation of various music related contracts between Crenshaw and various talent, or between Crenshaw and various recording companies.

106. Crenshaw further explained that he was involved in a number of different aspects in the music industry. He managed several recording artists and/or groups, and received a percentage of the overall gross receipts from all proceeds, including record sales, tour proceeds, publishing rights and other royalties. In addition, Crenshaw entered into various production agreements where, for a fee, Crenshaw would secure recording contracts with record companies for various artists and would further receive a percentage of the net record sales. To the best of his recollection, Moran negotiated over 30 contracts for Crenshaw, of which approximately four or five could be described as successful. As the manager of various recording groups, Crenshaw received approximately 20 percent of all gross profits. For example, one recording group which was under contract to Crenshaw successfully produced two gold albums, which represented over 500,000 sales in the U.S., and had at least one successful tour until they disbanded some time in 2002.

107. According to the defendant and generally corroborated by trial testimony, Crenshaw established an ongoing relationship with various recording companies and, on occasion, acted on behalf of recording companies, supplementing their efforts in the promotion of various artists' recent releases, although he was not a salaried employee. Crenshaw traveled to various radio stations, generally in the north and southeast, spoke with DJs and made

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
134

presentations on behalf of the various recording acts, in an attempt to encourage them to play the recording artist's releases. According to Crenshaw, he generally received a "flat fee" of approximately $2,500 for the "life of the record," which is approximately six weeks.

108. According to a representative of the Internal Revenue Service (IRS), Crenshaw filed personal tax returns for the years 1997 through 1999. To date Crenshaw has not filed personal income tax returns for the years 2000 through 2004. According to the IRS agent, the defendant's income tax returns for the years 1991 through 1996 were filed late, apparently after he learned of an IRS investigation. Crenshaw reported adjusted gross income of $40,229 in 1997, $14,956 in 1998, and $95,393 in 1999.

Financial Condition: Ability to Pay

109. The defendant declined to discuss his assets and, on the advice of counsel, declined to provide a financial statement. At the time of the presentence interview, Crenshaw voluntarily stated that his legal fees are being paid by a friend.

110. According to other available information, the defendant purchased a single-family home located at 357 North Bodega Avenue, Bodega Bay, Atlantis, on December 23, 2001, for $642,000. Crenshaw attempted to place this property in his mother's name, but the property was seized by the Government. In addition, the defendant owned a vacant lot, located in Clarkstown, Atlantis, which he subsequently sold to his mother on April 30, 2000 for the sum of $5. At the time of his arrest, the defendant informed the pretrial services officer that he owed approximately $15,000 on various credit cards, but that his attorney was in the process of arranging a payment schedule for the various credit card companies and outstanding tax liabilities. A recent credit bureau inquiry failed to reveal a record of the defendant's credit history.

111. Absent evidence to the contrary, it appears that Crenshaw is capable of paying any fine that the court may impose. It also appears that the defendant is capable of making a lump sum payment of any monetary penalty imposed by the court.

PART D. SENTENCING OPTIONS

Custody

112. **Statutory Provisions:** The maximum terms of imprisonment on Counts One, Two, and Three are 20 years, pursuant to 18 U.S.C. § 1963(a) and 21 U.S.C. § 848(a).

113. **Statutory Provisions:** The mandatory minimum term of imprisonment on Count Four is 20 years and the maximum is life, pursuant to 21 U.S.C. § 848(a).

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
135

114. **Guideline Provisions:** Based on a total offense level of 43 and a criminal history category of III, the guideline term for the combined counts is life.

Supervised Release

115. **Statutory Provisions:** If a term of imprisonment is imposed on Counts One, Two, and Three, the court may impose a term of supervised release of not more than three years, pursuant to 18 U.S.C. §§ 3583(a) and 18 U.S.C. § 3583(b). A term of supervised release of not more than five years may be imposed on Count Four, pursuant to 18 U.S.C. § 3583(a) and 18 U.S.C. § 3583(b). Pursuant to 18 U.S.C. § 3624(e), such terms of supervised release will run concurrently.

116. **Guideline Provisions:** If a term of imprisonment of more than one year is imposed, a term of supervised release is required. Pursuant to USSG §5D3.2(b)(2), the authorized term for supervised release is at least two years, but not more than three years for Counts One, Two and Three. Pursuant to USSG §5D3.2(b)(1), the authorized term of supervised release for Count Four is not more than five years.

Probation

117. **Statutory Provisions:** Probation is prohibited on Count Three per 21 U.S.C. §§ 846 and 841(b)(1)(C). Probation is prohibited on Count Four per 21 U.S.C. § 848(d). Probation is not authorized for Counts One or Two pursuant to 18 U.S.C. § 3561(a) since the defendant will be sentenced at the same time on another count which requires imprisonment.

118. **Guideline Provisions:** The defendant is not eligible for probation, pursuant to USSG §5B1.1(b)(1).

Fines

119. **Statutory Provisions:** The maximum fine for Counts One and Two is $250,000 on each count, pursuant to 18 U.S.C. § 3571. The maximum fine for Count Three is $1,000,000 pursuant to 21 U.S.C. § 841(b)(1)(C). The maximum fine for Count Four is $2,000,000 pursuant to 21 U.S.C. § 848(a), for a total fine of $3,500,000.

120. A special assessment of $100 is mandatory on each of Counts One, Two, Three and Four, for a total of $400, pursuant to 18 U.S.C. § 3013.

121. **Guideline Provisions:** The fine range for these offenses is from $25,000 to $3,000,000 pursuant to USSG. §5E1.2(c)(3) and (4).

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
136

Restitution

122. **Statutory Provisions:** Restitution must be ordered on Counts One and Two pursuant to 18 U.S.C. § 3663A. Restitution in the amount of $31,600 shall be ordered for the victims' funeral expenses. Restitution payments shall be made to the victims' estates as follows:

The Estate of John McDonald – $5,000
The Estate of Donnie Mitchell – $4,500
The Estate of Cisco Porter – $3,800
The Estate of Kevin Allen – $7,900
The Estate of Simon Morgan – $10,400

123. In addition, restitution in the amount of $57,000 is outstanding to Archie Porter for his medical and psychological counseling expenses. The total restitution in the case is therefore $88,600 and should be sent to the Clerk of the Court for disbursement to Mr. Porter and to the victims' estates.

124. **Guideline Provisions:** In accordance with the provisions of USSG §5E1.1(a)(1), restitution shall be ordered.

PART E. CIRCUMSTANCES THAT MAY WARRANT DEPARTURE

125. There are no circumstances concerning the offense or the offender that would warrant a departure from the prescribed guidelines.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
137

PART F. VARIANCES THAT MAY BE CONSIDERED IN IMPOSING SENTENCE

126. The probation officer has not identified any factors under 18 U.S.C. § 3553(a) that may warrant a variance and imposition of a non-guideline sentence.

Respectfully submitted,

CHIEF U.S. PROBATION OFFICER

By_____
Craig T. Doe
U.S. Probation Officer

Reviewed and Approved:

_____
Joan B. Fair
Supervising U.S. Probation Officer

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

ADDENDUM TO THE PRESENTENCE REPORT

UNITED STATES DISTRICT COURT FOR WESTERN DISTRICT OF ATLANTIS
UNITED STATES V. ROBERT CRENSHAW; DKT. # CR 05-111001-01-KGG

OBJECTIONS

By the Government

On February 6, 2006, Assistant U.S. Attorney Robert Prosecutor advised the probation officer that he had no objections to the presentence report.

By the Defendant

On February 8, 2006, defense counsel Arthur Goodfellow advised the probation officer that he had no objections to the presentence report.

Respectfully submitted,

CHIEF U.S. PROBATION OFFICER

By_____
Craig T. Doe
U.S. Probation Officer

Reviewed and Approved:

_____
Joan B. Fair
Supervising U.S. Probation Officer

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ATLANTIS

UNITED STATES OF AMERICA	)	
	)	
vs.	)	**PRESENTENCE INVESTIGATION REPORT**
	)	
	)	**Docket No. CR 05-002-01-KGG**
Frank Jones	)	

Prepared for: The Honorable Kelly G. Green
U.S. District Judge

Prepared by: Craig T. Doe
U.S. Probation Officer
Breaker Bay, Atlantis
(123) 111-1111

Assistant U.S. Attorney
Mr. Robert Prosecutor
United States Courthouse
Breaker Bay, Atlantis
(123) 111-1212

Defense Counsel
Mr. Arthur Goodfellow
737 North 7th Street
Breaker Bay, Atlantis
(123) 111-1313

Sentence Date: June 5, 2006

Offense: Count One: Tax Evasion (26 U.S.C. § 7201)
5 years/$250,000 fine

Release Status: At liberty on a $50,000 personal recognizance bond with pretrial supervision (No pretrial custody)

Detainers: None

Codefendants: None

Related Cases: Nancy Oscar CR 05-002-01
Samuel James CR 05-003-01
Brian McDonald CR 05-004-01
Vincent St. James CR 05-005-01
Donald Goodman CR 05-006-01

Date Report Prepared: 5/15/06 **Date Revised:** 5/25/06

Identifying Data:

Date of Birth:	1/1/50
Age:	56
Race:	White
Sex:	Male
S.S. #:	111-11-1111
FBI #:	111-11-11A
USM #:	11111-111
State ID #:	Not Applicable
PACTS ID #:	1101
Education:	BS degree
Dependents:	Two
Citizenship:	U.S.
Legal Address:	1701 Seagull Lane Breaker Bay, AT 11111
Aliases:	None

Restrictions on Use and Redisclosure of Presentence Investigation Report. Disclosure of this presentence investigation report to the Federal Bureau of Prisons and redisclosure by the Bureau of Prisons is authorized by the United States District Court solely to assist administering the offender's prison sentence (*i.e.,* classification, designation, programming, sentence calculation, pre-release planning, escape apprehension, prison disturbance response, sentence commutation, or pardon) and other limited purposes, including deportation proceedings and federal investigations directly related to terrorist activities. If this presentence investigation report is redisclosed by the Federal Bureau of Prisons upon completion of its sentence administration function, the report must be returned to the Federal Bureau of Prisons or destroyed. It is the policy of the federal judiciary and the Department of Justice that further redisclosure of the presentence investigation report is prohibited without the consent of the sentencing judge.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
141

PART A. THE OFFENSE

Charge(s) and Conviction(s)

1. Frank Jones was named in a three-count indictment filed by a Western District of Atlantis grand jury on November 1, 2005. Counts one through three charge that the defendant attempted to evade income tax due and owed by him and his wife for calendar years 2002, 2003, and 2004, respectively, in violation of 26 U.S.C. § 7201. On November 15, 2005, a superseding information was filed by the United States Attorney's Office in the Western District of Atlantis. The Information charges that on October 15, 2004, Jones evaded income tax due and owed by him and his wife for the calendar year 2004 by writing a check to the American Medisearch Organization in the amount of $20,000 for which he received 90 percent back in cash, and by filing a false tax return in which he deducted as a charitable contribution the entire amount of $20,000, in violation of 26 U.S.C. § 7201.

2. On November 21, 2005, Jones appeared before a U.S. Magistrate Judge and pled not guilty to all of the charges. He was released after posting bond and was ordered to report to the Pretrial Services Agency. On December 1, 2005, in accordance with the terms of a written plea agreement, the defendant pled guilty as charged in the superseding information. The parties entered into a plea agreement per F.R.Crim.P. 11(c)(1)(A), which calls for the dismissal of the original indictment. Jones is scheduled to be sentenced on June 5, 2006.

3. According to his supervising pretrial services officer, Jones made satisfactory adjustment while under pretrial services supervision and reported as directed. Additionally, Jones maintained employment and there were no substance-related issues with the defendant.

The Offense Conduct

4. The American Medisearch Organization is a not-for-profit national corporation that supervises fungus research. Across the country, the American Medisearch Organization derives its funds from 50 charter divisions, which are separately incorporated not-for-profit organizations. The American Medisearch Organization, Atlantis Division, Inc., located in Breaker Bay, Atlantis, is one of the charter divisions employing salaried individuals and volunteers, that supports the goals of the American Medisearch Organization and is authorized to use the name of the American Medisearch Organization in fund raising, educational programming, the issuance of grants in fungus research, and other activities. In late 2004, the Atlantis Medisearch Organization began to raise funds through an annual fall dinner dance, casino night.

5. Nancy Oscar began employment with the Atlantis Medisearch Organization in 1989 as a field services representative. Oscar, who created the dinner dance fund-raising event, was responsible for the fund-raising activities of the Atlantis Medisearch Organization. Three schemes developed from the dinner dance, all of which were aimed at enabling various "contributors" to inflate or falsify the "charitable" donations that could then be reported and,

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
142

where applicable, deducted on personal, corporate, partnership, or private foundation Federal income tax returns. Oscar and other participants collected checks made payable to the American Medisearch Organization and returned 90 percent of the face value of the checks, either in the form of cash, or later in the form of chips which could be converted to cash or to merchandise sold by the vendors at the dinner dance.

6. At least as early as 1999, in connection with the annual dinner dance, Oscar instituted a "check cashing" procedure whereby an individual was permitted to write a check payable to the American Medisearch Organization and send it to Oscar in advance of the affair. However, only 10 percent of the value of the check was retained by the Atlantis Medisearch Organization as a donation to the American Medisearch Organization, and 90 percent of the value of the check was returned to the "contributor" in cash either before or at the dinner dance.

7. At the dinner dance, which was usually held in October or November, guests were permitted to write checks, payable to the American Medisearch Organization, to purchase gambling chips. Ten percent of the value of each check was retained by the Atlantis Medisearch Organization as a donation, but 90 percent was returned to the "contributor" in the form of gambling chips. At the end of the evening all outstanding chips could be redeemed for cash or merchandise. Also at the dance, boutiques sold merchandise and gift certificates at fair market value, which were paid for by checks payable to the American Medisearch Organization, with chips or cash. No portion of the purchase price was a contribution to the organization; however, it did receive a small donation from the vendors.

8. Although the Atlantis Medisearch Organization raised money from other fund-raising events, its major source of income was from the annual dinner dance. Over the years, the number of people attending the dinner dance increased, the amount of advance "check-cashing" increased, the amount of checks written for gambling chips increased, and the amount of money Atlantis Medisearch Organization raised for the American Medisearch Organization increased. In 2001 the organization raised $73,000 and in 2004 the organization raised $360,000.

9. This scheme was in essence a "check cashing" operation, allowing "contributors" to draw checks to the American Medisearch Organization several weeks before the dinner dance affair. Specifically, before each dinner dance, Oscar told the members of the Atlantis Medisearch Organization that if they or their invited guests wished to write a check to the American Medisearch Organization over $3,000, the check would have to be received approximately two weeks before the affair, and 90 percent of the face value would be returned in cash. When the checks were collected in this manner they were deposited into the Atlantis Medisearch Organization bank account.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
143

10. After the checks cleared the account, Oscar and other employees at her direction would arrange for the bank to ship cash to the dinner dance site. Oscar and some of the officers and members of the Atlantis Medisearch Organization would meet in rooms at the dinner dance site where they took the cash and placed it in envelopes in amounts corresponding to 90 percent of the face value of the checks sent in advance of the dinner dance by the "contributors." Oscar also arranged for additional cash to be available at the dinner dance for those members who chose to redeem their chips for cash. Other "contributors" who did not attend the dinner dance were permitted to cash checks so long as they purchased a ticket for the affair. Those nonattending "contributors" who bought tickets and cashed checks were assigned to a nonexistent "dummy table" that was actually added to the dinner dance guest list.

11. The scheme was able to continue and flourish not only because of the greed of the "contributors," but also due to Oscar's bookkeeping methods. Oscar instructed officers of the organization who were preparing financial reports on the annual dinner to conceal the source of the funds raised through the check-cashing schemes by including those funds in other categories of the financial report, such as gambling receipts.

12. In support of their income tax submissions, "contributors" often attached to their tax returns copies of the fraudulent checks they wrote to the American Medisearch Organization, and during routine audits "contributors" furnished the original copy of the fraudulent check to agents of the Internal Revenue Service and directly or indirectly misrepresented that the full amount of the checks were charitable contributions to the American Medisearch Organization.

13. Over the years, the number of participants in this scheme substantially increased. According to available records, while the dinner dance attendees increased from approximately 65 in 2000 to approximately 650 in 2004, the Government has only sought prosecution of those "contributors" who participated in the various kickback schemes and filed fraudulent tax returns when the total amount of the checks written to the American Medisearch Organization was $30,000 or more over several years or $20,000 in one given year. To date, the Government has prosecuted Nancy Oscar, who was the organizer and creator of this scheme. She has recently pled guilty to a three-count indictment charging her with mail fraud, income tax evasion, and wire fraud, along with five "contributors," namely the defendant, Frank Jones, together with Samuel James, Brian McDonald, Vincent St. James, and Donald Goodman. In total, the Government expects to obtain indictments for approximately 37 additional "contributors." Although the value of the checks written to the American Medisearch Organization varied from "contributor" to "contributor," the check writers are equally culpable.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
144

14. Frank Jones participated in this false deduction scheme involving the Atlantis division of the American Medisearch Organization and filed fraudulent income tax returns for the years 2002, 2003, and 2004. During each of the years, Jones made contributions of $20,000, but received 90 percent of the contribution (or $18,000) back in cash or in gambling chips, some of which he used to gamble with, but the majority of which he redeemed for cash. However, on each of his individual income tax returns, filed jointly with his wife, Jones deducted the full amount of $20,000 as "charitable contributions," even though he was only entitled to deduct $2,000 in each tax year, which represents the 10 percent retained by the Atlantis Medisearch Organization as a contribution to the American Medisearch Organization.

15. Jones was invited to attend the dinner dance by the former chairman of the board of the Sigma Systems Company, John Adams. In 2002 and 2004 Jones drew personal checks to the American Medisearch Organization for $20,000 each year and attended the dinner dance. At the dance, Jones received $18,000, or 90 percent of his check back in gambling chips, of which the majority was later redeemed for cash. In 2003 Jones did not attend the dance, but learned that he could draw the personal check and still received the 90 percent return. As a result, Jones drew the check and gave it to Adams. Several weeks later, Adams gave Jones $18,000 in cash. Jones used the $18,000 he received each year from the Atlantis Medisearch Organization for personal expenditures and did not redeposit any of the funds into his personal bank account.

Victim Impact Statement

16. The Internal Revenue Service is the victim. In each tax year, Frank Jones deducted $20,000 as a charitable contribution from his taxable income when in fact he was only entitled to deduct a total of $2,000 as a charitable contribution during each of the tax years. As a result, Jones underreported his taxable income by $54,000. According to the results of an Internal Revenue Service audit, Jones had outstanding tax liabilities, not including interest and penalties, in the amount of $27,000, which he has paid in full.

Adjustment for Obstruction of Justice

17. The probation officer has no information to suggest that the defendant impeded or obstructed justice.

Adjustment for Acceptance of Responsibility

18. During an interview with Internal Revenue Service agents, and later during an interview with the probation officer, Jones readily admitted his involvement in this offense. Jones explained that he falsely claimed the charitable deductions on his personal tax returns because everyone else who attended the dinner dance was claiming the deductions.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
145

19. Jones added that his involvement in this offense has had an adverse effect on his career and in retrospect he never envisioned the potential impact such wrongdoing would have on his life. He expressed feelings of both embarrassment and regret, and assumes full responsibility for his criminal conduct, as supported by his recent tax payment to the Internal Revenue Service in the amount of $27,000. Jones indicates that he will immediately pay the balance of his tax liabilities once the IRS has assessed interest and penalties.

Offense Level Computation

20. The 2005 edition of the Guidelines Manual has been used in this case. In accordance with the provisions found in USSG. §1B1.3(a)(1), the total amount of evaded taxes has been taken into account in determining the sentencing guideline range.

21. **Base Offense Level:** The guideline for a 26 U.S.C. § 7201 offense is found in USSG. §2T1.1. That section provides that the base offense level for tax offenses is determined in accordance with the tax table found in USSG. §2T4.1, which corresponds to the tax loss. In this offense, the total amount of evaded taxes is $27,000. According to USSG. §2T4.1(D), the base offense level for tax losses of more than $12,500 but less than $30,000 is twelve. **12**

22. **Specific Offense Characteristics:** Pursuant to the provision found in USSG. §2T1.1(b)(1) since the defendant failed to report or to correctly identify the source of income exceeding $10,000 in any year from criminal activity, the offense level is increased by two levels. **+2**

23. **Adjustment for Role in the Offense:** None. **0**

24. **Victim-Related Adjustment:** None. **0**

25. **Adjustment for Obstruction of Justice:** None. **0**

26. **Adjusted Offense Level (Subtotal):** **14**

27. **Adjustment for Acceptance of Responsibility:** The defendant has shown recognition of responsibility for his conduct and a reduction of two levels for acceptance of responsibility is applicable under USSG. §3E1.1(a). **-2**

28. **Total Offense Level:** **12**

29. **Chapter Four Enhancements:** None. **0**

30. **Total Offense Level:** **12**

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
146

PART B. THE DEFENDANT'S CRIMINAL HISTORY

Juvenile Adjudications

31. None

Criminal Convictions

32. None

Criminal History Computation

33. A check with the FBI and the local police authorities reveals no prior convictions for Frank Jones. Therefore, Jones has a criminal history score of zero. According to the sentencing table (chapter five, part A), 0 to 1 criminal history points establish a criminal history category of I.

Other Criminal Conduct

34. None

Pending Charges

35. None

Other Arrests

36. None

PART C. OFFENDER CHARACTERISTICS

Personal and Family Data

37. Frank Samuel Jones was born on January 1, 1950, in Breaker Bay, Atlantis, to the union of Samuel and Patricia Jones, nee DeAngelo. Jones is an only child and was raised by his parents in the upper river section of Breaker Bay in an upper-middle-class socio-economic setting. Jones has fond memories of his developmental years, advising that he was reared under Roman Catholic traditions by concerned, loving parents who emphasized hard work, respect, and honesty.

38. The defendant's father was a partner in the Atlantis Tallow Company, a refinery and exporting company which manufactured tallow, the main ingredient in soap. When the defendant was 18 years old, his father became critically ill with tuberculosis and was not expected to recover. Jones withdrew from his daytime studies at college and worked in the

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
147

father's business. According to the defendant, his father fully recovered approximately three years later, and eventually returned to the tallow business, allowing the defendant to pursue other interests.

39. According to the defendant, his father died in 1988 at the age of 68, following a massive heart attack. While reporting a positive relationship with his father, Jones advised us that he felt much closer to his mother, who died of natural causes in 1997 at the age of 80. Prior to her retirement and failing health, the defendant's mother was employed by the Breaker Bay Electric Company as a secretary. According to Jones, after his father's death, he assisted his mother financially and she moved into an apartment in Breaker Bay, closer to the defendant's residence, in view of her declining health. As her health continued to decline, Jones eventually placed his mother in a retirement home where she eventually died.

40. Jones married the former Nancy Lipson Smith on June 17, 1981, in Spring Hill, Atlantis. This union produced two children: Frank, Jr., and Mellisa, ages 13 and 15, respectively, who both attend boarding schools in Central City, Atlantis. According to Mrs. Jones, age 46, the couple were married in 1981. For the past 13 years, the defendant and his family have resided at 1701 Seagull Lane, in a rather reclusive, wooded, upper-class area in Breaker Bay. A home investigation found this 5-bedroom bilevel, ranch-style home to be impeccably maintained and tastefully furnished. Prior to the birth of their children, Mrs. Jones was employed by the Breaker Bay school system and later employed by an investment banking firm in Bodega Bay, Atlantis. Mrs. Jones has not been employed outside the home in over 15 years, although in recent years she has participated in charities and other volunteer work.

41. Mrs. Jones describes her marriage in harmonious terms and states that the defendant is a kind, considerate, and devoted husband and father. Jones, for the most part, is a private person, and has suffered embarrassment as a result of the publicity in this case. The defendant's wife believes that her husband's actions "were not very well thought out," adding that "he never thinks about the impact his actions may have on his life or family." Mrs. Jones considers the defendant's conduct in this offense as an isolated incident contrary to his otherwise "law-abiding lifestyle." According to Mrs. Jones, her husband has been described by his children as a "workaholic," but he never allows himself to neglect the needs or concerns of his family. Mrs. Jones added that she rarely attended functions such as the one described in this offense, and considered her husband's involvement as a business-related activity.

Physical Condition

42. The defendant is 5'10" tall and weighs 180 pounds. He has brown eyes and slightly greying brown short hair. At our request, the defendant's private physician, John W. Brown, M.D., provided a summary of Jones' overall health, which was described as excellent and free from hospitalizations.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
148

Mental and Emotional Health

43. The defendant states that he has never been seen by a psychiatrist and describes his overall mental and emotional health as good. We have no information to suggest otherwise. Jones was polite and cooperative during the presentence process and presented himself as a professional and soft-spoken businessman voicing normal stress and concerns affiliated with pending legal difficulties.

Substance Abuse

44. Jones states that he rarely drinks alcohol and has never used narcotics. A urine specimen collected by the probation officer tested negative for illicit drug use.

Education and Vocational Skills

45. The defendant graduated from the Breaker Bay Military Academy in 1968 and continued his education at Atlantis University, where he received a bachelof or science degree in marketing on June 12, 1972. Jones advised that he received a master's in business administration (MBA) from Atlantis University in 1973; however, according to university records, Jones enrolled in the MBA program in September 1972 but left the program without completing the requirements in February 1977. Jones maintains that he completed the requirements, but "failed to pick up the degree."

Employment Record

46. Since March 1992, Jones has been employed by the commodity and securities firm, Greater Life Securities, Inc., in Breaker Bay, where he earns approximately $700,000 a year as senior vice president in charge of the commodities division.

47. From December 1984 until March 1992, Jones was a senior vice president and director of the commodity division at Bruger Securities, where he earned $275,000 per year until he resigned. According to Bruger Securities president John Bruger, the defendant was a talented commodities broker who was an asset to the firm. From October 1971 until December 1984, Jones was employed by the Marshall, Jones, and LaBelle securities firm in Breaker Bay as the company's vice president and director of commodity research. Jones earned approximately $65,000 a year and resigned to accept employment with Bruger. In the late 1960's and early 1970's, Jones worked for an economic consulting firm and an economic forecasting firm as a price index analyst. Jones also worked at his father's tallow business for several years, where he was responsible for the purchase of raw materials, such as animal carcasses, used in the production of tallow.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
149

Financial Condition: Ability to Pay

48. A review of the defendant's amended personal income tax returns for 2002 through 2004 (which now reflect the $57,000 in additional income previously reported as charitable deductions) reveals that the defendant earned $616,973 in 2002; $652,751 in 2003; and $704,448 in 2004 in salary and wages from Greater Life Securities. In addition, interest income ranging from $1,231 (2001) to $22,013 (2002) is also shown. In each tax year, Jones appears to have noteworthy long- and short-term capital losses, and in each year he takes the maximum loss allowed ($3,000) on his Schedule D. In addition, Jones reports substantial losses from tax shelters (set up in the form of limited partnerships and trusts), ranging from $91,234 (2002) to $221,008 (2003).

49. Jones submitted a signed joint financial statement and accompanying documentation, which supported the following verified financial profile summarized below:

Assets

Cash		
Cash on Hand		$ 5,000
Bank Accounts (4)		206,000
Securities		250,000
	Subtotal:	$ 461,000
Unencumbered Assets		
2003 Mercedes Benz 450		$ 45,000
2002 BMW		30,000
2002 Nissan Altima		15,000
1968 Camero		20,000
	Subtotal:	$ 110,000
Equity in Other Assets		
1701 Seagull Lane Breaker Bay, Atlantis (family residence)		$ 580,000 (See Note A)
1471 Vermont Avenue Lake Shore, Atlantis (vacation residence)		$ 150,000 (See Note A)
	Subtotal:	$ 730,000

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
150

Total Assets:	$1,301,000	
Unsecured Debts		
Credit cards (3)	$ 13,000	
Total Unsecured Debts:	$ 13,000	
NET WORTH:	$1,288,000	
Monthly Cash Flow		
Income		
Defendant's Net Salary	$ 11,038	
Stocks and Securities	10,000	
Interest income	20,000	
Total Income:	$ 41,038	
Necessary Living Expenses		
Property mortgages	$ 1,100	
Food	750	
Utilities	900	
Telephone	300	
Credit cards	300	
Life insurance		800
Car insurance	1,200	
Health insurance	200	
School tuition	700	
Other expenses	5,000	
Total Expenses:	$ 11,250	
Net Monthly Cash Flow:	$ 29,788	

Note A: The market value of the family residence is $650,000 and the market value of the vacation home is $160,000, based on sales of comparable homes in the property areas. The outstanding mortgage balance on the family home is $70,000 and the vacation home has a $10,000 mortgage balance.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

50. The defendant retained counsel in this offense and states that his attorney's fees have been paid in full. Based on the defendant's financial condition, he has the ability to pay a fine within the guideline range.

PART D. SENTENCING OPTIONS

Custody

51. **Statutory Provisions:** The maximum term of imprisonment for this offense is 5 years pursuant to 26 U.S.C. § 7201.

52. **Guideline Provisions:** Based on an offense level of 12 and a criminal history category of I, the guideline range of imprisonment is 10 to 16 months. Pursuant to USSG §5C1.1(d), if the applicable guideline range is in Zone C of the Sentencing Table, the minimum term may be satisfied by: 1) a sentence of imprisonment; or 2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in subsection (e), provided that at least one-half of the minimum term is satisfied by imprisonment.

Impact of Plea Agreement

53. Under the plea agreement, Jones has entered a plea to one count of tax evasion, in return for the dismissal of two other tax evasion counts. Pursuant to USSG §3D1.2(a), counts involving the same transaction are grouped together into a single group. Because all of the evaded taxes have been taken into account in determining the sentence guideline range, a conviction on the additional counts would not affect the offense level or any other guideline calculation.

Supervised Release

54. **Statutory Provisions:** If a term of imprisonment is imposed, the court may impose a term of supervised release of not more than three years, pursuant to 18 U.S.C. § 3583(b)(2), since this is a Class D felony.

55. **Guideline Provisions:** The court shall order a term of supervised release to follow imprisonment when a sentence of imprisonment of more than one year is imposed, or when required by statute, pursuant to USSG §5D1.1(a). The court may order a term of supervised release to follow imprisonment in any other case, pursuant to USSG §5D1.1(b). The authorized term of supervised release for this offense is at least two years but not more than three years, pursuant to USSG §5D1.2(a)(2).

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
152

Probation

56. **Statutory Provisions:** The defendant is eligible for a term of probation in this offense, pursuant to 18 U.S.C. § 3561(a). The authorized term for a felony is not less than one nor more than five years, pursuant to 18 U.S.C. § 3561(c)(1).

57. **Guideline Provisions:** According to USSG §5B1.1, Application Note 2, where the applicable guideline range is in Zone C or D of the Sentencing Table (i.e., the minimum term of imprisonment specified in the applicable guideline range is eight months or more), the guidelines do not authorize a sentence of probation. As the defendant's guideline range falls within Zone C and his minimum sentence is 10 months, he is not eligible for probation.

Fine

58. **Statutory Provisions:** The maximum fine for this offense is $250,000, pursuant to 18 U.S.C. § 3571(b)(3).

59. The special assessment of $100 is mandatory, pursuant to 18 U.S.C. 3013(a)(2)(A).

60. **Guideline Provisions:** According to USSG §5E1.2(c)(3), the minimum fine for this offense is $3,000 and the maximum fine for this offense is $30,000.

Restitution

61. **Statutory Provisions:** Pursuant to 18 U.S.C. § 3663, restitution may be ordered. In this case, the defendant's outstanding tax obligation has been paid. Interest and penalties are outstanding to the Internal Revenue Service, and can be forwarded to the following address:

Internal Revenue Service
111 IRS Tower
Breaker Bay, Atlantis 11111
Attention: Mr. Sam Claim

62. **Guideline Provisions:** In accordance with the provisions of USSG §5E1.1, restitution shall be ordered.

PART E. FACTORS THAT MAY WARRANT DEPARTURE

63. The probation officer has no information concerning the offense or the offender which would warrant a departure from the prescribed sentencing guidelines.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
153

PART F. FACTORS THAT MAY WARRANT A SENTENCE OUTSIDE OF THE ADVISORY GUIDELINE SYSTEM

64. No factors have been identified under 18 U.S.C. § 3553(a) that would warrant the court sentencing the defendant outside the advisory guideline range.

Respectfully submitted,

Chief U.S. Probation Officer

by _____
Craig T. Doe
U.S. Probation Officer

Approved:

_____
Mark T. Clark
Supervising U.S. Probation Officer

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

ADDENDUM TO THE PRESENTENCE REPORT

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ATLANTIS
UNITED STATES v. FRANK JONES, DKT. # CR 05-002-01-KGG

OBJECTIONS

By the Government

On May 21, 2006, Assistant U.S. Attorney Robert Prosecutor advised the probation officer that he had no objections to the presentence report.

By the Defendant

On May 23, 2006, defense counsel Arthur Goodfellow advised the probation officer that he had no objections to the presentence report.

Respectfully submitted,

Chief U.S. Probation Officer

by _____
Craig T. Doe
U.S. Probation Officer

Approved:

_____
Mark T. Clark
Supervising U.S. Probation Officer

SENTENCING RECOMMENDATION

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ATLANTIS
UNITED STATES v. FRANK JONES, DKT. # CR 05-002-01-KGG

TOTAL OFFENSE LEVEL: 12
CRIMINAL HISTORY CATEGORY: I

	Statutory Provisions	**Guideline Provisions**	**Plea Agreement Provisions**	**Recommended Sentence**
CUSTODY:	5 years	10-16 months	None	5 months
PROBATION:	1 - 5 years	N/A	None	N/A
SUPERVISED RELEASE:	2 - 3 years	2 - 3 years	None	2 years, 5 months home confinement
FINE:	$250,000	$3,000 to $30,000	None	#30,000
RESTITUTION:	$0	$0	None	$0
SPECIAL ASSESSMENT:	$100	$100	None	$100

Justification

Frank Jones is a successful and respected businessman who appears to be a situational offender, having been motivated by opportunistic greed. While his acceptance of responsibility and remorse are reflected in the guideline calculation, Jones has also paid restitution to the Internal Revenue Service prior to sentencing.

As the guidelines adequately addressed any 18 U.S.C. § 3553(a)(1)-(7) factors, a sentence within the guideline range is recommended. As such, a split sentence of five months in custody followed by five months of home confinement as a condition of supervised release is the recommended sentence in order to reflect the seriousness of the defendant's conduct and to provide just punishment.

The defendant earns a considerable income, has accumulated an impressive financial portfolio of over $1,000,000, and is employed with a reputable commodities firm. Given his financial acumen, his evasion of the payment of taxes by participation in a fraudulent scheme in the guise of charity merits a sentence reflective of the seriousness of the offense.

In view of Jones' financial profile, a fine of $30,000 is also recommended to be paid immediately in addition to the $100 penalty assessment. Inasmuch as he does not appear to pose a risk to the community nor to be in need of correctional treatment, the minimum term of supervised release of two years will be sufficient. Since the defendant will owe interest and penalties to the Internal Revenue Service as soon as they are calculated, it is recommended that collection of these monies be a condition of supervised release. A restriction against incurring any new debts until the criminal sanctions are paid is an additional recommended condition. Disclosure of financial information is also recommended. As this is a felony conviction, Jones must submit to DNA testing.

Voluntary Surrender

Jones has no prior criminal record, has solid ties to the community, and appears to be a good candidate for voluntary surrender.

Recommendation

It is respectfully recommended that sentence in this case be imposed as follows:

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the court that the defendant, Frank Jones, is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 5 months.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of two years. Within 72 hours of release from the custody of the Bureau of Prisons, the defendant shall report in person to the probation office in the district to which the defendant is released.

While on supervised release the defendant shall not commit any federal, state, or local crimes, and he shall be prohibited from possessing a firearm or other dangerous device. The defendant shall not possess a controlled substance and he shall comply with the standard conditions of supervised release as recommended by the United States Sentencing Commission.

In addition, the defendant shall comply with the following special conditions: The defendant shall be placed on home confinement for a period of five months with said placement to commence on a date to be determined by the probation officer. The defendant shall pay any fine that is imposed by this judgment and that remains unpaid at the commencement of the term of supervised release. Further, the defendant shall incur no new debts or open additional lines of credit without the permission of the probation officer unless the fine has been paid in full. The defendant shall provide the probation officer with access to any requested financial information.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

Finally, the defendant shall cooperate in the collection of a DNA sample at the direction of the probation officer, pursuant to Public Law 108-405 (Revised DNA Collection Requirements Under the Justice for All Act of 2004), if such sample was not collected during imprisonment.

THE COURT FINDS that the defendant has the ability to pay a fine and it is further ordered that the defendant shall pay to the United States a fine of $30,000. This fine, including any interest required by law, shall be paid in full within 30 days. In addition, the defendant is ordered to pay a special assessment in the amount of $100, which shall be due immediately.

Respectfully submitted,

Chief U.S. Probation Officer

by _____
Craig T. Doe
U.S. Probation Officer

Approved:

_____
Mark T. Clark
Supervising U.S. Probation Officer

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
158

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ATLANTIS

UNITED STATES OF AMERICA	)	
	)	
	)	**PRESENTENCE INVESTIGATION REPORT**
vs.	)	
	)	**Docket No.: CR 05-010-01-KGG**
	)	
Michael Mali	)	

Prepared for: The Honorable Kelly G. Green
U.S. District Court Judge

Prepared by: Craig T. Doe
U.S. Probation Officer
Breaker Bay, Atlantis
(123) 111-1111

Assistant U.S. Attorney
Mr. Robert Prosecutor
United States Courthouse
Breaker Bay, Atlantis
(123) 111-1212

Defense Counsel
Mr. Arthur Goodfellow
737 North 7th Street
Breaker Bay, Atlantis
(123) 111-1313

Sentencing Date: June 5, 2005

Offense: Count One: Conspiracy to Possess with Intent to Distribute Heroin (21 U.S.C. §§ 846, 841(b)(1)(A)) - 10 years to life/$4 million fine

Release Status Detained without bail since June 19, 2003.

Detainers: None

Codefendants: Sammy Maples-CR 05-011-02
John Smith-CR 05-011-03
Arthur Kent-CR 05-011-04
Leon Williams-CR 05-011-05

Related Cases: None

Date Report Prepared: 05/15/2005 **Date Report Revised:** 05/25/2005

Identifying Data:

Date of Birth:	03/19/1969
Age:	36
Race:	Black, Non-Hispanic
Sex:	Male
SSN#:	222-22-2222
FBI#:	222-22-22B
USM#:	22222-222
State ID #:	22BB22B
PACTS#:	26253
Education:	11th Grade
Dependents:	Two (2)
Citizenship:	United States
Legal Address:	1430 Bird Avenue Breaker Bay, AT 10101
Aliases:	None

Restrictions on Use and Redisclosure of Presentence Investigation Report. Disclosure of this presentence investigation report to the Federal Bureau of Prisons and redisclosure by the Bureau of Prisons is authorized by the United States District Court solely to assist administering the offender's prison sentence (*i.e.,* classification, designation, programming, sentence calculation, pre-release planning, escape apprehension, prison disturbance response, sentence commutation, or pardon) and other limited purposes, including deportation proceedings and federal investigations directly related to terrorist activities. If this presentence investigation report is redisclosed by the Federal Bureau of Prisons upon completion of its sentence administration function, the report must be returned to the Federal Bureau of Prisons or destroyed. It is the policy of the federal judiciary and the Department of Justice that further redisclosure of the presentence investigation report is prohibited without the consent of the sentencing judge.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
160

PART A. THE OFFENSE

Charge(s) and Conviction(s)

1. Michael Mali, Sammy Maples, Arthur Kent, John Smith, and Leon Williams were named in a two-count Indictment returned by a Western District of Atlantis grand jury on November 1, 2001. Count One charges that from December 1998 until June 19, 2001, the defendants conspired to possess with intent to distribute heroin in violation of 21 U.S.C. §§ 846. Count Two charges that on June 19, 2001, the defendants possessed with intent to distribute heroin in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B).

2. On March 3, 2005, Michael Mali and Sammy Maples both pled guilty to Count One and are scheduled to be sentenced on June 5, 2005. On March 9, 2005, Leon Williams pled guilty to Count One and he is scheduled to be sentenced on June 13, 2005. On March 13, 2005, Arthur Kent pled guilty to Count One and is scheduled to be sentenced on June 15, 2005. All of the above defendants have pled guilty in accordance with the terms of a written plea agreement which requires a plea of guilty to Count One in return for the dismissal of Count Two in the original Indictment. On March 14, 2005, John Smith was found guilty on Count Two after a jury trial and he is scheduled to be sentenced on June 15, 2005.

3. The Assistant U.S. Attorney has filed a motion pursuant to 18 U.S.C. § 3553(e) and USSG §5K1.1, advising that the defendant has provided substantial assistance to the Government. Accordingly, the Government will recommend a sentence below the mandatory minimum sentence and applicable guideline range.

The Offense Conduct

4. This case was initiated by the Drug Enforcement Administration (DEA) in December 1999, upon the receipt of information from a confidential informant that Michael Mali and Sammy Maples were involved in the distribution of multiple-ounce quantities of heroin from the Jamestown Apartment Complex in Breaker Bay. Subsequent investigation revealed that Mali and Maples were regularly distributing heroin to Arthur Kent. After several months of investigation and surveillance, DEA agents learned that Kent regularly purchased heroin from Mali and Maples, and sold the heroin to Leon Williams, who would travel to the Breaker Bay area each month from Bodega Bay, Atlantis, located approximately 200 miles south of Breaker Bay. Williams gave Kent the money to purchase the heroin, but generally waited in a parked car near the apartment complex while Kent conducted the heroin transaction inside the apartment. Mali and Maples relied on a number of heroin sources, including two (2) unidentified Asian males, and on at least two (2) occasions, John Smith.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
161

5. According to information provided by a confidential informant and testimony presented at John Smith's trial, sometime in August of 1999, Mali met Smith while they were being held by local police authorities on unrelated drug charges. While in custody, Mali told Smith that he sold small quantities of heroin in Breaker Bay and relied on various suppliers. Mali complained that his suppliers were unreliable and frequently provided him with heroin of poor quality. Smith, although cautious and somewhat suspicious of Mali, revealed that he might be aware of other suppliers whom Mali might use once he was released from custody and ready to resume his drug distribution operation. The two (2) exchanged phone numbers and agreed to discuss the use of Smith's suppliers in the future. Several days later, Mali was released from custody and shortly thereafter resumed his heroin distribution operations with his partner Maples.

6. In late December of 1999, Mali contacted Smith by telephone and discussed the possibility of obtaining 10 ounces of heroin. After several weeks of negotiations, Smith agreed to meet with Mali at Mali's apartment in the housing project. On February 14, 2000, Smith was observed by Federal agents outside the housing project near Mali's apartment, accompanied by an unidentified Hispanic male. Prior to entering the apartment building, Smith was observed handing a package, which investigators later learned contained 300 grams of heroin, to the Hispanic male. Once inside the apartment, Mali tested a small sample of the heroin and agreed to purchase the package of heroin for $70,000. Mali gave Smith the $70,000 in cash, and in turn, Smith directed the Hispanic male to give Mali the package of heroin. A short time later, Smith and his companion were observed leaving Mali's apartment.

7. Later that afternoon, Federal agents observed Arthur Kent and Leon Williams driving in the vicinity of the housing project. Williams parked the vehicle nearby and Kent was observed carrying a duffle bag as he entered the housing project, where he proceeded to Mali's apartment. According to the confidential informant, once inside the apartment, Kent briefly spoke to Mali and the two (2) proceeded to a back bedroom where Mali was known to weigh and package drugs. A few moments later, Kent and Mali returned to the living room of the apartment and Mali was carrying the duffle bag that Kent brought to the apartment. Mali then emptied the duffle bag, which contained a large sum of U.S. currency, bound in $50, $20, and $10 denominations. Mali assured Kent that he would find the heroin to be of high quality and agreed to provide additional quantities of heroin to Kent whenever his out-of-town buyer needed them. A short time later, Kent left the apartment and returned to the vehicle in which Williams was waiting.

8. For several months, agents maintained surveillance on Mali's apartment, and on several occasions, the agents monitored Smith's arrival at Mali's apartment, followed by the arrival of Kent and Williams. On each occasion, Williams would remain outside, sitting in the vehicle, while Kent entered Mali's apartment. Kent would deliver a large duffle bag to the apartment and return a short time later carrying a small package under his arm. On June 14, 2000, an undercover agent of the DEA, posing as a drug purchaser, met with Mali in the vicinity of the housing project to negotiate the purchase of 10 grams of heroin. Mali told the

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
162

undercover agent that he expected to receive a shipment of heroin the following day and that, while he anticipated transacting a large heroin deal with another out-of-town customer, he would be able to sell the undercover agent 10 grams of heroin from the shipment for $7,000.

9. For the next two (2) days, Federal agents maintained 24-hour surveillance of the housing project, and on June 19, 2000, the agents observed Smith when he arrived at Mali's residence carrying a shopping bag. Smith arrived at the apartment with the shopping bag and had a gun which was visible in his waist band. Smith remained in Mali's apartment and a short time later, Williams and Kent arrived. As on previous occasions, Williams remained in the car parked nearby while Kent went to Mali's apartment, carrying a gym bag. Shortly thereafter, the agents entered the apartment and the defendants scattered. The agents observed Maples, Kent, and Smith seated in the back bedroom of the apartment, and they were all placed under arrest without incident. Other Federal agents positioned outside the apartment building observed Mali as he jumped out of the apartment's kitchen window and landed in a patch of bushes on the ground below, where he was placed under arrest. At the time of his arrest, a loaded .38 caliber revolver was found in the bushes near the spot where Mali landed. In addition, other agents proceeded to the parked vehicle where Williams was waiting. At the time of Williams' arrest, agents recovered a .357 magnum from his waist band. Williams told the agents that he had driven to Breaker Bay from Bodega Bay and had driven Kent to the vicinity to visit some friends.

10. The agents searched Mali's apartment and recovered from the toilet a large quantity of suspected heroin that the defendants had attempted to destroy. The agents safeguarded the seized narcotics using plastic bags. The following day, the bags were re-opened and the water/heroin solution was drained into plastic bottles for laboratory submission. According to the results of a later laboratory report, the agents recovered a total of 725.12 grams of 20% pure heroin. In addition, the agents recovered an additional 55.4 grams of 20% pure heroin from the top of the refrigerator in the kitchen, and heroin residue from a table in the bedroom, along with an Ohaus triple beam scale, a strainer, and other drug-related paraphernalia. Moreover, the agents seized $103,160 in cash bundles of U.S. currency from the gym bag that the agents had previously observed being carried by Kent, and $16,870 from Kent's jacket pocket.

11. The agents then proceeded to the apartment where, according to confidential informant information, Mali was believed to store narcotics proceeds and other property. The apartment was occupied by Michael Mali's mother, Carol Mali, who consented to a search of the apartment. Agents recovered an additional $13,000 in cash and jewelry, later appraised to be valued at $50,000.

12. All of the participants in the offense shared equally important functions in this loosely organized heroin distribution operation. Defendant John Smith was the supplier of the heroin for the February 14, 2000, and June 19, 2000, transactions. Michael Mali and Sammy Maples were the brokers, while Arthur Kent was the middleman (and Williams' courier). Williams was a buyer who authorities believe operated a street-level heroin distribution

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
163

operation in Bodega Bay, Atlantis, and he frequently traveled to Breaker Bay to purchase heroin. A total of 1,090.52 grams (or slightly more than one kilogram) of heroin was distributed during the course of this offense, which has an estimated wholesale value of $350,000.

Victim Impact

13. There are no victims in this offense.

Adjustment for Obstruction of Justice

14. Although the defendant attempted to flee prior to his arrest, he was apprehended almost immediately. The Probation Officer has no other information to suggest that the defendant impeded or obstructed justice.

Adjustment for Acceptance of Responsibility

15. During an interview with DEA officials shortly after his arrest, and later during an interview with the Probation Officer, Mali readily admitted his involvement in the offense. In substance, Mali acknowledged that he participated in this conspiracy to distribute heroin and takes full responsibility for his conduct.

Offense Level Computation

16. The 2004 edition of the Guidelines Manual has been used in this case.

17. **Base Offense Level:** The guideline for a 21 U.S.C. § 846 offense is found in USSG §2D1.1. In this case, the defendant conspired to distribute 1,090.52 grams of heroin. In accordance with the provisions found in USSG §§2D1.1(a)(3) and (c)(4), the base offense level is 32. 32

18. **Specific Offense Characteristics:** Pursuant to the provision found in USSG §2D1.1(b)(1), because the agents retrieved a loaded .38 caliber revolver in the bushes where the defendant was arrested, the offense level is increased by two (2) levels. +2

19. **Victim-Related Adjustments:** None 0

20. **Adjustment for Role in the Offense:** None 0

21. **Adjustment for Obstruction of Justice:** None 0

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
164

22. **Adjustment for Acceptance of Responsibility:** The defendant has shown recognition of responsibility for the offense and a reduction of two (2) levels for Acceptance of Responsibility is applicable under USSG §3E1.1(a). Additionally, the government has indicated that the defendant qualifies for an additional level off under USSG §3E1.1(b) for assisting authorities and entering a timely plea. -3

23. **Total Offense Level:** **31**

Chapter Four Enhancements

24. **Career Criminal Provision:** In accordance with the provisions found in USSG §4B1.1, because the defendant was at least 18 years old at the time of the instant offense, the instant offense is a felony controlled substance offense, and the defendant has at least two (2) prior felony controlled substance convictions as detailed below, Mali is a career criminal and the adjusted offense level is 37. 37

25. **Adjustment for Acceptance of Responsibility:** The defendant has shown recognition of responsibility for the offense and a reduction of two (2) levels for Acceptance of Responsibility is applicable under USSG §3E1.1(a). Additionally, the government has indicated that the defendant qualifies for an additional level off under USSG §3E1.1(b) for assisting authorities and entering a timely plea. -3

26. **Total Offense Level:** **34**

PART B. THE DEFENDANT'S CRIMINAL HISTORY

Juvenile Adjudication(s)

27. None

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
165

Adult Criminal Conviction(s)

	Date of Arrest	Conviction/ Court	Date Sentence Imposed/Disposition	Guideline/ Points
28.	3/2/91 (Age 21)	Criminal Sale of Controlled Substance Class D Felony/ Breaker Bay Superior Court, Breaker Bay, AT Dkt. #86541	9/23/91: 5 years Probation	4A1.1(c) 1

The defendant was represented by counsel. Mali was arrested, along with Sidney Reynolds, after Breaker Bay Police Officers observed them selling a quantity of heroin to a third individual not arrested. At the time of arrest, the police recovered 20 glassine envelopes of heroin which, according to a later laboratory report, had a total net weight of three (3) grams. Mali was represented by counsel and subsequently pled guilty as noted above, although during his interview with the Breaker Bay County Probation Officer, he denied his guilt in the offense, stating that he pled guilty in return for the assurance that he would be placed on probation supervision. According to local county probation records, Mali successfully completed probation supervision and was given an early discharge from that supervision on September 27, 1993.

29.	4/4/95 (Age 26)	Criminal Sale of Controlled Substance Class C Felony/ Breaker Bay Superior Court, Breaker Bay, AT Dkt.#: 86926	10/24/95 2-4 years imprisonment; paroled 8/4/97; parole revoked 2/27/98, returned to custody.	4A1.1(a) 3

The defendant was represented by counsel. Police officers observed the defendant passing glassine envelopes to others in exchange for money. At the time of his arrest, police officers recovered 55 glassine envelopes containing 2.5 grams of heroin and 16 glassine envelopes containing 26 grams of cocaine, marked "Freeze," wrapped to Mali's arm. Mali failed to return to court as scheduled and on July 26, 1995, a bench warrant was issued for his arrest. The defendant was subsequently returned to court when he was arrested on a new unrelated charge. During his interview with the Probation Officer, Mali freely acknowledged possession of the narcotics, although he explained that the drugs were for his own personal use. Mali was arrested on the below-listed charges shortly after his release on parole. According to state parole officials, the defendant's parole was violated and he was returned to state custody. His sentence ran to expiration.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
166

30.	4/14/95 (Age 26)	Criminal Possession Of Marijuana, 5th Degree, Class B Misd./ Breaker Bay Criminal Court, Breaker Bay, AT Dkt. #89541	4/19/95: 7 days imprisonment.	4A1.1(c) 1

The defendant was represented by counsel. Mali was arrested and originally charged with assault, resisting arrest and criminal possession of marijuana, while at liberty on bail in connection with the above-mentioned offense.

31.	8/19/97 (Age 28)	Robbery, 3rd Degree Class E Felony/ Breaker Bay Superior Court, Breaker Bay, AT	2/27/98: 18 mos. to 3 yrs. imprisonment; paroled 8/4/99; discharged maximum expiration on 8/4/00.	4A1.1(a) 3

The defendant was represented by counsel. Mali was arrested by Breaker Bay Transit Police Officers after he snatched a gold chain from a victim's neck. According to the victim, who sustained minor injuries, the defendant approached him at gunpoint and demanded that he remove the gold chain. When the victim resisted, Mali snatched the chain and fled, but was apprehended when he ran into two (2) transit officers who were standing nearby. The term of imprisonment ran concurrently with his parole revocation of February 27, 1998.

According to information provided by the Atlantis State Department of Corrections and a review of his parole supervision file, while incarcerated, Mali received five (5) disciplinary reports, which specifically included threats and disturbing the order of the facility, failure to abide by posted rules, and refusing direct orders. The defendant lost his privileges and on two (2) occasions, he was placed in solitary confinement for short periods of time.

The defendant was released to parole supervision on August 4, 1999, to reside with his grandmother, Claudia Mali, in Breaker Bay, and worked as a messenger and a waiter while under supervision. While the defendant's overall adjustment to parole supervision was satisfactory, he was arrested in the instant offense prior to his maximum expiration of parole supervision of August 4, 2000. The Atlantis State Parole officials have declined to file parole violation charges and have advised that Mali's parole supervision was allowed to expire.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
167

Criminal History Computation

32. The criminal convictions above result in a subtotal criminal history score of eight (8).

33. At the time the instant offense was committed, Mali was on parole supervision for his August 19, 1997 offense. In accordance with the provisions of USSG Section 4A1.1(d), two (2) points are added.

34. The instant offense was committed fewer than two (2) years following Mali's release from custody on August 4, 1999, for the sentence imposed regarding the offense of August 19, 1997. As such, pursuant to USSG, Section 4A1.1(d), one (1) point is added.

35. The total criminal history score is 11, and according to the sentencing table found in Chapter 5, Part A, 10 - 12 criminal history points establishes a criminal history category of V; however, the defendant's criminal history category is enhanced to VI because he is considered a career criminal.

36. As detailed above, the defendant has three (3) prior felony convictions involving controlled substances and a crime of violence, and as such, pursuant to the provisions found in USSG Section 4B1.1, Mali is a career criminal and his criminal history category must be VI.

PART C. OFFENDER CHARACTERISTICS

Personal and Family Data

37. Michael Mali was born on March 19, 1969, in Breaker Bay, Atlantis, to the union of Carlos and Carol Mali, nee Hewson. His parents were never married and seldom lived together making it necessary for his mother to obtain public assistance for financial support. According to the defendant, his father died in 1987 following a massive heart attack. Prior to his death, the father collected public assistance for financial support and had difficulty maintaining employment. Michael has one brother, David Mali, age 33, who was reared by his maternal grandmother in Washington, DC. David was previously convicted of narcotics charges in the District of Columbia in May 1998 and sentenced to 30 months imprisonment. At the present time, David is serving a three (3)-year term of supervised release in this district and is living with their mother, age 67, at the Breaker Bay public housing development in the apartment where the defendant was arrested in the instant offense.

38. The defendant was reared by his paternal grandmother, Claudia Mali, now age 75, who has resided at the Breaker Bay housing project at 1430 Bird Avenue for the past 30 years. According to the defendant, he has a good relationship with his mother and brother David, although he acknowledged that he has not seen them in several months primarily because his mother abuses alcohol and is difficult to talk to when she is intoxicated.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
168

39. According to the defendant's grandmother, she assumed responsibility for Michael when he was approximately 12 years old because of the frequent fights and discord in the mother's residence, which is located in a nearby building within the same apartment complex. Michael was a quiet child and was frequently neglected by his mother, who never provided a positive living environment for Michael and frequently allowed him to miss school. The defendant's mother has a reported history of narcotics abuse and was frequently hospitalized and treated for alcohol and narcotics abuse. The grandmother explained that she was employed as a laundry worker prior to her retirement eight (8) years ago and now collects social security insurance and retirement benefits for financial support. She explained that she has always felt that Michael had the potential for positive contributions to the community but was frequently "sidetracked" by his friends.

40. The defendant has never been married, but from 1993 until 1997 maintained a long-term relationship with his former girlfriend, Jackie Smith, now age 27. This union produced one (1) child, Chanel Mali, now age 5, who currently resides with Smith's mother in an apartment at the Breaker Bay housing project. Several attempts to contact Ms. Smith have been unsuccessful.

41. Simultaneously, from 1995 until the present, Mali has maintained an ongoing relationship with Sandra Dee, now age 26. This union has produced one (1) child, Cynthia Mali, who was born on October 1, 1999. Mali states that for approximately four (4) months prior to his arrest, he was residing in a third-floor apartment in a three-family house in Bodega Bay, Atlantis (which he shared with Ms. Dee) that rented for $500 per month. Mali states that after his arrest, Ms. Dee lost the apartment because she was unable to pay the rent and now she resides with her mother in an apartment on the lower west side of Breaker Bay. Attempts to contact Ms. Dee have been unsuccessful; she has failed to appear at the probation office for several scheduled interviews. While the defendant describes his relationship with Ms. Dee in positive terms, he has elected to reside with his grandmother upon his release from custody.

Physical Condition

42. Michael Mali is 5'7" tall and weighs 170 pounds. He has brown eyes and brown hair and, at the time of our interview, he wore a mustache and goatee. The defendant states that he is in good general health, but noted that he was hospitalized in April of 1999 and treated for a gunshot wound to the arm, which he states he received from a stray .9mm hollow point round fired by his co-defendant Leon Williams, who was attempting to shoot someone else in a dispute. While medical records have been requested and are awaited, the defendant states that the bullet broke his arm and he still has bullet fragments in his arm. In addition, Mali noted that he was hospitalized in 1995 after he received a stab wound on his left arm during an argument with his girlfriend Jackie Smith. Mali has no known tattoos or gang affiliation.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
169

Mental and Emotional Health

43. The defendant states that he has never been seen by a psychiatrist and describes his overall mental and emotional health as good. We have no documented evidence to suggest otherwise. During our interview, the defendant communicated effectively, but his demeanor is street-wise and tough.

Substance Abuse

44. The defendant states that prior to his arrest, he drank alcohol almost every day; however, he does not believe he is in need of alcohol treatment. The defendant revealed that he has smoked marijuana regularly since 1992; from 1994 until 1995, he inhaled cocaine and smoked crack cocaine. According to Mali, prior to his state incarceration, he spent approximately $200 a day to support his cocaine addiction, but has been relatively drug-free since his release from state custody, although he will occasionally inhale small quantities of cocaine at parties. While in state custody, Mali completed the Network Substance Abuse Program. He attended an out-patient drug treatment program for a brief period after he tested positive for cocaine in January 2000 while under parole supervision. At the time of his arrest in this offense, a urine specimen collected from the defendant by a pretrial services officer tested positive for marijuana and opiates.

Educational and Vocational Skills

45. Mali attended Breaker Bay High School from September 1984 until October 6, 1987, when he was discharged in the first semester of the 12th grade at age 18. According to school officials, the defendant had a poor scholastic record, but had an average attendance record and attitude. According to State Corrections records, the defendant was administered the BETA IQ test in November 1995 and scored a 93. The defendant was enrolled in adult education programming and a pre-GED course in July 1996 until December 1996, while in custody, but was removed from the program due to disciplinary action. While in the program, he was characterized as an average student, according to available academic reports. While incarcerated, the defendant participated in a vocational training building maintenance program from December 1996 until May 5, 1997, and took office machine repair courses from September 23, 1996 until May 5, 1997. Mali received average to excellent evaluations, and was awarded a certificate in plumbing and basic electronics.

Employment Record

46. Mali states that he was briefly employed by messenger services prior to his state prison sentences. While under parole supervision, Mali was gainfully employed by a messenger service, was a waiter, and later a cook until approximately February 2000. Mali was also employed as a porter and dishwasher, earning $6.00 per hour, with Caroline's at the Breaker Bay Sea Port from October 2, 1999, until he resigned in February 2000. According to a

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
170

representative from Caroline's, Mali was reliable and a good worker, and would be considered for rehire.

47. Mali candidly admitted that during significant periods of unemployment, he sold marijuana, cocaine and heroin to support himself. Mali asserts that he has earned as much as $18,000 a day from his narcotics activities. While such claims cannot be directly verified, the Government seized approximately $13,000 in cash and $5,500 in jewelry from the apartment of the defendant's mother on the day of the defendant's arrest. Mali states that he used the money to enjoy the "fast life," which included the purchase of a 1999 Audi 5000, also recently seized by the Government.

Financial Condition: Ability to Pay

48. The defendant prepared a signed financial statement, wherein he reported no assets or liabilities. His counsel has been appointed by the court, and a recent credit bureau inquiry reveals that the defendant has never established credit. Mali has no known sources of income and upon his release he will be financially dependent upon others.

PART D. SENTENCING OPTIONS

Custody

49. **Statutory Provisions:** The minimum term of imprisonment for this offense is 10 years and the maximum term of imprisonment is life, pursuant to 21 U.S.C. §§ 846 and 841(b)(1)(A).

50. **Guideline Provisions:** Based on an offense level of 34 and a criminal history category of VI, the guideline range of imprisonment is 262 to 327 months.

Impact of Plea Agreement

51. Under the plea agreement, Mali has entered a guilty plea to Count One, the conspiracy count, in return for the dismissal of all other counts. Pursuant to USSG, Section 3E1.2(d), counts involving the same transaction are grouped together into a single group. All of the substantive counts in this offense pertain to the same transactions. Accordingly, a conviction on the additional counts would not affect the offense level or any other guideline calculation.

Supervised Release

52. **Statutory Provisions:** If a term of imprisonment is imposed, a term of supervised release of five (5) years must also be imposed, pursuant to 21 U.S.C. §§ 846 and 841(b)(1)(A).

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
171

53. **Guideline Provisions:** The guideline range for a term of supervised release is at least five (5) years pursuant to USSG §5D1.2(a).

Probation

54. **Statutory Provisions:** The defendant is ineligible for probation, pursuant to 21 U.S.C. §§ 846 and 841(b)(1)(A).

55. **Guideline Provisions:** The defendant is ineligible for probation, pursuant to USSG §5B1.1(b)(1).

Fines

56. **Statutory Provisions:** The maximum fine for this offense is $4 million, pursuant to 21 U.S.C. §§ 846 and 841(b)(1)(A).

57. A special assessment of $100 is mandatory, pursuant to 18 U.S.C. § 3013.

58. **Guideline Provisions:** Pursuant to USSG §§5E1.2(c)(3) and (4), the minimum fine in this offense is $17,500 and the maximum fine is $4 million.

Restitution

59. Restitution is not an issue in this case.

Denial of Federal Benefits

60. **Statutory Provisions:** Pursuant to 21 U.S.C. § 862, upon a second conviction for possession of a controlled substance, a defendant may be declared ineligible for any or all Federal benefits for up to five (5) years as determined by the Court.

61. **Guideline Provisions:** Pursuant to USSG §5F1.6, the Court may deny eligibility for certain Federal benefits to any individual convicted of distribution or possession of a controlled substance.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

PART E. FACTORS THAT MAY WARRANT DEPARTURE

62. The Assistant U.S. Attorney has filed a motion pursuant to 18 U.S.C. § 3553(e) and USSG §5K1.1, advising that the defendant has provided substantial assistance to the Government. Accordingly, the Government will recommend a sentence below the mandatory minimum sentence and applicable guideline range.

PART F. FACTORS THAT MAY WARRANT A NON-GUIDELINE SENTENCE

63. The U.S. Probation Office has not identified any factors that would support a sentence outside of the guideline system.

Respectfully Submitted,

Chief U.S. Probation Officer

By: _____
Craig T. Doe
U.S. Probation Officer

Approved:

_____
Mark T. Clark
Supervising U.S. Probation Officer

Date

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

ADDENDUM TO THE PRESENTENCE REPORT
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ATLANTIS
UNITED STATES V. MICHAEL MALI, DKT. #CR 05-0001-01-KGG

OBJECTIONS

By the Government

On May 21, 2005, Assistant U.S. Attorney Robert Prosecutor advised the Probation Officer that he had no objections to the presentence report.

By the Defendant

On May 23, 2005, defense counsel Arthur Goodfellow advised the Probation Officer that he had no objections to the presentence report.

Respectfully submitted,

Chief U.S. Probation Officer

By:_____
Craig T. Doe
U.S. Probation Officer

Approved:

_____

Mark T. Clark — Date
Supervising U.S. Probation Officer

SENTENCING RECOMMENDATION

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ATLANTIS
UNITED STATES V. MICHAEL MALI, DOCKET NO. CR 05-010-01-KGG

TOTAL OFFENSE LEVEL: 34
CRIMINAL HISTORY CATEGORY: VI

	Statutory Provisions	**Guideline Provisions**	**Plea Agreement Provisions**	**Recommended Sentence**
CUSTODY:	10 yrs.-Life	262-327 mos.	None listed	180 mos.
PROBATION:	Ineligible	Ineligible	None listed	N/A
SUPERVISED RELEASE:	5 years	At least 5 yrs.	None listed	5 years
FINE:	$4 million	$20,000-$4 million	None listed	None
RESTITUTION:	N/A	N/A	None listed	Not Applicable
SPECIAL ASSESSMENT:	$100	$100	None listed	$100

Justification:

We have been advised by the Assistant U.S. Attorney, who has filed a motion for downward departure in this case, that Mali entered into a cooperation agreement shortly after his arrest. In addition to his testimony at the trial of his codefendant, John Smith, Mali has reportedly provided substantial and extraordinary cooperation relative to organized crime figures, over and beyond the scope of this offense. While the Government has filed a motion for downward departure, the conduct in this offense, coupled with the defendant's prior criminal record, would have otherwise supported a sentence near the higher end of the guideline range. Mali has an extensive criminal record, which includes two (2) prior drug-related convictions. At the age of 37, Mali has a limited employment record and, by his own admission, has primarily supported himself through lucrative narcotics trafficking. He has a history of violence and appears to be extremely street-wise and tough. As such, his overall prognosis for rehabilitation is extremely poor, he poses a risk for recidivism, and a sentence of 15 years imprisonment appears appropriate for the protection of the community.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

The mandatory five (5)-year statutory term of supervised release is recommended in this case with a special condition requiring drug testing and treatment in view of the defendant's history of drug and alcohol abuse. While the defendant is subject to the provision of Federal benefit denial, in view of his expected jail sentence, these provisions will expire prior to his release from federal custody. The defendant does not have the ability to pay a fine at this time. No fine is recommended and, therefore, the fine payment should be waived by the Court. Although the Court may deny Federal benefits to the defendant for up to five (5) years, denial of such benefits is not recommended. Unless the defendant were to receive less than a five (5)-year sentence in this case, the period of ineligibility would expire while he is incarcerated.

Voluntary Surrender:

The defendant has been detained without bail since his arrest. In light of his conviction and expected lengthy jail sentence, Mali is not eligible for voluntary surrender in accordance with the provisions found in 18 U.S.C. § 3143(a)(2).

Recommendation:

It is respectfully recommended that sentence in this case be imposed as follows:

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Michael Mali, is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 180 months.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of five (5) years. Within 72 hours of release from the custody of the Bureau of Prisons, the defendant shall report in person to the Probation Office in the district to which the defendant is released.

While on supervised release, the defendant shall not commit another Federal, state or local crime. The defendant shall be prohibited from possessing a firearm or other dangerous device, and he shall not possess a controlled substance. In addition, the defendant shall comply with the standard conditions of supervised release as recommended by the United States Sentencing Commission. The defendant shall participate in a program of testing and treatment for drug and alcohol abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Officer.

THE COURT FINDS that the defendant does not have the ability to pay a fine.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

IT IS ORDERED that the defendant pay a special assessment in the amount of $100 for Count One, which shall be due immediately.

Respectfully submitted,

Chief U.S. Probation Officer

By: _____
Craig T. Doe
U.S. Probation Officer

Approved:

_____
Mark T. Clark Date
Supervising U.S. Probation Officer

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

IN UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ATLANTIS

UNITED STATES OF AMERICA	)	
	)	
vs.	)	**PRESENTENCE INVESTIGATION REPORT**
	)	
	)	**Docket No. CR 05-0011-001(KGG)**
JAVIER MARTÍNEZ-SOLÍS	)	

Prepared for: The Honorable Kelly G. Green
U.S. District Judge

Prepared by: Craig T. Doe
U.S. Probation Officer
Breaker Bay, Atlantis
(123) 111-1111

Assistant U.S. Attorney
Mr. Robert Prosecutor, Esq.
United States Courthouse
Breaker Bay, Atlantis
(123) 111-1212

Defense Counsel
Mr. Arthur Goodfellow, Esq.
737 North 7th Street
Breaker Bay, Atlantis
(123) 111-1313

Sentence Date: May 15, 2006

Offense:

Count One: Reentry of a Removed Alien (8 U.S.C. § 1326) - 20 years custody/$250,000 fine

Count Two: False Statements in Application for Adjustment of Status (8 U.S.C. § 1160(b)(7)(A)(i)) - 5 years custody/$250,000 fine

Release Status: Detained without bail since July 17, 2005.

Detainer: Bureau of Immigration and Customs Enforcement

Codefendants: None

Related cases: None

Date Report Prepared: 04/12/06 **Date Report Revised:** 05/01/06

Defendant Identifying Data:

Date of Birth:	10/21/72
Age:	33
Race:	White, Hispanic
Sex:	Male
Social Security Number:	111-11-1111
FBI Number:	111-11-11A
U.S. Marshals Number:	11111-111
ICE #:	A11-111111
Education:	3 years high school
Dependents:	Two (2)
Citizenship:	Mexico
Legal Address:	1023 Central Avenue Breaker Bay, AT 11111
Aliases:	Jesús Martínez-Solís

Restrictions on Use and Redisclosure of Presentence Investigation Report. Disclosure of this presentence investigation report to the Federal Bureau of Prisons and redisclosure by the Bureau of Prisons is authorized by the United States District Court solely to assist administering the offender's prison sentence (*i.e.,* classification, designation, programming, sentence calculation, pre-release planning, escape apprehension, prison disturbance response, sentence commutation, or pardon) and other limited purposes, including deportation proceedings and federal investigations directly related to terrorist activities. If this presentence investigation report is redisclosed by the Federal Bureau of Prisons upon completion of its sentence administration function, the report must be returned to the Federal Bureau of Prisons or destroyed. It is the policy of the federal judiciary and the Department of Justice that further redisclosure of the presentence investigation report is prohibited without the consent of the sentencing judge.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

PART A. THE OFFENSE

Charges and Convictions

1. Javier Martinez-Solis, is the sole defendant named in a three-count Indictment filed in the Western District of Atlantis on January 11, 2006. Count One charges that the defendant intentionally and illegally reentered the United States on November 15, 2003 and was subsequently found in Smallville, Atlantis, on July 17, 2005, an offense that is in violation of 8 U.S.C. § 1326.

2. Count Two charges that on or about November 30, 2004, the defendant filed an application for adjustment of status under section 210 of the Immigration and Nationality Act by applying as a special agricultural worker using the name, date of birth, birth certificate, and other information of his brother, Jesus Martinez-Solis, knowing the same to be false in violation of 8 U.S.C. § 1160(b)(7)(A)(i).

3. Count Three charges that on or about July 10, 2005, the defendant knowingly and illegally possessed 25 grams of marijuana in violation of 21 U.S.C. § 844.

4. On February 14, 2006, in accordance with the terms of a written plea agreement, the defendant pled guilty to Counts One and Two. The terms of the plea agreement call for the dismissal of Count Three and the Government agrees to recommend the minimum incarceration range computed under the Federal Sentencing Guidelines as they apply to the defendant. The defendant is scheduled to be sentenced on May 15, 2006.

The Offense Conduct

5. Investigation by the Bureau of Immigration and Customs Enforcement (BICE) in this case was initiated after information was received by the Harrison County Sheriff's Office, on July 17, 2005, advising that the defendant was incarcerated in the Harrison County Jail and had previously been arrested by BICE and returned to Mexico.

6. A subsequent record check revealed that the defendant has been deported from the United States on two prior occasions, with the most recent deportation having occurred on October 10, 2003. When the defendant was interviewed by BICE agents, he admitted his true name was Javier Martinez-Solis and that he had been deported from the United States in October 2003. He also stated that after he was deported from the United States in 2003, he visited his family in Mexico for several weeks and then reentered the United States without inspection near Nogales, Arizona, on or about November 15, 2003. On September 26, 2005, the defendant was again interviewed and admitted that, on November 30, 2004, he had applied for legalization using the name Jesus Martinez-Solis, date of birth May 7, 1957, knowing this information to be false. He stated he used his deceased brother's identification because he knew he would not qualify under his own name because he had two prior deportations. BICE also certified that the defendant had neither applied for nor received

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
180

permission from the Attorney General of the United States for legal entry into the United States.

Victim Impact

7. There is no victim in the instant offense.

Adjustment for Obstruction of Justice

8. The probation office has no information to suggesting the defendant obstructed or impeded justice.

Adjustment for Acceptance of Responsibility

9. During all conversations with BICE agents and the probation officer, the defendant admitted he illegally entered the United States after deportation and without permission of the Attorney General of the United States. He also admitted that he used his deceased brother's identification in attempting to obtain legal status in the United States. He indicated he entered the United States illegally to take advantage of financial and employment opportunities available in this country. After reentering, the defendant secured employment under his brother's name, using his brother's identification. In reference to the marijuana found in his pocket at the time of his arrest, the defendant stated that he purchased it for recreational use.

Adjustment for Acceptance of Responsibility

10. The 2005 edition of the Guidelines Manual has been used in this case. In accordance with the provisions found in USSG §3D1.2(b), counts one and two are grouped.

Count One -- Reentry of a Removed Alien.

11. **Base Offense Level:** The guideline for a violation of 8 U.S.C. § 1326 is found in USSG § 2L1.2 and calls for a base offense level of eight. 8

12. **Specific Offense Characteristics:** As the defendant had been previously deported after a conviction for a felony that is a crime of violence, an increase of sixteen (16) levels applies, pursuant to USSG §2L1.2(b)(1)(A)(ii). +16

13. Adjustment for Role in the Offense**:** None. 0

14. Victim-Related Adjustments: None. 0

15. Adjustment for Obstruction of Justice: None. 0

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
181

16. Adjusted Offense Level (Subtotal): 24

Count Two -- False Statements in Application for Adjustment of Status.

17. **Base Offense Level:** The guideline for violation of 8 U.S.C. § 1160 is found at USSG §2L2.2. The base offense level is eight. 8

18. **Specific Offense Characteristics:** Because the defendant is an unlawful alien who has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, the offense level is increased by two levels, pursuant to USSG §2L2.2(b)(1). +2

19. **Adjustment for Role in the Offense:** None. 0

20. **Victim-Related Adjustments:** None. 0

21. **Adjustment for Obstruction of Justice:** None. 0

22. **Adjusted Offense Level (Subtotal):** 10

23. Pursuant to USSG § 3D1.3(a), the highest offense level applicable to the groups is twenty-four. 24

24. **Adjustment for Acceptance of Responsibility:** The defendant has clearly demonstrated acceptance of responsibility for his offense. Accordingly, the offense level is decreased by two levels. USSG §3E1.1(a). In addition, the government has indicated that the defendant has timely provided complete information concerning his own involvement in the offense and has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial. Accordingly, the offense level is decreased one additional level pursuant to USSG §3E1.1(b). -3

25. **Total Offense Level:** 21

Offense Behavior Not Part of Relevant Conduct

26. The defendant was arrested by local authorities on September 11, 2005, in connection with a state warrant for violation of probation. During the booking search, a plastic bag containing 25 grams of what appeared to be marijuana was discovered in the defendant's jacket pocket. The bag was confiscated and a laboratory analysis confirmed that the substance was marijuana weighing 25 grams. Following sentencing on the probation warrant, the Harrison County, Atlantis, Sheriff's Office contacted BICE on September 17, 2005, to advise that the defendant was incarcerated in Harrison County Jail and that he had previously been arrested by BICE and returned to Mexico. When the defendant was taken into Federal custody, the marijuana was transferred to Federal authorities and placed into evidence.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
182

PART B. DEFENDANT'S CRIMINAL HISTORY

Juvenile Adjudications

27. None.

Adult Criminal Convictions

	Date of Arrest	Conviction/ Court	Date Sentence Imposed/Disposition	Guideline/ Points	
28.	2/17/01 (age 36)	Battery Harrison County Municipal Court, AT Dkt. # A-1234	2/18/01: $50 fine plus $15.50 court costs, 5 days jail suspended, 1 year probation	4A1.1(c)	1

The defendant waived his right to legal counsel and pled guilty. Court records reflect he failed to pay the fine and a warrant was issued contempt. He was subsequently ordered to serve five days in jail. The crime involved the defendant striking Alice Jones in the mouth with his fists on February 17, 2001.

29.	8/10/01 (age 36)	Driving While Intoxicated Harrison County Municipal Court, AT Dkt. # B-2222	9/2/01: 10 days jail, 8 days suspended; 1 year probation; $450 fine plus $15.50 court costs. 7/11/05: probation revoked, 5 days jail imprisonment	4A1.1(c)	1

The defendant waived his right to legal counsel and pled guilty. Conditions of probation included no driving in the state of Atlantis, attending counseling at New Chance Counseling Center, and not refusing blood alcohol testing by police. Breathalyzer examination revealed the defendant had a blood alcohol content of .13. The defendant failed to report to the probation authorities as directed and on November 17, 2001, a warrant was issued for his arrest. The defendant was arrested by local authorities on July 10, 2005, and was subsequently sentenced to 5 days imprisonment.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
183

30.	12/16/01 (age 37)	Burglary Harrison County Municipal Court, AT Dkt. # CR-0009	5/14/02: 3 years suspended; court retained 120 days jurisdiction; 8/31/02, 3 years probation; revoked 7/14/04: 1 year county jail with credit for time served	4A1.1(b)	2

The defendant was represented by legal counsel and was found guilty by jury trial of Second Degree Burglary. The offense involved the defendant entering the private residence of Mr. Michael Smith, in York, Atlantis, on November 19, 2001. He took personal property belonging to Mr. Smith in the amount of $1,030. Items taken included a VCR, turntable and a stereo receiver. The defendant denies he stole any items from Mr. Smith's home, although he does admit he had stopped by the home two separate times that day to collect wages for work he had performed for Mr. Smith.

The defendant was initially sentenced to three years at the Atlantis State Penitentiary, with the court retaining jurisdiction for 120 days. He was returned to court on August 31, 2001, and released on probation; however, he did not contact the state probation department. On October 21, 2003, the defendant was deported by BICE to Mexico. On July 14, 2004, the defendant was taken back before the court on charges of violating his probation and, upon advice of counsel, entered a plea of guilty to probation violation. He was sentenced to one year in the Harrison County Jail. He was subsequently released on February 12, 2005.

Criminal History Computation

31. The above-referenced criminal convictions result in a total criminal history in a subtotal criminal history score of four.

32. At the time the instant offense was committed, the defendant was on probation for his sentence of September 27, 2001. Pursuant to USSG §4A1.1(d), two points are added.

33. The instant offense was committed fewer than two years following the defendant's release from custody on February 12, 2005, for his sentence on May 14, 2002. Pursuant to USSG §4A1.1(e), one point is added.

34. The total of the criminal history points is seven. According to the sentencing table at USSG Chapter 5, Part A, the defendant has a criminal history category of IV.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
184

PART C. OFFENDER CHARACTERISTICS

Personal and Family Data

35. The defendant was born in Guadalajara, Mexico, on October 5, 1964. His father is deceased and his mother, Maria Solis-Hernandez, resides where the defendant was born. He has three brothers, one living in Colorado, one living in Mexico, and one deceased. The defendant used the identification of his deceased brother, Jesus Martinez-Solis, in an attempt to gain legal status. He has three sisters, all living in Mexico. He states he maintains contact with all family members.

36. The defendant's deceased father owned a ranch and the defendant quit school after completing three years of formal education to help with the family ranch. In 1995, at age 30, he first entered the United States through Lukeville, Arizona. He was detected by BICE in 1998 and was formally deported to Mexico on June 30, 1998. One year later, he illegally reentered the United States through Nogales, Arizona, and remained in the United States until detected by BICE. He was again formally deported from the United States to Mexico on October 10, 2003. He illegally reentered the United States approximately one month later and has remained in the United States to the present day, spending a significant portion of this time imprisoned for various offenses.

37. According to the defendant, he has never married but has maintained a consensual relationship for the past 18 months with Donna Alcalde at Smallville, Atlantis. They have one child, Javier Martinez, Jr., who is 18 months of age. Ms. Alcalde is currently unemployed and relies on her mother for financial support. She describes the defendant as a good mate and father, and states that they would like to be married as soon as possible, but she is frustrated in that authorities will not allow the defendant out of jail to marry her. She hopes to gain legal status for him in the near future.

Physical Condition

38. The defendant is 5 feet, 5 inches tall, weighs 140 pounds, has brown eyes and black hair. He has a scar on his forehead and a number of tattoos on his body.

Mental and Emotional Health

39. The defendant states he has never been treated for mental disorders. He appeared to be a normal individual during the interview with the probation officer.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
185

Substance Abuse

40. Mr. Martinez-Solis indicates he drinks only occasionally and it was on such an occasion that he was arrested and convicted for driving under the influence. He admits to smoking marijuana recreationally, stating he uses it perhaps once a week on the weekends. He denies the use of any other dugs. The results of a urine test administered by a pretrial services officer at the time of his Federal arrest were negative.

Educational and Vocational Skills

41. The defendant claims to have completed three years of formal education. He has limited use of the English language, requiring an interpreter during all court proceedings.

Employment Record

42. At the time of the instant offense the defendant was unemployed. He is currently unemployed and will be unemployed at sentencing.

43. The defendant's work history has been primarily as a field laborer. He has worked in California, Idaho, and Atlantis. His most recent employment was as laborer harvesting tomatoes at minimum wage for Dr. Joshua Green. BICE agents interviewed Dr. Green and learned the defendant was employed by him; however, Dr. Green understood his name to be Jesus Martinez-Solis, with a date of birth of May 7, 1957. Dr. Green stated that the defendant showed an employer authorization card (I-688A), with photo. The probation officer contacted Dr. Green and was told the defendant worked for him from April to July in 2004, and from April to July in 2005.

Financial Condition: Ability to Pay

44. Interviews with the defendant and a review of his credit check information reveal the defendant has no known financial assets nor financial obligations. His counsel has been appointed by the court.

45. The defendant has been incarcerated since July 2005, and has no assets which can be liquidated to pay a fine. It is unlikely, given his current status, that he will be capable of paying a fine, even with a payment schedule.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
186

PART D. SENTENCING OPTIONS

Custody

46. **Statutory Provisions:** The maximum term of imprisonment for count one is twenty years, pursuant to 8 U.S.C. § 1326(b). The maximum term of imprisonment for count two is five years, pursuant to U.S.C. § 1160(b)7(A)(I).

47. **Guideline Provisions:** Based on a total offense level of 21, and a criminal history category of IV, the guideline imprisonment range is 57 to 71 months.

Impact of Plea Agreement

48. If the defendant had pled guilty to all three counts, the guideline imprisonment range would have remained the same and none of the guideline calculations would have been affected.

Supervised Release

49. **Statutory Provisions:** If a term of imprisonment is imposed, the maximum term of imprisonment on counts one and two is three years, pursuant to 18 U.S.C. § 3583(b)(2). Pursuant to 18 U.S.C. § 3624(e), such terms of supervised release shall run concurrently.

50. **Guideline Provisions:** According to USSG §5D1.1(a), if a term of imprisonment of more than one year is imposed, the guidelines require a term of supervised release. Pursuant to USSG§ 5D1.2(a)(2), the term of supervised release for a defendant convicted of a Class C or D felony is at least two years, but not more than three years.

Probation

51. **Statutory Provisions:** The defendant is eligible for a term of probation in this offense, pursuant to 18 U.S.C. § 3561(a). The authorized term for a felony is not less than one nor more than five years, pursuant to 18 U.S.C. § 3561(c)(1).

52. **Guideline Provisions:** Since the applicable guideline range falls in Zone D of the Chapter Five Sentencing Table, the guidelines do not authorize a sentence of probation. USSG §5C1.1(f).

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

Fines

53. **Statutory Provisions:** The maximum fine is $250,000 as to each count of conviction pursuant to 18 U.S.C. § 3571(b)(3).

54. A special assessment of $100 on each count for a total of $200 is mandatory, pursuant to 18 U.S.C. § 3013.

55. **Guideline Provisions:** The guideline fine range for this offense is $7,500 to $75,000 as provided in USSG §5E1.2(c)(3).

Restitution

56. Restitution is not an issue in the instant offense.

PART E. FACTORS THAT MAY WARRANT DEPARTURE

57. There are no known mitigating or aggravating circumstances concerning the offense or the defendant that would warrant a departure from the prescribed guideline range.

PART F. FACTORS THAT MAY WARRANT A SENTENCE OUTSIDE OF THE ADVISORY GUIDELINE SYSTEM

58. The Probation Office has not identified any factors which would warrant a variance based on the provision of 18 U.S.C. § 3553(a).

Respectfully submitted,

CHIEF UNITED STATES PROBATION OFFICER

By: _____
Craig T. Doe
United States Probation Officer

APPROVED BY:

_____
Mary T. Clark Date
Supervising United States Probation Officer

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
188

SENTENCING RECOMMENDATION

UNITED STATES DISTRICT COURT FOR WESTERN DISTRICT OF ATLANTIS
UNITED STATES VS. JAVIER MARTINEZ-SOLIS, DKT. #: 05-011-01-KGG

TOTAL OFFENSE LEVEL:	**21**
CRIMINAL HISTORY CATEGORY:	**IV**

	STATUTORY PROVISIONS	**GUIDELINE PROVISIONS**	**PLEA AGREEMENT**	**RECOMMENDED SENTENCE**
CUSTODY:	Ct. 1: 20 yrs Ct. 2: 5 yrs	57 to 71 months	57 Months	57 months
PROBATION:	Ct. 1: 1-5 yrs Ct. 2: 1-5 yrs	Not Applicable	None	None
SUPERVISED RELEASE:	Ct. 1: 3 yr Ct. 2: 3 yrs	2 to 3 yrs	2 years	2 years
FINE:	$250,000 on each count	$7,500 to $75,000	$0	$0
RESTITUTION:	Not Applicable	Not Applicable	Not Applicable	Not Applicable
SPECIAL ASSESSMENT:	$100 on each count	$100 on each count	$200	$200

Justification

The defendant has a prior record of having entered the United States and being deported on two prior occasions. He also has a felony conviction for burglary and two misdemeanor convictions. It is of concern that he not only continues to enter this country illegally, but he has little regard for the laws while he is here. Factors to be considered in mitigation are his cooperation with authorities after detection and his acceptance of responsibility. Since these aggravating and mitigating circumstances have already been factored into the guidelines, a prison term of 57 months, which is the low end of the guidelines, is recommended for the statutory sentencing purposes of providing just punishment for the sentence and promoting respect for the law.
A two-year term of supervised release is recommended to protect the public from further crimes by attempting to insure that the defendant does not reenter the United States illegally without

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

additional penalty. The defendant has declared he does not have financial resources to pay a fine and there is no evidence to the contrary. Accordingly, a fine is not recommended.

Voluntary Surrender

The defendant is not considered to be a good candidate for voluntary surrender. There is an immigration detainer lodged against him. Moreover, his illegal status in this country also argues against a consideration for voluntary surrender.

Recommendation

It is respectfully recommended that sentence be imposed as follows:

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Javier Martinez-Solis**,** is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 57 months on each count, to be served concurrently.

IT IS FURTHER ORDERED that the defendant shall pay a special assessment fee of $100 on each count for a total of $200. The special assessment fee is due immediately.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 2 years on both counts, to be served concurrently. Within 72 hours of release from custody, the defendant shall report in person to the probation office in the district to which he is released. While on supervised release, the defendant shall not commit another federal, state, or local crime, shall comply with the standard conditions that have been adopted by this court, and shall also comply with the following special conditions:

The defendant shall be prohibited from possessing a firearm or other dangerous weapon.

The defendant shall not reenter the United States without the permission of the Attorney General.

THE COURT FINDS that the defendant does not have the ability to pay a fine.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

IN UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ATLANTIS

UNITED STATES OF AMERICA	)	
	)	
vs.	)	**PRESENTENCE INVESTIGATION REPORT**
	)	
Thaddeus Smith	)	**Docket No.** CR 05-001-01-KGG

Prepared for: The Honorable Kelly G. Green
U.S. District Judge

Prepared by: Craig T. Doe
U.S. Probation Officer
Breaker Bay, Atlantis
(123) 111-1111

Assistant U.S. Attorney
Mr. Robert Prosecutor
United States Courthouse
Breaker Bay, Atlantis
(123) 111-1212

Defense Counsel
Mr. Arthur Goodfellow
737 North 7th Street
Breaker Bay, Atlantis
(123) 111-1313

Sentence Date: February 22, 2006

Offense:
Count One: Bank Robbery (18 U.S.C. § 2113(a)) - 20 years/$308,270 fine
Count Two: Simple Possession of Cocaine (21 U.S.C. § 844(a)) - 15 days to 2 years/$250,000

Release Status: Detained without bail since 11/21/05

Detainers: Atlantis Parole Authority - Parole violation
Breaker Bay Municipal Court - Drunk Driving

Codefendants: Simon Brown - CR 005 - 0001-02-KGG
Veronica Pond - CR 005 - 0001-03-KGG

Related Cases: None

Date Report Prepared: 1/31/2006 **Date Report Revised:** 02/15/2006

Identifying Data:

Date of Birth:	3/15/1975
Age:	30
Race:	White
Sex:	Male
S.S. #:	111-11-1111
FBI #:	444-44-44B
USM #:	11111-111
Other ID #:	Not applicable
Education:	Vocational Degree
Dependents:	None
Citizenship:	U.S.
Legal Address:	111 Fifth St. #2B Breaker Bay, AT 99993
Aliases:	None

Optional Photograph

Restrictions on Use and Redisclosure of Presentence Investigation Report. Disclosure of this presentence investigation report to the Federal Bureau of Prisons and redisclosure by the Bureau of Prisons is authorized by the United States District Court solely to assist administering the offender's prison sentence (*i.e.,* classification, designation, programming, sentence calculation, pre-release planning, escape apprehension, prison disturbance response, sentence commutation, or pardon) and other limited purposes, including deportation proceedings and federal investigations directly related to terrorist activities. If this presentence investigation report is redisclosed by the Federal Bureau of Prisons upon completion of its sentence administration function, the report must be returned to the Federal Bureau of Prisons or destroyed. It is the policy of the federal judiciary and the Department of Justice that further redisclosure of the presentence investigation report is prohibited without the consent of the sentencing judge.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
192

PART A. THE OFFENSE

Charge(s) and Conviction(s)

1. Thaddeus Smith and codefendants Simon Brown and Veronica Pond were named in a five-count indictment filed by a Western District of Atlantis grand jury on November 30, 2005. Count One charges that from November 10, 2005 until November 18, 2005 the above-named defendants conspired to commit bank robbery, in violation of 18 U.S.C. § 2113(a) and 18 U.S.C. § 371. Count Two charges that on November 18, 2005, Smith, while armed with a revolver, robbed the Atlantis credit union, in violation of 18 U.S.C. § 2113(a). Count Three charges that on November 18, 2005, Smith used a firearm in a crime of violence, in violation of 18 U.S.C. § 924(c). Count Four charges that on November 21, 2005, he possessed with intent to distribute a controlled substance (cocaine), in violation of 21 U.S.C. § 841(a)(1), and Count Five charges that on November 18, 2005, the defendant robbed the Williams Bank, in violation of 18 U.S.C. § 2113(a).

2. On December 7, 2005, in accordance with the terms of a written plea agreement, Thaddeus Smith pled guilty to a two-count Superceding Information, charging him with armed bank robbery, in violation of 18 U.S.C. § 2113(a), and simple possession of cocaine, in violation of 21 U.S.C. § 844(a). The U.S. Attorney has filed an information charging Smith with a prior drug conviction, enhancing the penalty for this offense, in accordance with 21 U.S.C. § 851. The terms of the plea agreement call for the dismissal of the original Indictment. Codefendant Brown pled guilty to a one-count Superceding Information charging bank robbery, in violation of 18 U.S.C. § 2113(a). Codefendant Pond pled guilty to a one-count Superceding Information, charging simple possession of cocaine, in violation of 21 U.S.C. § 844(a). All of the defendants are scheduled to be sentenced on February 22, 2006.

The Offense Conduct

3. On November 10, 2005, Thaddeus Smith met with Simon Brown and Brown's girlfriend, Veronica Pond, at a bar in Breaker Bay. While at the bar, Smith discussed his plans of robbing the Atlantis Credit Union, located at 1948 Edgewater Street, Breaker Bay, Atlantis. Smith explained he had learned that on the following Friday, November 18, 2005, the credit union would have extra money in the safe to cash payroll checks and he planned to rob it on that date. To establish an alibi, Smith told Brown and Pond that he planned to leave the area for several days to visit relatives in a neighboring state, but would return to Breaker Bay early Friday morning, rob the credit union, and fly back to his relatives' residence before he was missed. He planned to travel using an alias to further avoid apprehension. Brown and Pond agreed to steal two getaway vehicles for Smith and to assist him in the robbery. Smith gave the couple a .357 magnum revolver, which he told them he had stolen from a friend's cabin, and asked them to leave it in the trunk of the getaway car. Smith promised to pay Brown and Pond $500 each for their help.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
193

4. On November 14, 2001, Brown and Pond stole a 2001 sedan from a Chevrolet dealership in Surf City and, the following day, the couple stole a 1999 Ford truck from an apartment complex in Surf City. On November 18, 2005, Brown picked Smith up at the airport in the Chevrolet and drove to a nearby shopping mall where Pond was waiting in the Ford. Brown told Pond to wait while he and Smith drove to the credit union.

5. Before the credit union opened, Smith, disguised with a wig and mustache, and Brown approached Patty Martinez, a teller, as she was exiting her vehicle. Armed with a revolver, Smith grabbed the teller's arm, and escorted her to the rear door of the credit union. Ordering the teller to pretend that she was alone, Brown told her to knock on the door to the credit union. The teller complied and the manager opened the door. The defendants then forced them back inside, and while pointing the revolver at two other employees, herded them into a corner near the vault.

6. Smith ordered the manager to open the vault and place five bags of cash into a duffle bag carried by Brown. Smith then directed the employees to the back of the credit union, ordered them to lie on the floor, placed his revolver inside his coat, and the two fled the credit union. Smith and Brown proceeded to the Chevrolet and immediately drove toward the shopping mall where Pond was waiting. En route, Smith threw the revolver into a vacant lot, later stating that he hoped some kid would find it, get caught, and be blamed for the robbery.

7. Smith and Brown abandoned the Chevrolet in the parking lot and left with Pond in the stolen Ford. While traveling to the airport, Smith changed his shirt and shoes, and threw them, along with his disguise, into a dumpster. As Smith began to count the money, Pond was shocked that over $100,000 had been stolen and demanded $5,000 for herself and Brown. Smith became angry and threatened to keep all of the money if they continued to complain. At the airport, Smith gave Brown and Pond a total of $1,000, and a small packet of cocaine as a bonus. Smith then left the couple and flew back to his relatives' residence that afternoon.

8. As Brown and Pond were driving home in the stolen Ford, they were stopped by the police for a routine traffic violation. When the police officer discovered the truck was stolen, Brown and Pond were placed under arrest. Brown and Pond each admitted their involvement in the offense and during questioning implicated Smith.

9. On November 21, 2001, Smith was arrested by federal agents at his relatives' home. The agents seized $78,690, along with 56 grams of cocaine, from Smith's suitcase. A subsequent laboratory analysis found the seized cocaine to be 64 percent pure. The revolver used by Smith in the robbery has not been recovered, but was believed to be a .357 Smith & Weston. Local police have no record of a theft of such a weapon on file. According to Smith, he purchased the weapon from an unknown individual at a gun show held at the Breaker Bay High School in October 2001.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
194

10. Smith is the most culpable defendant in this case. Smith recruited his codefendants, Brown and Pond, and directed their activities in this offense. In addition, Smith compensated his codefendants for their participation in the offense with a small share of the bank robbery proceeds.

Victim Impact

11. The Atlantis Credit Union is the primary victim in this offense and sustained direct financial losses totaling $128,135. The credit union has recovered $78,690 seized from Smith at the time of his arrest, leaving a net loss of $49,445. According to credit union officials, Apex Insurance Company has reimbursed the credit union, except for a $5,000 deductible. In addition, the credit union paid a total of $900 for Ms. Martinez to receive 12 hours of psychological counseling.

12. Three tellers and the credit union manager are also victims in this offense. The tellers and the manager were interviewed by the probation officer and provided the following information.

13. Patty Martinez was the teller approached by Smith as she left her car in the credit union parking lot. While she was not physically injured, she was reportedly emotionally traumatized by the defendant's conduct. With her consent, the credit union arranged for Martinez to receive private psychological counseling. After 12 sessions, Martinez states that she began improving, and was able to sleep at night without nightmares and felt more comfortable at work. Nevertheless, Martinez decided to resign from the credit union, due in part to the offense, and has now returned to college to pursue her education.

14. The branch manager and the other two tellers inside the credit union stated that they were not physically injured by the defendant, but each expressed anger toward Smith for assaulting them. Each employee expressed experiences of being startled by strangers who entered the credit union, but the employees do not believe they are in need of professional counseling or treatment.

15. The two stolen vehicles in this case have been recovered without damages. A representative from the Chevrolet dealership was contacted and interviewed by the probation officer and advised that he has subsequently sold the sedan for $14,000. Similarly, the owner of the Ford truck reported no losses or expenses related to the theft of the truck.

Adjustment for Obstruction of Justice

16. The probation officer has no information to suggest that the defendant impeded or obstructed justice.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
195

Adjustment for Acceptance of Responsibility

17. Shortly after his arrest, Smith made voluntary and candid admissions to the authorities concerning his involvement in this offense, including his recruitment of Brown and Pond to help him execute the robbery scheme. Smith also acknowledged using a weapon during the robbery, which he purchased from an unknown individual at a gun show. In addition, Smith admitted his possession of cocaine at the time of his arrest, explaining that he had purchased the narcotics with money stolen from the robbery. The defendant freely admitted his guilt in court at the time of his plea, and appears to fully accept responsibility for his conduct. During his interview with the probation officer, Smith explained that he committed this offense at the prospect of quick and easy financial gains, and expressed remorse for assaulting the credit union employees.

Offense Level Computation

18. The 2005 edition of the Guidelines Manual has been used in this case. Pursuant to the provisions found in USSG §3D1.1(a)(3), Counts One and Two are unrelated offenses and are treated separately.

Count One – Armed Bank Robbery

19. **Base Offense Level:** The guideline for an 18 U.S.C. § 2113(a) offense is found in USSG §2B3.1, which states that robbery has a base offense level of 20. 20

20. **Specific Offense Characteristic:** Pursuant to USSG §2B3.1(b)(1), because the property of a financial institution was taken, the offense level is increased by two levels. +2

21. **Specific Offense Characteristic:** Pursuant to USSG §2B3.1(b)(2)(C), because a gun was possessed and brandished during the commission of this offense, the offense level is increased five levels. +5

22. **Specific Offense Characteristic:** In preparation for this offense, Smith directed Brown and Pond to steal two vehicles, valued at a total of $26,000. Smith stole $128,135 from the credit union; thus the total loss attributable to this offense is $154,135. According to the provisions in USSG §2B3.1(b)(7)(C), the offense level is increased by two levels in accordance with the overall loss in this offense. +2

23. **Victim-Related Adjustments:** None. 0

24. **Adjustment for Role in the Offense:** Smith was the organizer and leader in this offense. He provided instructions and directives to his codefendants and compensated them for their participation in this offense. In accordance with the provisions found in USSG §3B1.1(c), a two-level increase is recommended. +2

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
196

25. **Adjustment for Obstruction of Justice:** None. 0

26. **Adjusted Offense Level (Subtotal):** 31

Count Two – Possession of Cocaine

27. **Base Offense Level:** The guideline for a 21 U.S.C. § 844(a) offense is found in USSG §2D2.1(a)(2), which provides that the base offense level for the unlawful possession of cocaine is six. 6

28. **Specific Offense Characteristic:** None. 0

29. **Victim-Related Adjustments:** None. 0

30. **Adjustment for Role in the Offense:** None. 0

31. **Adjustment for Obstruction of Justice:** None. 0

32. **Adjusted Offense Level (Subtotal):** 6

Multiple-Count Adjustment (See USSG §3D1.4)

			Units	
33.	Adjusted Offense Level for Count One	31	1	
34.	Adjusted Offense Level for Count Two	6	0	
35.	Total Number of Units		1	
36.	Highest Adjusted Offense Level			31
37.	Increase in Offense Level:			0
38.	**Combined Adjusted Offense Level:**			31

39. **Adjustment for Acceptance of Responsibility:** The defendant has shown recognition of responsibility for his criminal conduct and a reduction of two levels for Acceptance of Responsibility is applicable under USSG §3E1.1(a). Further, based upon the defendant's timely notification of his intent to plead guilty, and the Government's motion for an additional one-level reduction under USSG §3E1.1(b), a total reduction of three levels is recommended. -3

40. **Total Offense Level:** 28

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
197

41. **Chapter Four Enhancements:** None. 0

42. **Total Offense Level:** 28

Offense Behavior Not Part of Relevant Conduct

43. Smith was also charged in an unrelated robbery on November 18, 2005, of Williams Bank in Sun City, Atlantis, as summarized in Count Five of the original Indictment. Bank surveillance cameras show a suspect, generally resembling the defendant, as he was approaching a teller, handing her a bag, accompanied by a demand note. The suspect then left the bank with $1,375 in the bag. While the defendant has declined to discuss this robbery, at the time of his arrest, federal agents recovered a shirt, pants, and shoes from the defendant's duffle bag matching those of the suspect in the surveillance photographs.

PART B. THE DEFENDANT'S CRIMINAL HISTORY

Juvenile Adjudication(s)

	Date of Referral	Charge/ Court	Date Sentence Imposed/Disposition	Guideline/ Points	
44.	04/15/1992 (Age 17)	Auto Theft, Breaker Bay Juvenile Ct., Atlantis Action #4732	05/15/1992 Youth Correction Center	4A1.2(e)(3)	0

According to court records, Smith was arrested after he stole and dismantled a vehicle and sold the part. Smith was represented by counsel.

Adult Criminal Conviction(s)

	Date of Arrest	Conviction/ Court	Date Sentence Imposed/Disposition	Guideline/ Points	
45.	04/20/1993 (Age 18)	Receiving Stolen Property, Breaker Bay Superior Court Atlantis, Dkt. # 57349	10/08/1994 2 years imprisonment; paroled 11/11/1995	4A1.1(a) 4A1.2(e)(1)	3

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
198

According to court records, Smith was arrested after he was found to be in possession of stolen automobile parts. The defendant was represented by counsel. Although Smith was arrested several times while under parole supervision, according to his supervision record, he made satisfactory adjustment to parole supervision and was discharged from parole on April 7, 1996.

46.	05/30/1993 (Age 18)	Petty Theft Breaker Bay Municipal Ct., Atlantis, Dkt.# 758924A	06/15/1993 1 year probation	4A1.2(e)(3)	0

Smith was arrested after he fueled his vehicle at a service station and left without paying. The defendant waived counsel, and successfully completed probation shortly before he was convicted on the unrelated charges of his previous arrest noted above.

47.	03/16/1994 (Age 19)	Petty Theft, Breaker Bay Municipal Ct., Dkt. #857234A	04/10/1994 1 year probation; 10/10/1994 probation revoked; 90 days jail	4A1.1(b) 4A1.2(k)(1)	2

According to court records, Smith stole two packages of frozen vegetables valued at $3.00 from a local grocery store. He waived counsel, and his probation was later revoked after he absconded from supervision.

48.	08/20/1995 (Age 20)	Theft Breaker Bay Municipal Ct., Dkt. #857234A	09/10/1995 Consolidated with Dkt. # 867330B; 20 days jail, consecutive	4A1.1(c)	1

According to court records, Smith was arrested after he offered to sell an undercover Breaker Bay police officer stolen automobile parts as detailed in his next conviction. At the time of the defendant's arrest, police officers also recovered a vehicle stolen from a local automobile dealership. Smith admitted that on July 5, 1995, he used a false driver's license and took the vehicle for a test drive, but never returned it. Smith was represented by counsel. The points assigned for this offense take into account the below-listed case which was consolidated for sentencing, in accordance with the provisions found in U.S.S.G. § 4A1.2, comment. (n.3.)

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

49.	08/20/1995 (Age 20)	Theft, Breaker Bay Municipal Ct., Dkt. #867330B	09/10/1995 Consolidated with Dkt. # 867329A; 30 days jail, consecutive	4A1.1(c) 4A1.2(a)(2)	0

According to the arrest report and court documents, Smith and a codefendant were arrested after they convinced an intoxicated acquaintance to surrender his keys to a 1990 Buick Skylark. Smith and his codefendant dismantled the vehicle and offered to sell the parts to an undercover Breaker Bay police officer. Police also recovered a stolen vehicle which had been taken from a local dealership as detailed in the above arrest. Smith was represented by counsel. No points were assigned for this conviction because the case was consolidated with the case above and assigned one point.

50.	05/17/1997 (Age 22)	Reckless Driving, Breaker Bay Municipal Ct., Dkt. #875662	06/09/1997 1 year probation	4A1.1(c) 4A1.2(c)(1)	1

According to court records, Smith was detained after he was observed by a Breaker Bay traffic officer driving a vehicle at 90 miles per hour in a 15-mile-per-hour school zone. Smith waived his right to counsel.

51.	05/15/1998 (Age 23)	Possession of Marijuana, Breaker Bay Municipal Ct., Dkt. #879322A	07/10/1998 3 years probation	4A1.1(c)	1

A Breaker Bay police officer arrested Smith after he was observed smoking marijuana at a concert. At the time of his arrest, Smith was found in possession of five grams of marijuana. According to local probation department records, Smith successfully completed probation and, as a condition of his supervision, participated in a substance abuse treatment program. The defendant was represented by counsel. The probation term was terminated unsatisfactorily on April 3, 2001, due to Smith's new arrest for criminal conduct.

52.	06/10/1998 (Age 23)	Insufficient Funds/ Bad Checks, Breaker Bay Municipal Ct., Dkt. # 875883A	06/30/1998 10 days jail	4A1.2(c)(1)	0

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
200

According to the court and bank records, Smith established a checking account in his own name and deposited $500. He then wrote personal checks payable in amounts totaling $1,000. The funds were not recovered. He was represented by counsel.

53.	03/14/2001 (Age 25)	Grand Theft, Breaker Bay Superior Court, Dkt. # 97456	07/15/2001 3 years probation with 59 days jail; probation terminated and deemed unsuccessful 08/30/2002	4A1.1(c)	1

According to court records, on March 14, 2001, Smith stole the keys to an automobile showroom. Later that night, he returned to the showroom and stole three vehicles, valued at $56,000. Smith was apprehended as he attempted to drive the third vehicle away from the lot, and assisted in the recovery of the other two stolen vehicles. Smith was originally charged with burglary, but he was later convicted of theft. The defendant was represented by counsel. His probation was later terminated and deemed unsuccessful after he was committed to prison on an unrelated offense.

54.	12/15/2002 (Age 27)	Petty Theft, Breaker Bay Municipal Ct., Dkt. # 932741A	12/20/2002 20 days jail	4A1.1(c)	1

According to court records, a private store security officer arrested Smith after he stole a hat, valued at $14.00, from a local department store. Smith was represented by counsel.

55.	01/15/2003 (Age 27)	Robbery, Breaker Bay Superior Court,	08/27/2003 5 years imprisonment; paroled 08/26/2005	4A1.1(a)	3

According to available police reports and court records, Smith robbed a convenience store owner of $765.00 at gunpoint. As he attempted to leave the store, Smith was apprehended by a Breaker Bay patrolman. Smith was represented by counsel. He was later committed to the Allmont Correctional Facility and, according to institutional records, Smith was enrolled in a high school equivalency program, but did not complete the course. During his incarceration, Smith received several incident reports, including the possession and use of a weapon, fighting, and possession of marijuana. Smith also worked in the facility kitchen, where he received above-average performance evaluations.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
201

Smith was released to parole supervision on August 26, 2005, and committed the instant offense shortly thereafter. According to his parole officer, Smith reported as directed, but was unemployed and was not actively looking for work, although he had been repeatedly instructed to do so by his parole officer. The defendant has been charged with violation of his parole, based on this offense, and a warrant has been lodged as a detainer.

56. In addition, Smith was convicted five times, between 1993 and 1999, for public intoxication and ten times for traffic infractions. He was fined up to $150 for each traffic infraction, and for two of the intoxication convictions. Smith was jailed for up to five days for the other three intoxication convictions, and he was represented by counsel for all of the convictions which resulted in imprisonment.

Criminal History Computation

57. The criminal convictions above result in a subtotal criminal history score of 12. In accordance with the provisions found in USSG. §4A1.1(c), only a total of 4 points have been added for the defendant's 5 prior convictions that resulted in a term of imprisonment of less than 60 days.

58. At the time that the instant offense was committed, Smith was on parole supervision for his August 27, 2003, sentence. In accordance with USSG. §4A1.1(d), two points are added.

59. The instant offense was committed less than two years following Smith's release from custody on August 26, 2005. Pursuant to USSG §4A1.1(e), one point is added.

60. The total of the criminal history points is 15. According to the sentencing table (Chapter 5, Part A), 13 or more criminal history points establish a criminal history category of VI.

Other Criminal Conduct

61. During the presentence interview, Smith admitted to the probation officer that he was granted pretrial diversion in 1994 for possession of marijuana. Probation department records indicated that Smith successfully completed the diversion program.

Pending Charges

62. On August 28, 2005, the defendant was arrested for driving under the influence of alcohol. Smith has been charged with a violation in the Breaker Bay Municipal Court under docket number 945789A. An arrest warrant was issued after Smith was taken into federal custody and failed to appear in municipal court. The warrant has been lodged as a detainer with the U.S. Marshals Service.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
202

63. On December 1, 2005, a warrant was issued by the Atlantis Parole Authority, charging Smith with parole violations. This warrant has also been lodged as a detainer with the U.S. Marshals Service.

Other Arrests

	Date of Arrest	Charge	Agency	Disposition
64.	11/14/2002 (Age 27)	Shoplifting	Breaker Bay Police Dept.	No charges filed

PART C. OFFENDER CHARACTERISTICS

Personal and Family Data

65. Thaddeus Smith was born on March 15, 1975, in Breaker Bay, Atlantis, to the union of Samuel and Edith Smith (nee Barker). The defendant's parents separated on numerous occasions, and Smith was often left in the care of his maternal grandmother, who has a history of severe depression. As a consequence, his childhood was chaotic. According to his juvenile record, Smith ran away from home several times and was eventually placed in his grandmother's custody. In 1989 the grandmother committed suicide and Smith discovered her body. He was returned to his mother's residence, located in a small housing project on the lower east side of Breaker Bay.

66. According to the defendant's mother, Smith was very respectful in the family home, although he did exhibit recurring signs of violence and temper tantrums, which she attributed to her son's inability to overcome the emotionally traumatic experiences associated with the loss of his grandmother. Smith and his grandmother had been extremely close. After an episode of delinquency, Smith was committed to the Breaker Bay Youth Correctional Center.

67. Since his release from the youth center, Smith has been residing with distant relatives, with friends, or alone in a series of small apartments in Breaker Bay. His last contact with his parents was in 1995 at his brother Frederick's funeral. Since 1998, Smith has lived at 111 Fifth Street, Apartment B, Breaker Bay, Atlantis 99993, with his cousin, Martin Johnson. A recent home investigation found this small, sparsely furnished apartment to be located in a high-crime section in northwest Breaker Bay. According to the defendant's cousin Martin Johnson, Smith rarely stayed in the apartment and did not contribute to their monthly living expenses; however, Johnson would welcome the defendant back into his apartment upon his release because of limited housing alternatives available to the defendant at the present time.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
203

Physical Condition

68. Thaddeus Smith is a white non-Hispanic male who is 6'2" tall, and weighs 210 pounds. He has brown eyes and brown shoulder-length hair. Smith has a surgical scar on his abdomen, and a tattoo of a skull with the motto "Born to Lose" on his right hand.

69. The defendant describes his overall general physical health as good. He was hospitalized briefly in 1996 for the repair of a hernia he suffered while working in the Breaker Bay jail laundry.

Mental and Emotional Health

70. Smith indicated that he has never been seen by a psychiatrist and described his overall mental and emotional health as good. There is no documented evidence to suggest otherwise.

Substance Abuse

71. The defendant describes a history of alcohol and drug abuse which began when he was approximately 10 years old. According to Smith, he stole alcohol from his parents' supply, adding, "...they were drunk so often, they never noticed." He stated that he often attended school under the influence of alcohol, and that he has been intoxicated "too many times to count."

72. Smith stated that he began smoking marijuana when he was 12 years old. When he discovered that it was easier to attend school under the influence of marijuana without detection than under the influence of alcohol, he became a daily marijuana smoker. The defendant reports the abuse of numerous substances, including hallucinogens, stimulants and depressants, methamphetamine, and cocaine. Smith said he never used opiates.

73. Smith reported he has often been under the influence of some substance while committing his crimes. Before the instant offense, he drank a pint of whisky and inhaled approximately one quarter gram of methamphetamine. Smith admitted that he used some of the proceeds from the robbery to purchase cocaine, and said that since his most recent release from prison, he has used as much as he could acquire. Smith estimates that he has spent at least $200 each week for methamphetamine (his drug of choice), alcohol, or cocaine. The results of a urine test administered by a pretrial services officer at the time of the defendant's arrest were positive for methamphetamine and cocaine.

74. Smith stated that he has been referred to several alcohol and substance abuse programs as a result of his criminal conduct. In 1994, he participated in a marijuana use and education program as a condition of diversion and in 1993, he underwent drug treatment as a condition of probation. Prison records reflect that during his most recent confinement, Smith attended

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
204

Alcoholics and Narcotics Anonymous sessions regularly, but his correctional counselors noted that Smith seemed unmotivated and never selected sponsors. The defendant currently indicates that he would be willing to participate in a drug treatment program and adds that he is now motivated to address his narcotics dependency.

Educational and Vocational Skills

75. The defendant attended Kennedy High School for Boys in Breaker Bay in 1993, where he received poor grades and had a poor attendance record. After his commitment to the Breaker Bay Youth Center in 1992, Smith completed the 11th grade, but center records indicate that he reads at an 8th grade level. He has no other formal education or identifiable skills and is in need of remedial educational or vocational training.

Employment Record

76. Since his release from State custody on August 26, 2005, Smith has been unemployed. He acknowledges he has made no attempt to actively seek employment and has relied on others for financial assistance.

77. From September 15, 1996, until December 15, 1996, Smith was employed by Sam's Super-Save Gasoline, 333 Third Avenue, Breaker Bay, as a service station attendant and cashier, earning minimum wages. In addition, from January 10, 1997, until June 9, 1997 Smith was employed as a mechanic by Al's Auto Aid, 129 5th Street, Breaker Bay, earning $10.45 per hour, until his arrest on new criminal charges and subsequent commitment to state prison.

78. From June 15, 1993 until July 14, 1996, Smith was employed by Uriah's Cheap Heaps, 435 Ohio Street, Breaker Bay. He was first hired as a mechanic, but was later promoted to service manager at this dealership, where he earned $2,500 per month before he was terminated when the dealership learned of his arrest for stealing cars from a nearby dealership showroom. Smith's former employer, Uriah Dickens, advised that he was extremely disappointed in Smith, whom he hired despite his criminal record. Dickens described Smith as a likable employee who got along well with others. According to Dickens, hoping that a second chance would encourage Smith to reform, Dickens allowed Smith to continue in his employ, even after his 1993 conviction for petty theft.

79. From January 10, 1992, until June 9, 1992, Smith was employed by Prestigious Motors, Breaker Bay, where he worked detailing cars, earning $6.75 per hour. According to his immediate supervisor, Smith was knowledgeable but was terminated after he was repeatedly failed to show up for work.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
205

80. Overall, Smith has a sporadic work history, marked by substantial periods of employment. After his release from the Breaker Bay Youth Corrections Center, he worked sporadically as a mechanic. When unemployed, he supplemented his income by working on friends' and acquaintances' vehicles.

Financial Condition: Ability to Pay

81. According to the Personal Financial Statement and a credit bureau check, Smith has no known identifiable assets or liabilities. While he has no sources of income, Smith claims to have spent approximately $800 per month for drugs and alcohol. Prior to his arrest in this offense, Smith was living with his cousin and the defendant provided no financial assistance to the monthly living expenses. The defendant is unemployed and upon his release, he will be dependent upon others for financial assistance. Smith's attorney has been appointed by the court, and at the present time, Smith does not have the ability to pay a fine. Based upon his vocational training and skills, Smith does appear to have the ability to pay a minimal fine on a payment schedule. However, his ability to pay a fine may be limited by any restitution which the court may impose.

PART D. SENTENCING OPTIONS

Custody

82. **Statutory Provisions:** The maximum term of imprisonment for Count One is 20 years, pursuant to 18 U.S.C. § 2113(a). The minimum term of imprisonment on Count Two is 15 days, and the maximum term of imprisonment is 2 years, pursuant to 21 U.S.C. § 844(a) since the defendant has a prior drug conviction.

83. **Guideline Provisions:** Based on an offense level of 28 and a criminal history category of VI, the guideline range of imprisonment is 140 to 175 months.

Impact of the Plea Agreement

84. Had the defendant been convicted of all the charges in the original indictment, the guideline imprisonment range would be 140 to 175 months, plus a mandatory 60-month minimum term of imprisonment required for violations of 18 U.S.C. § 924(c)(1), which would be served consecutively to any other sentence imposed.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
206

Supervised Release

85. **Statutory Provisions:** If a term of imprisonment is imposed on Counts One and Two, the court may impose a term of supervised release of not more than three years on Count One and not more than one year on Count Two, pursuant to 18 U.S.C. §§ 3583(b)(2) and (3), since they are Class C and Class E felonies, respectively. According to 18 U.S.C. § 3624(e), the terms of supervised release shall run concurrently.

86. **Guideline Provisions:** If the defendant is sentenced to a term of imprisonment of more than one year, the court must impose a term of supervised release, pursuant to USSG. §5D1.1. The authorized term of supervised release for Count One is not less than two years nor more than three years, and the authorized term of supervised release for Count Two is one year, pursuant to USSG §§ 5D1.2(b)(2) and (3). Pursuant to 18 U.S.C. § 3624(e), the terms would be served concurrently.

Probation

87. **Statutory Provisions:** The defendant is ineligible for a term of probation in this offense, pursuant to 18 U.S.C. § 3561(a)(3) since he must be sentenced to at least a 15-day term of imprisonment on Count Two.

88. **Guideline Provisions:** The defendant is ineligible for a term of probation since Count Two requires a mandatory term of imprisonment of 15 days and the minimum guideline imprisonment range exceeds eight months, pursuant to USSG §§ 5B1.1(b)(3) and 5B1.1, comment. (n.2).

Fines

89. **Statutory Provisions:** The maximum fine for Count One is twice the gross loss, or $308,270, pursuant to 18 U.S.C. § 3571(d). The minimum fine for Count Two is $2,500, plus the cost of the investigation and prosecution (unless the defendant does not have the ability to pay), pursuant to 21 U.S.C. § 844(a), and the maximum fine is $250,000, pursuant to 18 U.S.C. § 3571(b).

90. A special assessment of $50 on each count for a total of $100 is mandatory, pursuant to 18 U.S.C. § 3013.

91. **Guideline Provisions:** Pursuant to U.S.S.G. § 5E1.2(c)(3), the fine range for this offense is from $12,500 to $ 125,000.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
207

Restitution

92. **Statutory Provisions:** Pursuant to 18 U.S.C. § 3663A, restitution shall be ordered. In this case, restitution in the amount of $5,900 is outstanding to the Atlantis Credit Union and can be forwarded to the following address:

Atlantis Credit Union
Attention: Mr. Sam Claim
1948 Edgewater Street
Breaker Bay, Atlantis 99996

93. In addition, restitution in the amount of $44,445 is outstanding to the Apex Insurance Company and can be forwarded to the following address:

Apex Insurance Company
Attention: Mrs. Cindy Claim
1950 Backstreet
Breaker Bay, Atlantis 99995

94. **Guideline Provisions:** In accordance with the provisions of USSG §5E1.1, restitution shall be ordered.

Denial of Federal Benefits

95. **Statutory Provisions:** Pursuant to 21 U.S.C. § 862, upon a second conviction for possession of a controlled substance, a defendant may be declared ineligible for any or all Federal benefits for up to five years as determined by the Court. In addition, the Court may require the defendant to participate and complete an approved drug treatment program that includes periodic drug testing, or to perform appropriate community service.

96. **Guideline Provisions:** Pursuant to 21 USSG §5F1.6, the Court may deny eligibility for certain federal benefits of any individual convicted of distribution or possession of a controlled substance.

PART E. CIRCUMSTANCES THAT MAY WARRANT DEPARTURE

97. The probation officer has no information concerning the offense or the offender which would warrant a departure from the prescribed sentencing guidelines.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
208

PART F. VARIANCES THAT MAY BE CONSIDERED IN IMPOSING SENTENCE

98. The probation officer has not identified any factors under 18 U.S.C. § 3553(a) that may warrant a variance and imposition of a non-guideline sentence.

Respectfully submitted,

CHIEF U.S. PROBATION OFFICER

By_____
Craig T. Doe
U.S. Probation Officer

Reviewed and Approved:

_____
Joan B. Fair
Supervising U.S. Probation Officer

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
209

ADDENDUM TO THE PRESENTENCE REPORT
UNITED STATES DISTRICT COURT FOR WESTERN DISTRICT OF ATLANTIS
UNITED STATES V. THADDEUS SMITH; DKT. # CR 01-001-01-KGG

OBJECTIONS

By the Government

On February 6, 2006, Assistant U.S. Attorney Robert Prosecutor advised the probation officer that he had no objections to the presentence report.

By the Defendant

On February 7, 2006, defense counsel Arthur Goodfellow provided the probation officer with a written objection to the initial presentence report. In summary, defense counsel objects to the adjustment for role in the offense and will argue that defendant Smith was not the organizer or leader within the meaning of USSG §3B1.1(c) and that all of the defendants in this offense are equally culpable.

The probation officer believes that Smith was an organizer and leader in this offense and there is not evidence to support defense counsel's contention that the defendants are equally culpable. The uncontested facts presented in this offense reveal that Smith recruited the codefendants in this offense and exercised clear decision making authority over the other participants when he planned the robbery. Moreover, he gave implicit instructions to Brown and Pond, defining their role in the offense, and claimed the right to a far greater share of the proceeds from the robbery. The probation officer relies on a review of the commentary found in USSG §3B1.1 that supports a two-level enhancement for Smith's role in this offense.

Respectfully submitted,

CHIEF U.S. PROBATION OFFICER

By_____
Craig T. Doe
U.S. Probation Officer

Reviewed and Approved:

_____
Joan B. Fair
Supervising U.S. Probation Officer

SENTENCING RECOMMENDATION

UNITED STATES DISTRICT COURT FOR WESTERN DISTRICT OF ATLANTIS
UNITED STATES V. THADDEUS SMITH; DKT. NO. 01-001-01-KGG

TOTAL OFFENSE LEVEL: 28
CRIMINAL HISTORY CATEGORY: VI

	Statutory Provisions	Guideline Provisions	Plea Agreement Provisions	Recommended Sentence
CUSTODY:	Ct.1: 20 yrs Ct.2:15 days-2 years	140-175 months	None	160 months
PROBATION:	Ineligible	Ineligible	None	Not applicable
SUPERVISED RELEASE:	Ct.1: 3 yrs Ct.2: 1 yr	Ct.1: 2 to 3 yrs Ct.2: 1 yr	None	Ct.1: 3 years Ct.2: 1 year, cc
FINE:	Ct.1: $308,270 Ct.2: $2,500-$250,000	$12,500 to $384,405	None	$0
RESTITUTION:	Ct.1: $50,345 Ct.2: N/A	Ct.1: $50,345 Ct.2: N/A	None	Ct.1: $50,345 Ct.2: N/A
SPECIAL ASSESSMENT:	$200	$200	None	$200

Justification:

The robbery of the credit union involved extensive planning in the design of the crime, as well as the recruitment of others to participate in the offense. These factors, as well as Thaddeus Smith's role in the offense, use of a gun, and the amount of loss, have been taken into account in determining the guideline range. The defendant has an extensive criminal record which is reflected in the fact that he is in the highest criminal history category. He accepts responsibility for his actions and expresses remorse for his actions in the instant case. Because the significant sentencing considerations, both aggravating and mitigating, have been factored into the application of the guidelines, a sentence near the middle of the guideline range is merited. Accordingly, a prison sentence of 160 months is recommended, which would reflect the seriousness of the offense and meet the sentencing objective of just punishment.

In the past, when Smith has been subject to community supervision, his overall adjustment has been poor, as evidenced by continued conflicts with the law. He has a history of drug and alcohol abuse and could benefit from intervention and treatment. A three-year period of supervised release is recommended for the protection of the public, as well as for the correctional treatment of the defendant when he is released to the community. Accordingly, a special condition for testing and substance abuse treatment is recommended.

In view of the defendant's inability to pay financial sanctions and his lack of employment stability, it is recommended that the fine be waived. However, in light of his expected lengthy jail sentence, it is recommended that the defendant be ordered to make restitution immediately to the Atlantis Credit Union in the amount of $5,900 and to the Apex Insurance Company in the amount of $44,445. The Federal Bureau of Prisons has a voluntary Inmate Financial Responsibility Program, and while incarcerated, if employed, Smith can begin immediate payment toward his restitution obligation.

Although the court may deny any or all Federal benefits for up to five years because Count Two is the defendant's second conviction for possession of a controlled substance, denial of Federal benefits is not recommended. If the court imposes a custodial sentence within the guideline range, the period of ineligibility for benefits would expire before the defendant's release from custody.

Voluntary Surrender:

Smith is subject to a substantial period of incarceration in this offense and he has been detained without bail since his arrest. Although he has family members in the community, his regular contact with them has been sporadic. As a result, the defendant does not appear to be a good candidate for voluntary surrender.

Recommendation:

It is respectfully recommended that sentence in this case be imposed as follows:

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the court that the defendant, Thaddeus Smith, is hereby committed to the custody of the United States Bureau of Prison, to be imprisoned for a term of 160 months. The term consists of 160 months on Count One and a term of 24 months on Count Two, all to be served concurrently.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of three years. This term consists of three years on each of Counts One and Two and all such terms to run concurrently. Within 72 hours of release from custody of the Bureau of Prisons, the defendant shall report in person to the probation office in the district to which the defendant is released.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
212

While on supervised release the defendant shall not commit any Federal, state, or local crimes, and he shall be prohibited from possessing a firearm or other dangerous device, and he shall not possess a controlled substance. In addition, he shall comply with the standard conditions of supervised release as recommended by the Unite States Sentencing Commission. The defendant shall also comply with the following special condition: The defendant shall participate in a program of testing and treatment for drug and alcohol abuse, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer.

THE COURT FINDS that the defendant does not have the ability to pay a fine, but he will begin to make immediate restitution in accordance with the provisions of 18 U.S.C. § 3663 to the Atlantis Credit Union in the amount of $5,900 and to the Apex Insurance Company in the amount of $44,445. Any payment that is not paid in full shall be divided proportionately among the entities named. Upon release from custody, payment of any unpaid restitution balance will become a special condition of supervised release.

IT IS ORDERED that the defendant pay a special assessment in the amount of $200 for Counts One and Two, which shall be due immediately.

Respectfully submitted,

Chief U.S. Probation Officer

By_____
Craig T. Doe
U.S. Probation Officer

Approved:

_____
Joan B. Fair
Supervising U.S. Probation Officer

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
213

Appendix B

Non-Guideline Misdemeanor Presentence Investigation Reports

Appendix B

The Presentence Report for Non-Guideline Misdemeanor Offenses

When a class B or C misdemeanor case is referred for a presentence investigation, the structure for the presentence report (which is referred to as a non-guideline misdemeanor presentence report) is distinct from guideline presentence reports because the scope of information needed to construct the report is less extensive. The format mirrors the model used for guideline presentence reports, except that the sections of the report designed for guideline application do not appear and the sections in Offender Characteristics, Part C have been simplified. Although it is anticipated that most non-guideline misdemeanor presentence reports will be concise, if the offense is aggravated or if there are complicated issues, the format will accommodate more comprehensive information.

Preparation of the non-guideline misdemeanor presentence report is generally easier than preparation of a guideline report because the sentencing issues are less complex. Disposition may be made on the basis of less comprehensive information for several reasons. The sentencing guidelines are not applicable to class B or C misdemeanor offenses and, as a result, several of the standard sections of the guideline presentence report are not required. Without guideline application, the need to research legal issues will be uncommon and use of an addendum to answer written objections is infrequent. The offense conduct for a class B or C misdemeanor offense is ordinarily less complex, reducing investigative effort. Because the maximum fine is restricted and crimes entailing large amounts of restitution are frequently prosecuted as felonies, the financial condition section of the report can be condensed. Information regarding the defendant's personal life remains critical in making an informed recommendation regarding sentence, particularly in the decision about whether to recommend probation, a sentencing option which, in contrast to guideline cases, is available in virtually every class B and C misdemeanor offense. Information regarding the offender is summarized, focusing on the facts necessary to understand the offender in an effort to formulate an appropriate sentence or to address significant supervision issues.

Non-Guideline Misdemeanor Offense Investigation

The nature of class B and C misdemeanor offenses gives the probation officer latitude during the investigative process. In many instances, the level of detail required for guideline presentence reports may not be necessary for a non-guideline misdemeanor presentence report. The focus of the investigation on the events presently occurring in the defendant's life may allow for less comprehensive verification of personal data as a reasonable modification to the investigative process. The professional judgment of the officer is important in selecting facts and material that are relevant to an informed sentencing decision. The officer may be able to eliminate a second interview with the offender and the home investigation in many cases. If a critical issue or problem emerges during the investigation, the officer expands the investigation in that particular area. The investigation into a defendant's personal data is generally limited to the preceding five years, except

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
215

when specific issues arise requiring more substantial investigation, such as a history of mental health or substance abuse-related problems.

In verifying information, officers direct offenders to provide verification of as much information as possible. The Probation Form 14 series is used to request verification by mail. Collateral requests are used primarily to obtain criminal history information for class B and C misdemeanor cases. Collateral requests to verify personal data are sent to other districts only in cases where a compelling reason exists, which is explicitly stated in the collateral request letter.

Use of the Non-Guideline Misdemeanor Presentence Reports by Other Agencies

Reduced requirements for non-guideline misdemeanor presentence reports are consistent with the needs of agencies that routinely utilize presentence reports. The U.S. Sentencing Commission does not collect data pertaining to class B or C misdemeanor offenses, as these offenses are not covered by the guidelines. The Bureau of Prisons frequently designates misdemeanor inmates to local facilities because the prison terms are short. Since class B misdemeanor offenses result in a maximum of 6 months incarceration, these offenders are not generally enrolled in programs operated by the Bureau of Prisons. As a consequence, the Bureau does not require the same level of detail regarding class B or C misdemeanor offenders in the presentence report. The U.S. Parole Commission does not require presentence reports for these offenders because they are not parole eligible. Finally, since detailed background information will be retained on the Probation Form 1, supervision by the Probation Office will not be compromised.

Contents of the Non-Guideline Misdemeanor Presentence Report

Face Sheet

The face sheet is identical to the face sheet in the guideline presentence report model, except that the report is titled the "Non-guideline Misdemeanor Presentence Report" and the heading "Date Report Revised" is not included, except when appropriate. The information contained on the identifying data page of the non-guideline misdemeanor presentence report is the same as in a guideline presentence report.

Part A. The Offense

The offense section of the non-guideline misdemeanor presentence report consists of the following subheadings: Charge(s) and Conviction(s); Offense Conduct; Victim Impact; and Defendant Statement. The sections of the guideline presentence report that were designed for specific guideline requirements are not applicable.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
216

Charge(s) and Conviction(s)

The information contained in this section is the same; however, there is no separate subheading for pretrial adjustment. The information included under the Pretrial Adjustment subheading in the guideline presentence report is included as the last paragraph in the Charge(s) and Conviction(s) section.

The Offense Conduct

The offense conduct section of the non-guideline misdemeanor presentence report will remain the same in structure and content as in the guideline presentence report. The description of facts can often be more condensed because the level of detail for guideline application is not required.

Victim Impact

The officer reports all consequences to any identifiable victim in the same manner as in a guideline presentence report.

Defendant's Statement

The defendant's statement is a section unique to the non-guideline misdemeanor presentence report. The acceptance of responsibility section of the guideline presentence report is not included because it is an artifact of the guideline presentence report. This section includes the defendant's statements regarding motive and whether or not the defendant has accepted personal responsibility for the offense behavior. The Defendant's Statement section is not intended to be a verbatim account of a written statement prepared by the defendant. Rather, it provides the court with a succinct description of the defendant's statements as they pertain to motivation for committing the instant offense as well as the degree of personal responsibility and remorse demonstrated by the defendant.

Part B. The Defendant's Criminal History

The criminal history section uses identical subheadings to those found in the guideline presentence report format, without criminal history points. The verification procedures used to authenticate a defendant's criminal history correspond to those utilized during a guideline presentence investigation.

Since the guidelines do not apply, criminal history points will not be computed. As a result, composition of a non-guideline misdemeanor presentence report should not be delayed if extensive details regarding the offense have not been received. It is generally not necessary to include extensive detail relating to prior offense conduct, unless it is indicative of risk.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
217

Part C: Offender Characteristics

Personal Data

Personal Data encompasses information from the following subheadings from the guideline presentence report format: Personal and Family Characteristics; Physical Condition; Mental and Emotional Health; Substance Abuse; Educational and Vocational Skills; and Employment. Information relevant to these topics is succinctly condensed in the Personal Data section.

In determining what particular data is included in the presentence report, the probation officer uses professional judgment. If facts are not relevant to sentencing or supervision, such factors remain on the PROB Form 1, but are not included in the report. The probation officer collects all the basic material pertaining to a defendant's life experience, and sifts out only the information most pertinent to sentencing for incorporation into the body of the report. The primary focus of this section is the condition of the defendant's life at the time of sentencing. The Personal Data section of the report serves as a brief synopsis of the defendant's current personal profile, not an itemized account of biographic information. Information pertaining to the defendant's personal experience is to be presented in a general and concise manner. When certain unique biographic information that is especially relevant to sentencing is developed during the presentence investigation, presentation of such information is expanded to include more detail.

During the investigative phase, the probation officer fills out a PROB Form 1 completely and obtains the verification necessary to substantiate information regarding the defendant's current circumstances. The officer directs the defendant to provide as much verification as possible and mails Probation Form 14's to verify personal information. The officer rarely sends a collateral request to another district to verify personal information. In petty offense presentence reports, collateral requests are primarily reserved to verify criminal history.

Financial Condition: Ability to Pay

The financial condition section of the presentence report format is condensed. Although the defendant's finances are thoroughly verified, the specifics actually incorporated into the presentence report can be minimized. The officer includes assets and liabilities to determine the defendant's ability to make an immediate (lump sum) payment at the time of sentencing and monthly net cash flow to determine the defendant's ability to make maximum monthly payments. These figures are presented in narrative form. If a defendant has no assets, liabilities, income, and expenses, a simple statement of fact is all that is required.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
218

The officer obtains the verification necessary to confirm the offender's financial condition. Although the probation officer will not itemize the figures used to calculate the totals in these categories, it is expected that the specific figures along with corresponding verification are in the probation file in the event that an officer's assessment of the defendant's ability to pay is challenged. The officer provides the court with an analysis of the defendant's ability to pay financial sanctions, and a paragraph addressing this issue is included.

Part D. Sentencing Options

Compared to felonies and class A misdemeanors, the sentencing options available to the court in a class B or C misdemeanor offense are limited by statute. As a result, this section is less complex than in a guideline-applicable case. This section is similar to the guideline presentence format, except for the two subheadings pertaining to impact of the plea agreement and supervised release, which are deleted. The subheadings to be included under sentencing options are: Custody, Probation, Fines, and Restitution. Since the guidelines do not apply, the officer simply reports the statutory provisions without labeling them as "Statutory Provisions."

Recommendation

The recommendation section for a non-guideline misdemeanor presentence report is similar to the guideline format, except that guideline provisions and supervised release are not included in the sentencing chart. The subheadings to be included in the recommendation section are statutory provisions, justification, recommendation and voluntary surrender.

Addendum to the Presentence Report

It is not anticipated that many written objections will be generated in response to the non-guideline misdemeanor presentence report, since the sentencing guidelines do not apply. If written objections to the report are filed, the guideline presentence report format is used to construct the addendum.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

Appendix C

Modified Presentence Investigation Reports

Appendix C:
The Modified Presentence Investigation Report

In any case, the court may order the probation officer to prepare a modified presentence investigation report. These reports are designed to give the court flexibility in ordering shorter reports in appropriate cases. For example, these reports could be used in a case involving a single defendant, convicted on a single count of conviction where the defendant has no or few ties to the United States and is not exposed to a lengthy term of imprisonment or supervision (e.g., class A misdemeanors, class E felonies, cases in which the plea agreements contemplate a brief period of imprisonment[1] or no prison at all, deportable aliens). Modified presentence investigation reports may not be suitable if the defendant has a history of violence or sexual offenses, significant ties to the country, identified risks and needs (e.g., current substance abuse or mental health issues), or significant assets, since these issues tend to have greater influence on the sentence imposed, Bureau of Prisons designation and programming, and post-conviction supervision.

Modified Presentence Investigation

In many instances, the level of detail required for standard guideline presentence reports will not be necessary for a modified presentence report. The investigation into a defendant's personal history is generally limited to the preceding five years, except when specific issues arise requiring more substantial investigation, such as a history of mental health or substance abuse-related problems. While the defendant is still interviewed, the officer may be able to eliminate a second interview with the defendant, interviews with collateral contacts, and in most cases, the home investigation.

In verifying information, officers should ask the defendant to provide as much documentation as possible. The Probation Form 14 series may be used to request verification by mail if verification is necessary. Collateral requests may be made to obtain criminal history information; however, collateral requests to verify personal data are sent to other districts only in cases where a compelling reason exists.

Financial investigations may be limited to cases in which restitution would be required under 18 U.S.C. § 3663A. In such cases, the officer should comply with all of the requirements in 18 U.S.C. § 3664, including notifying the victim and requesting an affidavit of loss. It is expected that most of the cases referred for modified presentence investigations will involve indigent defendants. In such cases, officers should have the defendant complete the Probation Form 48EZ (Net Worth Short Form Statement). Additional guidance on conducting a financial investigation on indigent defendants may be found in Monograph 114, *Criminal Monetary Penalties*.

[1]For the purposes of this section, a "brief period of imprisonment" is one in which the defendant would have nine months or less of imprisonment left to serve upon imposition of the sentence.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
221

Content of the Modified Presentence Investigation Report

Every modified presentence report will include the following core elements:

Face Sheet -- The face sheet is identical to the face sheet in the guideline presentence report model, except that the report is titled the "Modified Presentence Investigation Report" and the heading "Date Report Revised" is not included, except when appropriate. The information contained on the identifying data page of the modified presentence investigation report is the same as in a standard guideline presentence investigation report.

Part A. The Offense

Charge(s) and Conviction(s) **--** The information contained in this section is the same; however, there is no separate subheading for pretrial adjustment. The information included under the Pretrial Adjustment subheading in the guideline presentence report is included as the last paragraph in the Charge(s) and Conviction(s) section.

The Offense Conduct -- The officer should prepare a concise but complete description of the offense based on all information (including relevant conduct information) that is readily available from the parties. This information should come from the charging documents, Assistant U.S. Attorney's (AUSA) file, the case agent's notes, and/or the factual stipulations in the plea agreement. If necessary, the impact to any victims may also be summarized in this section.

Guideline Calculations -- The guidelines should be calculated based on the offense conduct prepared by the officer.

Part B. The Defendant's Criminal History -- The officer should prepare the criminal history and calculations as he or she does in standard guideline presentence reports; however, prior arrests that do not result in convictions (i.e., "other arrests") need not be verified unless the officer believes that doing so would provide the court with relevant and reliable information that may effect the sentence (e.g., similar to the instant offense, violence, sexual offenses).

Part C: Offender Characteristics

Personal Data -- Personal Data encompasses information from the following subheadings from the standard guideline presentence report format: Personal and Family Characteristics, Physical Condition, Mental and Emotional Health, Substance Abuse, Educational and Vocational Skills, and Employment. Information relevant to these topics is succinctly condensed in the Personal Data section.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
222

Facts not relevant to sentencing, Bureau of Prisons designation, or post-conviction supervision remain on the Probation Form 1, but are not included in the report. The Personal Data section of the report serves as a brief synopsis of the defendant's current personal profile, not an itemized account of biographic information. When certain unique biographic information that is especially relevant to sentencing is developed during the presentence investigation, presentation of such information is expanded to include more detail.

Financial Condition: Ability to Pay -- When restitution is mandatory, the report should include a section summarizing the defendant's financial condition and ability to pay. Although the defendant's finances are verified, the details presented in the report can be minimized. The officer should note the defendant's net worth (to determine the defendant's ability to make an immediate (lump sum) payment at the time of sentencing) and monthly cash flow (to determine the defendant's ability to make maximum monthly payments). If a defendant has no assets, liabilities, income, and expenses, a simple statement to that extent is all that is required.

Part D. Sentencing Options -- The officer should present the guideline and statutory sentencing options as he or she does in a standard guideline presentence investigation report. Any readily available grounds for a sentence outside of the guidelines (e.g., those identified in the plea agreement) should be identified in the report.

Part E. Grounds That May Warrant Departure -- If the plea agreement identifies possible grounds for departure, the officer should report these in this section.

Part F. Grounds That May Warrant a Sentence Outside of the Guideline System -- If the parties identify possible grounds for sentence outside of the guidelines system, the officer should report these in this section.

Recommendation -- The recommendation section for a modified presentence investigation report is similar to the standard guideline format.

Addendum to the Presentence Report -- If written objections to the report are filed, the standard guideline presentence report format is used to construct the addendum.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

Complex Cases Referred for Modified Presentence Investigation Reports

A modified presentence investigation report should be sufficient to meet the needs of the court in most low-complexity cases. In some cases, however, a modified presentence investigation report may be ordered but, because the issues revealed during the investigation are more complex, a standard guideline presentence investigation report may be more appropriate. For example, defendants with a history of violence or sexual offenses, identified risks and needs (e.g., current substance abuse or mental health issues), or significant assets may not be suitable for a modified presentence report. In such cases, the officer should notify the court and request guidance on how to continue. The request should specify the factors that make the investigation and report more complex and should explain whether and to what degree a full investigation and report would address these issues. The officer should complete the report according to the court's instructions.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ATLANTIS

UNITED STATES OF AMERICA	)	**MODIFIED PRESENTENCE INVESTIGATION REPORT**
	)	
v.	)	
	)	
Elizabeth Moreno	)	**Docket: 04-CR-00000-001-KGG**

Prepared For: The Honorable Kelly G. Green
U.S. District Judge

Prepared By: Craig T. Doe
U.S. Probation Officer
(123) 111-1111

Assistant U.S. Attorney
Mr. Robert Prosecutor
United States Courthouse
Breaker Bay, Atlantis 00000-0000
(123) 111-1212

Defense Counsel
Mr. Arthur Defender (Appointed)
737 N. 7th Street
Breaker Bay, Atlantis 00000-0000
(123) 111-1313

Sentence Date: April 6, 2005

Offense: Possession with Intent to Distribute Marijuana, 21 U.S.C. § 841(a)(1) and (b)(1)(D), a Class D felony. Up to five years imprisonment / $250,000 fine.

Release Status: Detained since November 17, 2004.

Detainers: Immigration

Co-defendants: None

Related Cases: None

Date Report Completed: March 3, 2005

Restrictions on Use and Redisclosure of Presentence Investigation Report. Disclosure of this presentence investigation report to the Federal Bureau of Prisons and redisclosure by the Bureau of Prisons is authorized by the United States District Court solely to assist administering the offender's prison sentence (i.e., classification, designation, programming, sentence calculation, pre-release planning, escape apprehension, prison disturbance response, sentence commutation, or pardon) and other limited purposes, including deportation proceedings and federal investigations directly related to terrorists activities. If this presentence investigation report is rediscloseed by the Federal Bureau of Prisons upon completion of its sentence administration function, the report must be returned to the Federal Bureau of Prisons or destroyed. It is the policy of the federal judiciary and the Department of Justice that further redisclosure of the presentence investigation report is prohibited without the consent of the sentencing judge.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

Presentence Report
Moreno, Elizabeth

Identifying Data:

Date of Birth:	June 14, 1977
Date of Birth:	February 1, 1978
Age:	27
Race:	White, Hispanic
Sex:	Female
SSN:	None
FBI:	000000FC9
USM:	00000-000
SID:	None
Other ID No.:	Alien Registration: A00 0000 000
PACTS:	000000
Education:	Six years (Mexico)
Dependents:	Husband and four children
Citizenship:	Mexico
Last Address:	Buganbilia 10-A, Conjunto Jardin Nogales, Sonora, Mexico
Aliases:	None

PART A—THE OFFENSE

Charge(s) and Conviction(s)

1. On January 26, 2005, the defendant pled guilty to Count Two of the two-count indictment charging that on November 17, 2004 she possessed with intent to distribute less than 50 kilograms (68.69 Pounds) of marijuana, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(D).

2. The plea agreement under Rule 11(c)(1)(C), provides for a stipulated sentencing range of four to 12 months imprisonment, contingent upon the defendant falling within Criminal History Category I. The agreement provides for a downward departure pursuant to §5K3.1, early disposition programs. Count 1 of the indictment will be dismissed at sentencing. The defendant may withdraw from the agreement if she receives a sentence in excess of 12 months imprisonment, and the government may withdraw from the agreement if the defendant receives a sentence of less than four months imprisonment.

The Offense Conduct

3. On November 17, 2004, immigration authorities working at the Nogales, Arizona, port of entry encountered the defendant, the driver and sole occupant of a vehicle, who applied for admission into the United States. Moreno made a negative declaration, but appeared nervous when responding to basic questions. Authorities lifted the floorboard carpeting and discovered several packages of marijuana underneath. A secondary inspection of the vehicle revealed 15 packages of marijuana, weighing 68.69 pounds (31.15 kilograms), hidden inside the floor of the vehicle.

4. The defendant told authorities she made arrangements with Jose Manuel Lozano-Lopez to drive a load of marijuana across the border from Mexico to the United States in exchange for $1,500. She was to drive to a convenience store in Nogales, Arizona, where she would be given further directions to a location in Tucson, Arizona, where she would deliver the vehicle and the marijuana.

Offense Level Computations

5. The advisory guidelines in effect at the time of sentencing are applied pursuant to 18 U.S.C. § 3553(a) and §1B1.11.

6. The plea agreement stipulates the defendant transported 68.69 pounds (31.15 kilograms) of marijuana into the United States, and she intended to deliver the marijuana to another person. This supports application of the Base Offense Level pursuant to §2D1.1(c)(11).

7. **Base Offense Level:** The guideline for a violation of 21 USC § 841(a)(1), involving 68.69 pounds (31.15 kilograms) of marijuana, is §2D1.1(c)(11). The Base Offense Level is 18.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

8. **Specific Offense Characteristic:** Two levels are subtracted as the defendant meets "safety valve" requirements at 18 U.S.C. § 3553(f) and U.S.S.G. §5C1.2. §2D1.1(b)(7). -2

9. **Victim-Related Adjustments:** None 0

10. **Adjustments for Role in the Offense:** None 0

11. **Adjustment for Obstruction of Justice:** None 0

12. **Adjusted Offense Level (Subtotal)** 16

13. **Adjustment for Acceptance of Responsibility:** Two levels are subtracted as the defendant clearly demonstrates acceptance of responsibility. §3E1.1(a). One additional level is subtracted in anticipation of a government motion confirming that the defendant assisted in the investigation or prosecution of her own misconduct by timely notifying the government of an intention to plead guilty. §3E1.1(b). -3

14. **Total Offense Level:** 13

PART B—DEFENDANT'S CRIMINAL HISTORY

Juvenile Adjudications

15. None

Adult Convictions

16. None

Criminal History Computation

17. The defendant's criminal history points total zero, establishing a Criminal History Category I.

PART C—OFFENDER PERSONAL HISTORY

Personal and Family Data

18. The defendant was born on June 14, 1977, in Nogales, Sonora, Mexico. The defendant is married to Fortunato Agramon Verdusco and they have four children

together: Jesus Yarisma, 10; Carlos Antonio, 8; Osvaldo Mauricio, 7; and Santos Jovani, 4.

19. According to immigration records, the defendant has never applied for nor been granted residency status in the United States. When she committed the offense, she was in possession of a valid border crossing card, but it is anticipated her conviction will result in her deportation from the United States.

PART D—SENTENCING OPTIONS

20. The defendant meets the "safety valve" provisions under 18 U.S.C. § 3553(f) and U.S.S.G. §5C1.2; consequently, the Court shall impose a sentence without regard to any statutory minimum sentence.

Custody

21. **Statutory Provisions:** The maximum term of imprisonment is five years. 21 U.S.C. § 841(b)(1)(D).

22. **Guideline Provisions:** Based on a Total Offense Level of 13 and Criminal History Category of I, the guideline range for imprisonment is 12 to 18 months.

Supervised Release

23. **Statutory Provisions:** The authorized term of supervised release is up to life. 21 U.S.C. § 841(b)(1)(D) and 18 U.S.C. § 3553(f).

24. **Guideline Provisions:** The authorized term of supervised release is not less than two nor more than three years. U.S.S.G. §5D1.2(a)(2). If the defendant is sentenced to a term of imprisonment of more than one year, the court must impose a term of supervised release. U.S.S.G. §5D1.1(a)

Probation

25. **Statutory Provisions:** The authorized term of probation is not less than one nor more than five years. 18 U.S.C. § 3561(c)(1).

26. **Guideline Provisions:** Because the guideline range is in Zone D, probation is not authorized. §5C1.1(f).

Fines

27. **Statutory Provisions:** The maximum fine is $250,000. 21 U.S.C. § 841(b)(1)(D).

28. **Guideline Provisions:** The fine range is $3,000 to $30,000. U.S.S.G. §5E1.2(c)(3).

29. Subject to the defendant's ability to pay, the Court shall consider costs of imprisonment, probation, or supervised release. U.S.S.G. §5E1.2(d).

	Prison	Halfway House	Supervision
Costs Per Month:	$1,931.97	$1,590.66	$292.21

Special Assessments

30. **Statutory Provisions:** A special assessment of $100 is mandatory. 18 U.S.C. § 3013(a).

Community Restitution

31. **Statutory Provisions:** Community restitution may be ordered. 18 U.S.C. § 3663(c)(1).

32. **Guideline Provisions:** The Court shall order an amount of community restitution not to exceed the fine imposed. §5E1.1(d).

Denial of Federal Benefits

33. **Statutory Provisions:** Upon a first conviction for distribution of a controlled substance, a defendant may be declared ineligible for any or all federal benefits for up to five years. 21 U.S.C § 862(a)(1)(A). However, this denial shall not apply to a defendant who cooperates or testifies with the government or who is in a government witness protection plan.

34. **Guideline Provisions:** The Court may deny eligibility for certain federal benefits of any individual convicted of distribution or possession of a controlled substance. U.S.S.G. §5F1.6.

PART E. FACTORS THAT MAY WARRANT DEPARTURE

35. Presentation of information in this section does not necessarily constitute a recommendation for a departure from the advisory guideline range.

36. Pursuant to §5K3.1, upon motion of the government, the Court may depart

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
230

downward not more than four levels pursuant to an early disposition program authorized by the Attorney General of the United States and the United States Attorney for the district in which the Court resides.

Respectfully submitted,

Chief U.S. Probation Officer

By: _____
Craig T. Doe
U.S. Probation Officer

Approved by:

_____ _____
Mary T. Clark Date
Supervising U.S. Probation Officer

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

SENTENCING RECOMMENDATION

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ATLANTIS

UNITED STATES v. Elizabeth Moreno, DOCKET 04-CR-00000-001-KGG

TOTAL OFFENSE LEVEL: **13**
CRIMINAL HISTORY CATEGORY: **I**

	Statutory Provisions	**Guideline Provisions**	**Plea Agreement Provisions**	**Recommended Sentence**
CUSTODY:	Up to 5 years	12 to 18 months	4 to 12 months, per Rule 11(c)(1)(C) agreement to departure under §5K3.1	Time served, pursuant to downward departure under §5K3.1
SUPERVISED RELEASE:	Up to life	2 to 3 years		2 years
PROBATION:	1 to 5 years	Not authorized		Not recommended
FINE:	Up to $250,000	$3,000 to $30,000		Waive
COMMUNITY RESTITUTION:	May be applicable	May be applicable		May be ordered
SPECIAL ASSESSMENT:	$100	$100		$100

Justification

The defendant's case is mitigated by her timely plea. A four-level departure under §5K3.1, based on an early disposition program, is recommended.

An aggravating factor taken into consideration by the advisory guidelines is the weight of marijuana, 68.69 pounds (31.15 kilograms), transported by the defendant during the instant offense. An aggravating factor not considered by the advisory guidelines is that this was not an impromptu crime. Mitigating factors taken into consideration by the advisory guidelines are the defendant's placement into Criminal History Category I, which renders her eligible for "safety valve" relief, and acceptance of responsibility. Considering these factors, a sentence of time served is recommended as it adequately addresses the seriousness of the offense, will promote respect for the law and will afford adequate punishment. The defendant will have served 140 days at the time of sentencing.

The recommended term of supervised release, along with a special condition barring illegal re-entry is recommended and will serve to monitor future criminal activity. Denial of federal benefits is not recommended as there is no information indicating the defendant has ever applied for any of the federal benefits outlined by statute, and there is no indication she will do so in the future. No community restitution or fine is recommended as the defendant does not have the ability to pay. The $100 special assessment and participation in the collection of DNA are mandatory.

Voluntary Surrender

The defendant has been detained without bail since arrest and is not a candidate for voluntary surrender. 18 U.S.C. § 3143(a)(2).

Recommendation

It is respectfully recommended that sentence in this case be imposed as follows:

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that Elizabeth Moreno is hereby committed to the Bureau of Prisons for a period of time served.

The defendant shall pay a special assessment of $100, which shall be due immediately. If incarcerated, payment shall begin under the Bureau of Prisons Inmate Financial Responsibility Program. Payments shall be made to the Clerk, U.S. District Court.

The Court finds the defendant does not have the ability to pay and orders the fine waived.

Upon release from imprisonment, the defendant shall be placed on supervised release for two years.

While on supervised release, the defendant shall comply with the standard conditions of supervision. The defendant shall comply with the following additional conditions:

If deported, you shall not re-enter the United States without legal authorization.

Respectfully submitted,

Chief U.S. Probation Officer

By: _____

Craig T. Doe
U.S. Probation Officer

Approved by:

_____

Mark T. Clark Date
Supervising U.S. Probation Officer

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ATLANTIS

UNITED STATES OF AMERICA	)	**MODIFIED PRESENTENCE INVESTIGATION REPORT**
	)	
v.	)	
	)	
Mark Trainor	)	**Docket: 05-CR-00311-001-KGG**

Prepared For: The Honorable Kelly G. Green
U.S. District Judge

Prepared By: Craig T. Doe
U.S. Probation Officer
(123) 111-1111

Assistant U.S. Attorney
Mr. Robert Prosecutor
United States Courthouse
Breaker Bay, Atlantis 00000-0000
(123) 111-1212

Defense Counsel
Mr. Arthur Defender (Appointed)
P.O. Box 1000
Breaker Bay, Atlantis 00000-1000
(123) 111-1313

Sentence Date: April 29, 2005

Offense: Making a Fraudulent Loan Application, 18 U.S.C. § 1014, a Class B felony. Up to 30 years imprisonment/$1,000,000 fine.

Release Status: Released on a personal recognizance bond on November 14, 2004.

Detainers: None

Co-defendants: None

Related Cases: None

Date Report Completed: April 4, 2005

Restrictions on Use and Redisclosure of Presentence Investigation Report. Disclosure of this presentence investigation report to the Federal Bureau of Prisons and redisclosure by the Bureau of Prisons is authorized by the United States District Court solely to assist administering the offender's prison sentence (i.e., classification, designation, programming, sentence calculation, pre-release planning, escape apprehension, prison disturbance response, sentence commutation, or pardon) and other limited purposes, including deportation proceedings and federal investigations directly related to terrorists activities. If this presentence investigation report is redisclosed by the Federal Bureau of Prisons upon completion of its sentence administration function, the report must be returned to the Federal Bureau of Prisons or destroyed. It is the policy of the federal judiciary and the Department of Justice that further redisclosure of the presentence investigation report is prohibited without the consent of the sentencing judge.

Presentence Report
Trainor, Mark

Identifying Data:

Place of Birth:	Newark, New Jersey
Date of Birth:	March 1, 1975
Age:	30
Race:	White, Non-Hispanic
Sex:	Male
SSN:	111-22-3333
FBI:	1111233A
USM:	10000-000
SID:	None
PACTS:	09999
Education:	Some College
Dependents:	None
Citizenship:	United States
Last Address:	1 Oak Street Breaker Bay, Atlantis
Aliases:	None

PART A—THE OFFENSE

Charge(s) and Conviction(s)

1. On February 18, 2005, the defendant pleaded guilty to a single-count information charging that on or about November 14, 2004, the defendant submitted a false loan application, a violation of 18 U.S.C. § 1014.

The Offense Conduct

2. According to records obtained from the government, on November 14, 2004, the defendant submitted an application to the Atlantis First Trust Bank for a loan in the amount of $25,000. On the application, the defendant falsely reported his monthly income as $4,000. The loan was approved and the funds were deposited into the defendant's Atlantis First Trust Bank account. When the defendant failed to make the required repayments, his application was reviewed and it was determined that he had not been employed as he claimed on his application. The defendant's account was frozen and $20,000 have been recovered by the bank.

Offense Level Computations

3. The guidelines in effect at the time of sentencing are applied pursuant to 18 U.S.C. § 3553(a)(4) and U.S.S.G. §1B1.11.

4. **Base Offense Level:** The guideline for a violation of 18 U.S.C. § 1014 is U.S.S.G. §2B1.1(a)(1). The Base Offense Level is 7. 7

5. **Specific Offense Characteristic:** Because the defendant intended to defraud $25,000 from the bank, the offense level is increased by 4 levels per U.S.S.G. §2B1.1(b)(1)(C). 4

6. **Victim-Related Adjustments:** None 0

7. **Adjustments for Role in the Offense:** None 0

8. **Adjustment for Obstruction of Justice:** None 0

9. **Adjusted Offense Level (Subtotal)** 11

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
236

10. **Adjustment for Acceptance of Responsibility:** Two levels are subtracted as the defendant clearly demonstrates acceptance of responsibility. §3E1.1(a). -2

11. **Total Offense Level:** 9

PART B—DEFENDANT'S CRIMINAL HISTORY

Juvenile Adjudications

12. None

Adult Convictions

13. None

Criminal History Computation

14. The defendant has no criminal history points, establishing a Criminal History Category I.

PART C—OFFENDER PERSONAL HISTORY

Personal and Family Data

15. The defendant is the only child born to Joseph Trainor, 64, a teacher, and Edna Maxwell, 62, a housewife. The defendant's parents reside in Newark, New Jersey. The defendant has resided in Breaker Bay for the past 10 years, having moved to the area to attend college. He discontinued his studies after two years, and has worked intermittently as a computer technician since then.

16. The defendant has not worked in the past eight months, and is currently being supported by his parents. Prior to that, the defendant worked as a consultant for Omegatronics, a software development firm in Breaker Bay. Following the company's completion of a major project, he was told that his services were no longer needed.

17. At the request of the probation officer, the defendant completed a personal financial statement. The defendant reported a positive net worth of approximately $1,000. His sole asset is a 2001 Honda Civic, with a fair market value of $6,000. The defendant reported approximately $5,000 in credit card debt. This was confirmed by a consumer credit report. The defendant receives no income, and all of his necessary monthly expenses, totaling approximately $1,500, are being paid for by his parents.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
237

PART D—SENTENCING OPTIONS

Custody

18. **Statutory Provisions:** The maximum term of imprisonment is 30 years. 18 U.S.C. § 1014.

19. **Guideline Provisions:** Based on a Total Offense Level of 9 and Criminal History Category of I, the guideline range for imprisonment is 4 to 10 months.

Supervised Release

20. **Statutory Provisions:** The court may impose a term of supervised release of not more than five years. 18 U.S.C. § 3583(b)(1).

21. **Guideline Provisions:** The authorized term of supervised release is at least three but not more than five years. U.S.S.G. § 5D1.2(a)(1). If a term of imprisonment of more than one year is imposed, the court must impose a term of supervised release. U.S.S.G. § 5D1.1(a).

Probation

22. **Statutory Provisions:** The defendant is ineligible for probation. 18 U.S.C. § 3561(a)(1).

23. **Guideline Provisions:** The defendant is ineligible for probation. U.S.S.G. §5B1.2(b)(1).

Fines

24. **Statutory Provisions:** The maximum fine is $1,000,000. 18 U.S.C. § 1014.

25. **Guideline Provisions:** The fine range is $1,000 to $10,000. U.S.S.G. §5E1.2(c)(3).

26. Subject to the defendant's ability to pay, the Court shall consider costs of imprisonment, probation, or supervised release. U.S.S.G. §5E1.2(d).

	Prison	Halfway House	Supervision
Costs Per Month:	$1,931.97	$1,590.66	$292.21

Special Assessments

27. **Statutory Provisions:** A special assessment of $100 is mandatory. 18 U.S.C. § 3013(a).

Restitution

28. **Statutory Provisions:** Restitution is mandatory. 18 U.S.C. § 3663A. An affidavit of loss submitted by the bank indicates that they were able to recoup all but $5,000 of the funds defrauded by the defendant. As such, restitution in the amount of $5,000 is owed to the Atlantis First Trust Bank, One Wall Street, Breaker Bay, Atlantis.

PART E. FACTORS THAT MAY WARRANT DEPARTURE

29. There are no factors concerning the offense or the offender that would warrant a sentence outside of the guideline range.

Respectfully submitted,

Chief U.S. Probation Officer

By: _____
Craig T. Doe
U.S. Probation Officer

Approved by:

_____
Mary T. Clark
Supervising U.S. Probation Officer

_____
Date

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
239

SENTENCING RECOMMENDATION

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ATLANTIS
UNITED STATES v. Mark Trainor, DOCKET 05-CR-00311-001-KGG

TOTAL OFFENSE LEVEL: **9**
CRIMINAL HISTORY CATEGORY: **I**

	Statutory Provisions	**Guideline Provisions**	**Plea Agreement Provisions**	**Recommended Sentence**
CUSTODY:	Up to 30 years	4 to 10 months	10 months	4 months
SUPERVISED RELEASE:	Up to 5 years	3 to 5 years	5 years	3 years
PROBATION:	N/A	N/A	N/A	N/A
FINE:	Up to $1,000,000	$1,000 to $10,000	None	None
RESTITUTION:	$5,000	$5,000	$5,000	$5,000
SPECIAL ASSESSMENT:	$100	$100	$100	$100

Justification

The defendant promptly pleaded guilty to filing a fraudulent loan application. The guideline calculations reflect the defendant's acceptance of responsibility and his placement in Criminal History Category I.

Considering all factors, an imprisonment sentence of four months, followed by three years of supervised release, is warranted to provide just punishment for the offense and to afford adequate deterrence to further criminal conduct.

Restitution in the amount of $5,000 is mandatory. Because the defendant does not have the means to pay a fine, it is recommended the fine be waived. The special assessment is mandatory pursuant to 18 U.S.C. § 3013(a). Pursuant to 18 U.S.C. §3583(d) the court shall order as an explicit condition of supervised release that the defendant cooperate in the collection of a DNA sample from the defendant.

Voluntary Surrender

It is recommended that the defendant be allowed to voluntarily surrender to serve any sentence of imprisonment ordered by the court. Following his initial appearance, the defendant was released on his own recognizance and has reported to all court hearings as required by the court.

Recommendation

It is respectfully recommended that sentence in this case be imposed as follows:

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that Mark Trainor is hereby committed to the Bureau of Prisons for four months.

The defendant shall pay a special assessment of $100, which shall be due immediately. If incarcerated, payment shall begin under the Bureau of Prisons Inmate Financial Responsibility Program. Payments shall be made to the Clerk, U.S. District Court.

The defendant shall also pay restitution in the sum of $5,000 to the Atlantis First Trust Bank. Payment is due immediately. The defendant is ordered to pay the greater of 10% of his net monthly earnings or $25.

The Court finds the defendant does not have the ability to pay and orders the fine waived.

Upon release from imprisonment, the defendant shall be placed on supervised release for three years.

While on supervised release, the defendant shall comply with the standard conditions of supervision.

Respectfully submitted,

Chief U.S. Probation Officer

By: _____
Craig T. Doe
U.S. Probation Officer

Approved by:

_____ _____
Mary T. Clark Date
Supervising U.S. Probation Officer

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
241

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ATLANTIS

UNITED STATES OF AMERICA	)	**MODIFIED PRESENTENCE INVESTIGATION REPORT**
	)	
v.	)	
	)	
Christian Sanchez	)	**Docket: 05-CR-00211-001-KGG**

Prepared For: The Honorable Kelly G. Green
U.S. District Judge

Prepared By: Craig T. Doe
U.S. Probation Officer
(123) 111-1111

Assistant U.S. Attorney
Mr. Robert Prosecutor
United States Courthouse
Breaker Bay, Atlantis 00000-0000
(123) 111-1212

Defense Counsel
Mr. Arthur Defender (Appointed)
P.O. Box 1000
Breaker Bay, Atlantis 00000-1000
(123) 111-1313

Sentence Date: April 29, 2005

Offense: Re-entry After Deportation, 8 USC § 1326(a), a Class E felony. Up to two years imprisonment/$250,000 fine.

Release Status: Detained without bail since January 14, 2005.

Detainers: Immigration

Co-defendants: None

Related Cases: None

Date Report Completed: April 4, 2005

Restrictions on Use and Redisclosure of Presentence Investigation Report. Disclosure of this presentence investigation report to the Federal Bureau of Prisons and redisclosure by the Bureau of Prisons is authorized by the United States District Court solely to assist administering the offender's prison sentence (i.e., classification, designation, programming, sentence calculation, pre-release planning, escape apprehension, prison disturbance response, sentence commutation, or pardon) and other limited purposes, including deportation proceedings and federal investigations directly related to terrorists activities. If this presentence investigation report is redisclosed by the Federal Bureau of Prisons upon completion of its sentence administration function, the report must be returned to the Federal Bureau of Prisons or destroyed. It is the policy of the federal judiciary and the Department of Justice that further redisclosure of the presentence investigation report is prohibited without the consent of the sentencing judge.

Identifying Data:

Place of Birth:	Guaymas, Sonora, Mexico
Date of Birth:	January 10, 1982
Race:	White, Hispanic
Sex:	Male
SSN:	None
FBI:	1112233A
USM:	Unknown
SID:	Arizona: AZ12345678
Other ID No.:	Alien Registration: A090 000 900
PACTS:	08888
Education:	13 years
Dependents:	Two (girlfriend and child)
Citizenship:	Mexico
Last Address:	Colonia Indeus Citahuis, No. 31 Navojoa, Sonora, Mexico
Names on Record:	Sanchez, Christian; BORRON, Cristian Lugo; BURBON-LUGO, Cristian; LUGO, Cristian; LUGO, Cristian Canek; BORBON, Cristian Canek

PART A—THE OFFENSE

Charge(s) and Conviction(s)

1. On February 18, 2005, the defendant pleaded guilty to a single-count indictment charging that on or about January 14, 2005, the defendant entered and was found in the United States after having been deported, a violation of 8 U.S.C. § 1326(a).

2. Pursuant to Rule 11(c)(1)(C) and §5K3.1, the parties stipulate to a sentencing range of zero to six months based on a Criminal History Category I. The government may withdraw from the agreement if it is discovered the defendant has a prior felony or aggravated felony conviction. The defendant waives rights to appeal the judgment and sentence if sentenced in accordance with the agreement.

The Offense Conduct

3. On January 14, 2005, a Border Patrol agent detected foot sign of several individuals near Naco, Arizona. After following the tracks, the agent encountered approximately 26 individuals, who were attempting to conceal themselves behind some brush. The individuals, including the defendant, admitted being citizens of Mexico and being in the United States illegally.

4. Further investigation revealed the defendant had five prior removals from the United States in 2004. A formal order of removal or deportation was signed by an immigration judge on December 17, 2004, and the defendant was removed to Mexico.

Offense Level Computations

5. The guidelines in effect at the time of sentencing are applied pursuant to 18 USC § 3553(a)(4) and §1B1.11.

6. **Base Offense Level:** The guideline for a violation of 8 USC § 1326 is §2L1.2(a). The Base Offense Level is 8. 8

7. **Specific Offense Characteristic:** None 0

8. **Victim-Related Adjustments:** None 0

9. **Adjustments for Role in the Offense:** None 0

10. **Adjustment for Obstruction of Justice:** None 0

11. **Adjusted Offense Level (Subtotal)** 8

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
244

12. **Adjustment for Acceptance of Responsibility:** Two levels are subtracted as the defendant clearly demonstrates acceptance of responsibility. §3E1.1(a). -2

13. **Total Offense Level:** 6

PART B—DEFENDANT'S CRIMINAL HISTORY

Juvenile Adjudications

14. None

Adult Convictions

	Date of Arrest	Conviction/Court	Date/Sentence	Guideline/Points
15.	12/12/2004 (Age 22)	Illegal Entry (misdemeanor) 8 U.S.C. § 1325; U.S. District Court, Tucson, Arizona, Docket 04-6185M-P	12/15/2004: Time served	§4A1.1(c) 1

The defendant was represented by an attorney. According to immigration records and the defendant's automated criminal record, an immigration judge ordered the defendant removed from the country on December 17, 2004.

Criminal History Computation

16. The defendant's criminal history points total one, establishing a Criminal History Category I.

Other Criminal Conduct

17. According to immigration records, the defendant had four additional removals from the United States during 2004. Immigration records also noted that on August 9, 2004, the defendant was the driver of a vehicle seized for transporting 11 undocumented illegal aliens.

PART C—OFFENDER PERSONAL HISTORY

Personal and Family Data

18. The defendant is one of three children born to Jesus Sanchez, 44, a teacher, and Irma Lugo-Ramos, 42, a housewife. The defendant's parents and siblings, Solaya, 22, a student, and Jesus, 16, a student, reside in Navojoa, Sonora. The defendant has been involved in a relationship with Mariella Lopez, 22, for three years. They have a son, Cristian, 2. His girlfriend and child reside with his parents in Navojoa.

19. The defendant reported he has lived in Navojoa for most of his life. He stated he had previously traveled to Phoenix on seven occasions and that he stayed there for no more than one month each time. Upon release, the defendant intends to return to his family in Navojoa. According to immigration records, an immigration judge ordered the defendant removed from the United States on December 17, 2004.

PART D—SENTENCING OPTIONS

Custody

20. **Statutory Provisions:** The maximum term of imprisonment is 2 years. 8 U.S.C. § 1326(a).

21. **Guideline Provisions:** Based on a Total Offense Level of 6 and Criminal History Category of I, the guideline range for imprisonment is 0 to 6 months.

Supervised Release

22. **Statutory Provisions:** The court may impose a term of supervised release of not more than 1 year. 18 U.S.C. § 3583(b)(3).

23. **Guideline Provisions:** The authorized term of supervised release is one year. U.S.S.G. § 5D1.2(a)(3). If a term of imprisonment of more than one year is imposed, the court must impose a term of supervised release. U.S.S.G. § 5D1.1(a).

Probation

24. **Statutory Provisions:** The authorized term of probation is not less than one nor more than five years. 18 U.S.C. § 3561(c)(1).

25. **Guideline Provisions:** The authorized term of probation is at least one but no more than five years. U.S.S.G. §5B1.2(a)(1).

Fines

26. **Statutory Provisions:** The maximum fine is $250,000. 18 U.S.C. § 3571.

27. **Guideline Provisions:** The fine range is $500 to $5,000. U.S.S.G. §5E1.2(c)(3).

28. Subject to the defendant's ability to pay, the Court shall consider costs of imprisonment, probation, or supervised release. U.S.S.G. §5E1.2(d).

	Prison	Halfway House	Supervision
Costs Per Month:	$1,931.97	$1,590.66	$292.21

Special Assessments

29. **Statutory Provisions:** A special assessment of $100 is mandatory. 18 U.S.C. § 3013(a).

Restitution

30. Restitution is not an issue.

PART E—CIRCUMSTANCES THAT MAY WARRANT DEPARTURE FROM USSC GUIDELINES

31. Presentation of information in this section does not necessarily constitute a recommendation for a departure from the advisory guideline range.

32. Pursuant to §5K3.1, upon motion of the government, the Court may depart downward not more than four levels pursuant to an early disposition program authorized by the Attorney General of the United States and the United States Attorney for the District of Arizona.

Respectfully submitted,

Chief U.S. Probation Officer

By: _____
Craig T. Doe
U.S. Probation Officer

Approved by:

_____
Mary T. Clark
Supervising U.S. Probation Officer

_____
Date

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
247

SENTENCING RECOMMENDATION

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ATLANTIS
UNITED STATES v. Christian Sanchez, DOCKET 05-CR-00211-001-KGG

TOTAL OFFENSE LEVEL: **6**
CRIMINAL HISTORY CATEGORY: **I**

	Statutory Provisions	Guideline Provisions	Plea Agreement Provisions	Recommended Sentence
CUSTODY:	Up to 2 years	0 to 6 months	0 to 6 months	6 months
SUPERVISED RELEASE:	Up to 1 year	1 year		1 year
PROBATION:	1 to 5 years	1 to 5 years		
FINE:	Up to $250,000	$500 to $5,000		Waive
RESTITUTION:	Not an issue	Not an issue		Not an issue
SPECIAL ASSESSMENT:	$100	$100		$100

Justification

The defendant pleaded guilty to re-entry after deportation. The guideline calculations reflect the defendant's acceptance of responsibility and his placement in Criminal History Category I.

Unaccounted-for aggravating factors include the defendant's five prior removals from the country. Although no charges were filed, immigration records reflected the defendant was a driver of a vehicle seized for transporting 11 illegal aliens. No unaccounted-for mitigating factors have been identified.

Considering all factors, an imprisonment sentence of six months, followed by one year of supervised release, is warranted to provide just punishment for the offense and to afford adequate deterrence to further criminal conduct.

In light of his pending removal from the United States, a special condition of supervised release is recommended ordering the defendant not to re-enter the United States without legal authorization. Because the defendant does not have the means to pay a fine, it is recommended the fine be waived. The special assessment is mandatory pursuant to 18 U.S.C. § 3013(a). Pursuant to 18 U.S.C. §3583(d) the court shall order as an explicit condition of supervised release, that the defendant shall cooperate in the collection of a DNA sample from the defendant.

Voluntary Surrender

The defendant has been detained without bail since arrest and is not a candidate for voluntary surrender. 18 U.S.C. § 3143(a)(2).

Recommendation

It is respectfully recommended that sentence in this case be imposed as follows:

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that Cristian Sanchez is hereby committed to the Bureau of Prisons for six months.

The defendant shall pay a special assessment of $100, which shall be due immediately. If incarcerated, payment shall begin under the Bureau of Prisons Inmate Financial Responsibility Program. Payments shall be made to the Clerk, U.S. District Court.

The Court finds the defendant does not have the ability to pay and orders the fine waived.

Upon release from imprisonment, the defendant shall be placed on supervised release for one year.

While on supervised release, the defendant shall comply with the standard conditions of supervision. The defendant shall comply with the following additional conditions:

You shall not re-enter the United States without legal authorization.

Respectfully submitted,

Chief U.S. Probation Officer

By: _____
Craig T. Doe
U.S. Probation Officer

Approved by:

_____ _____
Mary T. Clark Date
Supervising U.S. Probation Officer

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
249

UNITED STATES PROBATION OFFICE
WESTERN DISTRICT OF ATLANTIS
Memorandum

DATE: April 28, 2005

FROM: Craig T. Doe, U.S. Probation Officer

THRU: Mary T. Clark, Supervising U.S. Probation Officer

SUBJECT: U.S. v Donald Reese, 05-CR-1000-KGG

TO: Honorable Kelly G. Green, U.S. District Judge

On April 15, the defendant appeared before Magistrate Judge Mark Lerner and pleaded guilty to a single-count information charging the defendant with theft of mail, in violation of 18 U.S.C. § 1708. Following the entry of the plea, Magistrate Judge Lerner ordered the probation office to prepare a modified presentence investigation report.

A search through local criminal court records has revealed several prior arrests that the court was not previously made aware of. Among the defendant's prior arrests is a conviction for assault for which he was sentenced to two years of probation. As a special condition, the defendant was ordered to participate in an anger-management program. According to local probation officials, due to the defendant's erratic behavior during these sessions, he was referred for a mental health assessment. The defendant has since been diagnosed with antisocial personality disorder and is under the care of a mental health professional. It appears that neither this conviction nor the defendant's mental health condition were known to the court when the defendant pleaded guilty.

Because a modified presentence investigation report was ordered, the probation officer has not yet fully investigated these issues. Based on these developments, we are requesting guidance from the court on how to proceed. Please feel free to contact us if you have any questions.

_____ Proceed with modified presentence investigation report

_____ Proceed with full presentence investigation report

_____ Proceed according to the following instructions:_____

_____

_____

So Ordered:_____ Date:_____
U.S. District Judge

Appendix D

Supplemental Report to the Bureau of Prisons
and
Treaty Transfer Postsentence Reports

Appendix D:
Post-Sentence Reports:
The Supplemental Report to the Bureau of Prisons and the Treaty Transfer Post-Sentence Report

While the focus of this document has been on the probation officer's role at the presentence stage, this section addresses those investigations and reports prepared by an officer after the sentence has already been imposed. In these reports, the focus is less on the court's need for information, and more on need for information by corrections and community corrections officials.

I. Supplemental Report to the Federal Bureau of Prisons

The probation officer prepares a supplemental report to the Federal Bureau of Prisons following sentencing when a presentence report was not prepared. Rule 32 provides that officers must conduct a presentence investigation and submit a report to the court unless:

1. the court finds that the information in the record enables it to exercise its sentencing authority meaningfully under 18 U.S.C. § 3553; and
2. the court explains this finding on the record.

The officer prepares a supplemental report to the Federal Bureau of Prisons for any defendant who did not receive a presentence report, received a commitment to the Bureau of Prisons, and has at least nine months imprisonment remaining to be served. The supplemental report to the Federal Bureau of Prisons helps the Bureau in classification and designation procedures.

Sometimes a presentence report is waived, the defendant is sentenced to probation or a term of imprisonment of less than nine months, and background information is needed for supervision purposes. In such cases, probation officers collect the same information using the Form 1 and record it in the opening chronological record of the file. Ideally, the opening chronological record includes only information needed to supervise the individual. If supervision is transferred, the officer forwards this information to the receiving district.

Contents of the Supplemental Report

The Bureau of Prisons has developed a classification system designed to designate inmates at the least restrictive custodial level. The designation instrument relies heavily on information provided by the probation office, particularly the circumstances of the offense and the offender's role in it. An inmate's eventual consideration for halfway house placement or other less restrictive settings may be negatively affected if critical offense information is missing. According to the Bureau of Prisons, the critical elements necessary for classification and screening purposes are the following: the offender's name; date of birth; social security number; proof of citizenship; current offense docket number; offense conduct, including the offender's role; juvenile adjudications; criminal

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
252

convictions; pending charges; gang affiliation; personal and family data; physical condition; mental and emotional health; substance abuse history; education; and financial condition.

The report contains a summary of any significant findings made by the court (e.g., a firearm was possessed during the offense, or the defendant was a minimal participant). These findings will also be relied upon by the Bureau of Prisons. Although a sentence has already been imposed, the probation officer still prepares a guideline calculation. The officer will adopt any findings made by the court at sentencing. The calculation is helpful to the Bureau of Prisons and will be needed should the defendant be returned to court for a violation of any term of supervision imposed.

II. Treaty Transfer Postsentence Report

Probation officers prepare treaty transfer postsentence reports for American citizens who have been imprisoned in foreign countries and have been returned to the United States under treaty agreements. This procedure is sometimes known as the prison exchange program. Title 18 U.S.C. § 4106, which went into effect October 1977, provides that upon receipt of an offender from a foreign country, the Attorney General shall assign the transferee to the U.S. Parole Commission. Following assignment, the Parole Commission determines a release date, sets the term and conditions of parole, and maintains jurisdiction throughout the parole period.

When the Sentencing Reform Act of 1984 took effect, treaty cases in which the offense took place on or after November 1, 1987, became subject to supervised release rather than parole. Responsibility to supervise foreign offenders on supervised release became the responsibility of district courts, as codified in 18 U.S.C. § 4106A.

When a citizen imprisoned in a foreign country petitions for a transfer, a U.S. magistrate conducts a Verification of Consent to Transfer hearing in the country of conviction. Upon entry to the United States, it is the Parole Commission, not the district court, that initially has authority over the offender. A U.S. probation officer, in the district where the transferee is incarcerated, prepares a postsentence report and submits it to the Parole Commission. The Parole Commission determines a release date, the term of supervised release with appropriate conditions, and the district of the offender's residence.

Special Features of the Report

The officer prepares the treaty transfer postsentence report using the guideline presentence report format. Because the Parole Commission will resentence the offender under the guidelines, all of the sections of the report, including the recommendation, apply.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
253

Title 18 § 4106A(b)(3) provides:

> During the supervised release of an offender under this subsection, the United States district court for the *district in which the offender resides* shall supervise the offender. (emphasis added)

Since the district court has the responsibility to supervise the treaty transferees, jurisdiction of the case must be transferred from the Parole Commission to the court where the offender will reside. In most instances, the probation office preparing the postsentence report is the office located at the offender's port of entry, not the offender's district of residence. Because many treaty transferees are immediately released to a term of supervised release, the postsentence report incorporates the offender's release plan. Essentially, the officer conducts a prerelease investigation as part of the postsentence report. At the end of Part C. Offender Characteristics, the treaty transfer postsentence report contains a subheading "Proposed Release Plan."

Proposed Release Plan

In the Proposed Release Plan section of the report, the officer incorporates the results of the prerelease investigation. The officer reports the address and telephone number of the offender's proposed residence and the identity of individuals residing at that address. The officer includes the offender's employment plans and any other relevant release planning information. To expedite the transfer process at the Parole Commission, the report identifies the name of the probation officer in the district of residence that has been involved in the case, the office telephone number, and, when applicable, the branch office where the officer is located.

Source of Offense Conduct Information

When a prisoner is transferred from a foreign country, all of the foreign documents pertaining to the case are provided to the Bureau of Prisons. Officers request copies of all foreign documents transferred with the individual concerning the offense and conviction.

Sentencing Options

The sentencing options pertaining to probation and the impact of the plea agreement are not relevant to treaty transfer cases. Fines and restitution are applicable if the sentence imposed in the foreign country included either or both.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

Statutory provisions pertaining to supervised release in treaty transfer cases include:

1. The U.S. Parole Commission shall, without unnecessary delay, determine a release date and a period and conditions of supervised release for an offender transferred to the United States to serve a sentence of imprisonment, as though the offender were convicted in the United States District Court of a similar offense pursuant to 18 U.S.C. § 4106A(b)(1)(A).

2. In accordance with 18 U.S.C. § 4106(b)(1)(C), the combined periods of imprisonment and supervised release that result from such determination shall not exceed the term of imprisonment imposed by the foreign court on the defendant.

3. The United States District Court for the district in which the offender resides shall supervise the offender during the supervised release period, pursuant to 18 U.S.C. § 4106A(b)(3).

Recommendation

Since the defendant has been sentenced, a recommendation as to sentencing is inapplicable; however, the United States Parole Commission requests the probation officer's recommendation regarding special conditions of supervision.

Addendum

In treaty transfer cases, addendums are not typically included. An addendum is appropriate when the probation officer has information regarding objections by the defense attorney pertaining to the officer's application of the guidelines.

Transfer Procedures

In cooperation with the Administrative Office of the U.S. Courts, the Parole Commission developed a form, "Transfer of Jurisdiction for Supervised Releasees Transferred Pursuant to Treaty," labeled as Special Transferee Form 8. This form is modeled after Probation Form 22, "Transfer of Jurisdiction," which is used when a probation case is transferred from one district court to another pursuant to 18 U.S.C. § 3605.

As soon as the Parole Commission establishes an offender's release date, term of supervised release, supervision conditions, and the district of residence, it will forward the Transfer Treaty Determination and Special Transferee Form 8 to the chief probation officer. The probation office makes copies of the documents to establish a file and submits the original documents to the clerk of the court for docketing. The clerk establishes a criminal docket number for the case and files it in the same manner as a transfer of jurisdiction over a probationer or person on supervised release pursuant to 18 U.S.C. § 3605.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
255

Distribution of the Supplemental and Treaty Transfer Postsentence Reports

The officer places the original supplemental report to the Federal Bureau of Prisons in the probation file and forwards a copy to the Bureau of Prisons and the United States Sentencing Commission. In a treaty transfer postsentence case, the officer forwards the original report to the United States Parole Commission, along with copies of all of the foreign documents pertaining to the case. The foreign documents are necessary if the findings of the Parole Commission are appealed.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

Appendix E

Presentence Report for an Organizational Defendant

Appendix E:
Presentence Report for an Organizational Defendant

The presentence report designed for the sentencing of an individual defendant does not easily accommodate the application of the guidelines for organizations. Since organizations are not subject to the same sanctions as an individual defendant, the structure of the guidelines for organizations is different. This chapter provides a format for a presentence report on an organization that is intended to provide the factual information necessary for application of the guidelines for organizations and to assist the court in making an informed sentencing decision.

Chapter III has two distinct sections. The first section presents an outline of the format and content of the presentence report for an organization. The elements of information included in each section of the report are outlined with the rationale for organizing the report in this manner. The outline is intended as a reference and checklist for the required content of the report. Figure 1 provides a topical outline of the sections of the report with the pertinent subheadings.

Following the outline, the section entitled "Conducting a Financial Investigation of an Organization" provides a discussion of techniques for gathering information about organizations, focusing primarily on collection and analysis of financial data. Since the principal sanctions available to the court for sentencing an organization are fines and restitution, it is important that the probation officer provide a complete and accurate analysis of the organization's financial profile. Determining an organization's ability to pay financial sanctions requires a process of analysis that differs from the analysis of an individual's ability to pay. A step-by-step discussion of the process is provided in this chapter.

Outline and Contents of the Organizational Presentence Report

Face Sheet

* Information related to the sentencing hearing includes:
    * Court of jurisdiction
    * Identification of the defendant
    * Sentencing Judge
    * U.S. Probation Officer
    * Prosecutor
    * Defense Counsel
    * Sentencing date

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
258

Presentence Report Outline

THE FACE SHEET

PART A. THE OFFENSE

Charge(s) and Conviction(s)
The Offense Conduct
Victim Impact
Offense Behavior Not Part of Relevant Conduct
Obstruction of Justice
Self Reporting/Cooperation/Acceptance of Responsibility

PART B. PRIOR HISTORY OF MISCONDUCT

Similar Misconduct
Other Misconduct
Pending Charges

PART C. ORGANIZATION CHARACTERISTICS

Organizational Data
Effective Compliance and Ethics Program
Financial Condition: Ability to Pay

PART D. GUIDELINE APPLICATION

Offense Level Computation
Base Fine Calculation
Culpability Score Computation
Fine Range Computation
Fine Adjustments

PART E. SENTENCING OPTIONS

Restitution
Fines
Probation
Impact of the Plea Agreement

PART F. FACTORS THAT MAY WARRANT DEPARTURE

ADDENDUM TO THE PRESENTENCE REPORT

RECOMMENDATION

Figure 1

*

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
259

Offense data include:

* Offense(s) of conviction
* Maximum Statutory penalties (fine & probation)

* Codefendants identified by name and docket number

* Related Cases identified by name and docket number

* Dates of preparation of the report and revision of the report

* The second page of the face sheet contains identifying data:

  * Federal employer identification number (tax identification number)
  * Legal address
  * Other organizational names
  * Organization representative (spokesperson)

Rationale. -- The face sheet contains significant court-related information for ease of reference. The second page contains data provided for the use of the sentencing judge, probation officer, and U.S. Sentencing Commission. The "appropriate judge or officer" is required to submit a written report of the sentence to the U.S. Sentencing Commission. The report includes the offense for which the sentence is imposed as well as other factors relevant to the guidelines. 28 U.S.C. § 994(w).[1] Accordingly, submission of copies of the presentence report, judgment, statement of reasons, and written plea agreement (if available) to the Commission will meet these statutory obligations.

Part A. The Offense

Charge(s) and Conviction(s)

* Identify specific charge(s) filed against the defendant and any co-defendant(s) in the indictment, information, or complaint.

* Summarize any superseding indictment(s) or information(s).

[1] "...The Commission shall assure that the guidelines and policy statements are entirely neutral as to race, sex, national origin, creed, and socioeconomic status of offenders." 28 U.S.C. § 994(d).

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
260

* List the charge(s) of conviction and date(s) of the offense(s).

* Report the method(s) of conviction (plea, jury verdict, court verdict, etc.) and date.

* Identify individual entering plea/accepting verdict on the organization's behalf.

* Provide a synopsis of the plea agreement (if any).

* Report the status of the co-defendant(s).

* Report the status of related cases, including individuals.

Rationale. -- This section of the report provides a brief chronological history of the prosecution of the case from the filing of the initial charges to the referral to the probation office for a presentence report.

The Offense Conduct

* Provide a concise but complete description, in chronological order, using significant dates as points of reference, of the organization's conduct and the conduct of codefendants or other participants during the offense of conviction, including planning, preparation for the offense, and the circumstances leading to the detection of the criminal conduct.

* Present all information about the offense that is relevant to the application of the sentencing guidelines, including the facts pertaining to relevant conduct, specific offense characteristics, and appropriate guideline adjustments. In cases involving multiple participants, describe each participant's conduct and role in the offense.

* Identify the number of employees directly involved in the offense and the degree of managerial involvement. Managerial involvement includes: facts regarding an individual(s) within high-level personnel who participated in, condoned, or was willfully ignorant of the offense; or pervasive tolerance of the offense by substantial authority personnel throughout the organization or unit of the organization (culpability score factors).

* Describe any violation of a judicial order or injunction that occurred as a result of the commission of the offense (culpability score factor).

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
261

* Note any other details of the offense behavior that may assist in understanding the offense.

* If the defendant is a criminal purpose organization, include facts regarding the history and characteristics of the organization supporting this guideline determination.

Rationale. -- The description of the offense in this section of the report provides the court with the factual basis for application of the sentencing guidelines. The details pertaining to the offense(s) of conviction and all relevant conduct are included. The facts supporting determination of the base offense level, any specific offense characteristics or adjustments, and the culpability score factors are addressed. This section also provides the facts that support application of the guideline provision for Criminal Purpose Organizations. Any details that will assist the court in understanding the offense conduct are included so that the court will be able to make findings for the guideline application. The description of the offense will also assist the court in identifying factors that may be considered grounds for departure.

Victim Impact

* Report all consequences of the offense conduct affecting any identifiable victim or the community.

* Provide an assessment of the financial, social, psychological, and medical impact upon any individual victim of the offense.

* Report any financial loss or impact caused by the conduct in the offense.

* Describe the status of any related civil suits filed by victims that are pending or have been settled.

* Report any remedial orders for corrective action that have been issued to the organization, including judicial, administrative, or civil orders.

Rationale. -- Rule 32(c) of the Federal Rules of Criminal Procedure requires that the presentence report address the consequences of the offense on any victim. By furnishing an account of this information in a separate section of the report, it is intended that the full impact on the victim(s) will be emphasized, regardless of whether the information affects guideline application. The status of civil suits and administrative actions is important in assessing the victim impact of organizational offenses.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
262

Offense Behavior Not Part of Relevant Conduct (if applicable)

* Describe criminal behavior related to the offense that is not considered relevant conduct, as defined by the guidelines, for guideline application.

Rationale. -- In some cases, the offense behavior of the count(s) to be dismissed is not considered part of relevant conduct (as defined by the guidelines). Since such behavior is not part of relevant conduct and is not included in the guideline application, the criminal conduct is included in this section rather than in The Offense Conduct. Discussion of the facts in this section makes it clear to the court that the conduct is not captured within the guideline application. For example, an organization pled guilty to one count of bid rigging; a count alleging tax evasion is to be dismissed. The conduct in the tax evasion would not be relevant conduct to the bid rigging conviction and would be presented in this section. Presentation of the information in this manner will assist the court in evaluating a plea agreement. There may also be instances in which related offense behavior that is not part of relevant conduct has not been included in the criminal charges. If sufficient evidence is present to establish that the conduct took place, it may be included in this section.

Obstruction of Justice

* Describe any efforts by the defendant to impede the investigation, prosecution, or sentencing of this case (culpability score factor).

Rationale. -- This guideline adjustment is separated from The Offense Conduct because an assessment of the organization's obstruction conduct usually focuses on behavior occurring after law enforcement authorities have initiated an investigation. In general, evaluation of obstruction of justice is distinct from consideration of the offense conduct.

Self Reporting, Cooperation, and Acceptance of Responsibility

* Identify whether or not the organization reported the offense to appropriate governmental authorities. Address whether the self reporting took place prior to an imminent threat of disclosure or government investigation. (culpability score factor)

* Identify conduct, or lack thereof, demonstrating that the organizational defendant fully cooperated in the investigation and demonstrating a recognition and acceptance of responsibility for its criminal conduct (culpability score factor)

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
263

Rationale. -- In the same manner as the adjustment for obstruction of justice, this guideline adjustment is distinguished from The Offense Conduct because an assessment of the defendant's self reporting, cooperation and acceptance of responsibility usually focuses on behavior occurring after law enforcement authorities have initiated an investigation or have filed criminal charges. In general, evaluation of these areas entails an assessment distinct from the presentation of the offense conduct.

Part B. Prior History of Misconduct

Similar Misconduct

* List all similar incidents of misconduct, including criminal, civil, and administrative adjudications.

* For each incident of similar misconduct list: the date of the charges (criminal, civil, or administrative charges); the charges of conviction or charges sustained; for criminal and civil cases list the date and court with the docket number; for administrative adjudications list the date of the action and the case identification number; for all actions, report the sentence imposed or action taken; report all pending matters that have been adjudicated but are awaiting disposition. Display applicable culpability score points (including zero).

* Provide a brief description of the behavior underlying each incident of misconduct.

* In criminal actions, address the status of representation of counsel.

* If supervised on probation, describe the organization's performance.

* Report probation revocations in the same entry as the original conviction or misconduct.

Rationale. -- Identification of similar misconduct with the dates of action facilitates application of the prior history portion of the culpability score.

Other Misconduct

* List all other incidents of misconduct (that are not similar to the instant offense), including criminal, civil, and administrative adjudications.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
264

* For each incident of misconduct list: the date of the charges (criminal, civil, or administrative charges); the charges of conviction or charges sustained; for criminal and civil cases list the date and court with the docket number; for administrative adjudications list the date of the action and the case identification number; for all actions, report the sentence imposed or action taken; report all pending matters that have been adjudicated but are awaiting disposition.

* Provide a brief description of the behavior underlying each incident of misconduct.

* In criminal actions, address the status of representation of counsel.

* If supervised on probation, describe the organization's performance.

* Report probation revocations in the same entry as the original conviction or misconduct.

Rationale. -- Identification of prior misconduct that is dissimilar to the instant offense may be considered by the court as a factor that may warrant departure.

Pending Charges

* Describe the status of any pending criminal, civil, or administrative charges.

Rationale. -- Identification of pending charges alleging misconduct provides facts that the court may consider in determining a sentence within the range or whether to depart and to what extent. Of particular importance, the court should be aware of pending civil cases that parallel the instant case in order to consider the potential for remedial orders, restitution, and other financial matters.

Part C. Organizational Characteristics

Organizational Data

Organizational data should include as much information as possible regarding the following:

* When the organization was established or incorporated.

* The location(s) of the business and description of the physical facilities.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
265

* The type of organization: public corporation; closely held corporation; subchapter S corporation; partnership; association; union; trust; non-profit organization, etc.

* Identification of the owners of the organization and percentage of ownership.

* Purpose of the organization and/or the nature of the business (including criminal purpose organization, if applicable).

* General structure of the organization, including the number of employees, the hierarchical structure of the management, whether there are company subsidiaries or separately managed lines of business, and any history of acquisitions of other businesses and reorganizations.

* Describe the present status of the organization in view of the criminal action, including:

  - impact of public knowledge of the offense on the organization's business or activities;

  - impact on the stock price;

  - debarment proceedings;

  - whether the organization is defunct;

  - projections of organizational recovery.

Rationale. -- Information regarding the history, growth, and future of the organization is of assistance to the court in applying the guidelines and in selecting appropriate sentencing options, particularly in determining the need for probation supervision as well as the length of the term and appropriate conditions. Such information is relevant in determining the defendant's ability to pay financial sanctions.

Effective Compliance and Ethics Program

* Describe the organization's program to prevent and/or detect misconduct and the date of the policy, or the lack thereof.

* Describe what, if any, efforts were taken to prevent and detect criminal conduct and promote an organizational culture that encouraged ethical conduct and a commitment to compliance with the law.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
266

*

Rationale. -- Inclusion of the information in this section enables application of the culpability score factor for Effective Compliance and Ethics Program in cases in which the fine guidelines apply. In cases in which the fine guidelines do not apply, it may also be helpful to the court in analyzing whether the organization had an effective compliance and ethics program at the time of the offense. In addition, this information may be helpful in setting conditions of any term of probation ordered.

Financial Condition: Ability to Pay

* Report the organization's assets, liabilities, equity, income, expenses, and the source of the information being reported.

* Analyze the organization's ability to make a lump-sum restitution or fine payment and the organization's ability to make installment restitution or fine payments.

Rationale. -- A fine is the primary sanction for an organizational defendant. Payment of a fine and restitution are subject to the organizational defendant's ability to pay. Presentation of the organization's financial status is critical to provide the factual basis for the court's finding as to the organization's ability to pay financial sanctions.

Part D. Guideline Application

* Identify the edition of the *Guidelines Manual* used to apply the guidelines.

* Using U.S.S.G. §8C2.1, determine whether counts are excluded from the fine provisions at §§8C2.2 - 8C2.9. If the guideline for the offense is not listed in §8C2.1, the Commission has not promulgated guidelines for setting fines for those offenses. For such offenses, do not apply §§8C2.2 - 8C2.9, and instead apply §8C2.10. Even if the offense is not listed in §8C2.10 and those fine provisions do not apply, the other sections of Chapter Eight are applicable (e.g., Probation)

* Identify whether there is an agreement regarding the use of certain information pursuant to U.S.S.G. §1B1.8.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
267

* If there are multiple convictions, describe the factual basis for grouping decisions and cite the grouping rule(s). The explanation for grouping counts may be addressed before display of the application or immediately before the multiple count adjustment, whichever placement, given the facts of the case, will be more helpful in understanding the application.

* Identify the Chapter Two guideline that determines the base offense level for each count or group of counts.

* Display specific offense characteristics that apply to each count or group, and summarize the factual basis for resulting increases or decreases in the base offense level.

* Apply any special instructions for base fine calculation within Chapter Two.

* Display the Offense Level Computation and summarize the factual basis for:

  Base Offense Level
  Specific Offense Characteristics
  Total Offense Level

* Provide the base fine calculation by identifying:

  Fine Table Amount
  Pecuniary gain
  Pecuniary loss
  Apply Chapter Two special instructions, if applicable
  Base Fine

* Determine the Culpability Score Computation by displaying the culpability score factors and summarize the factual basis for the resulting increases or decreases in the base score for the factors:

  Starting Culpability Score (See 8C2.5(a))
  Involvement/Tolerance
  Prior History
  Violation of an Order
  Obstruction of Justice
  Effective Compliance and Ethics Program
  Self Reporting/Cooperation/Acceptance of Responsibility

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

Total Culpability Score

* Display the fine range computation stating:

  Based on a culpability score of *** the minimum multiplier is *** and the maximum multiplier is ***. Given the base fine of ***, the guideline fine range is **** to ****.

* Identify any applicable fine adjustments with a summary of the factual basis for:

  Disgorgement
  Fine Offset

* Indicate whether the organization fits the criteria for being a Criminal Purpose Organization. The subheading for Criminal Purpose Organization appears in every report. If the provision applies, the officer provides a synopsis of the facts and displays the net assets as defined in Application Note 1 of U.S.S.G. § 8C1.1. If the provision does not apply, display "not applicable" or N/A.

Rationale. -- This section presents the probation officer's application of the guidelines. A short synopsis of the facts underlying each application is included to provide tentative factual findings for the court. The provision for Criminal Purpose Organization is addressed in every report for two reasons: it communicates to the court that the provision has been considered by the officer, and, if the officer has applied the provision and the court then determines that it does not apply, the alternative guideline application is readily displayed.

Part E. Sentencing Options

Restitution

* Describe statutory provisions for restitution.

* List guideline provisions applicable to the case.

* Identify each victim and the amount of restitution outstanding.

Rationale. -- Listing the statutory provisions adjacent to the guideline provisions allows comparison of sentencing options that are statutorily available versus those that are available within the guidelines.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
269

Fines

* Identify statutory provisions applicable to any mandatory minimum and maximum fine for each count of conviction.

* Report statutory provisions for special assessments for counts of conviction and the total amount for multiple-count cases.

* List guideline provisions applicable to the case, including a determination of the fine range. *If a count of conviction has been excluded from U.S.S.G. §§ 8C2.2 - 8C2.9, a fine range will not have been determined. (See U.S.S.G. § 8C2.10).*

Rationale. -- Listing the statutory provisions adjacent to the guideline provisions allows comparison of sentencing options that are statutorily available versus those that are available within the guidelines.

Probation

* Report statutory provisions applicable to the counts of conviction, eligibility for probation, authorized term, and mandatory conditions of supervision, if applicable.

* State the guideline provisions applicable to the total offense level.

Rationale. -- Listing the statutory provisions adjacent to the guideline provisions allows comparison of sentencing options that are statutorily available versus those that are available within the guidelines.

Impact of the Plea Agreement

* If the plea agreement includes counts to be dismissed, identify the counts to be dismissed and display the fine range that would have resulted if the defendant had been convicted on all counts.

* Describe any mandatory minimum fine penalty or sentence enhancement that would have been required by the count(s) that will be dismissed.

* If the plea agreement includes stipulations, or any other factor that may affect the guideline range, display the range that would have resulted if there had been no plea agreement.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
270

1. * Provide any other information regarding the plea agreement that is requested by the court.

Rationale. -- A description of the guideline range that would have resulted had there been no plea agreement assists the court in evaluating the impact of the plea agreement on the ultimate sentence. This section will only be included when the case includes a plea agreement.

Part F. Factors That May Warrant Departure

* Identify any factors that warrant consideration for departure from the guideline range.

* Note that inclusion of a factor does not constitute a recommendation by the probation officer for a departure.

Rationale. -- Reporting all factors that the officer believes might be a consideration for departure serves two purposes: It provides notice to the court and to counsel that the officer has considered each factor before making the sentencing recommendation, and it allows the court to independently consider each factor.

Part G. Factors That May Warrant a Sentence Outside of the Guideline System

* Identify any factors that warrant consideration of a sentence outside of the guideline system (i.e., any sentence authorized by statute, but not supported by the advisory guidelines or policy statements).

* Note that inclusion of a factor does not constitute a recommendation by the probation officer for a departure.

Rationale. -- Reporting all factors that the officer believes might be a consideration for a sentence outside of the guideline system serves two purposes: It provides notice to the court and to counsel that the officer has considered each factor before making the sentencing recommendation, and it allows the court to independently consider each factor.

Addendum

* Describe unresolved objections to the presentence report raised by the defendant, defense attorney, or the Government attorney.

* Indicate whether the objections are based on disputed facts or legal arguments.

* Report the probation officer's comments on the issues, with references, including

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
271

statutory authority, sentencing guideline provisions, Supreme Court or circuit case law.

Rationale. -- The function of the addendum is to advise the court of the remaining disputed issues pertaining to the application of the guidelines and related sentencing matters, as well as to articulate the probation officer's position pertaining to those issues.

Sentencing Recommendation

* As to each count, present the statutory and guideline provisions and recommended sentence in a chart format, including:
    * Restitution
    * Fine
    * Disgorgement
    * Fine Offset
    * Total Fine
    * Special Assessment
    * Probation
* Provide a justification for the recommended sentence, including the need for special conditions of probation.
* Restate the recommended sentence, including special conditions of probation, using Model Sentencing Form language

Rationale. -- The sentencing chart allows the court to easily compare the recommendation to the statutory and guideline provisions. The justification provides the court with the officer's evaluation of the offense and the organizational defendant in order to support the recommended sentence. The justification includes references to the statutory objectives for sentencing to assist the court in providing a statement of reasons for imposition of the sentence. Displaying the recommendation in Model Sentencing Form language allows the court to adopt the recommendation in the appropriate language for the judgment.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
272

Investigative Procedures and Gathering Information

Historically, probation officers have not had much experience completing organizational presentence reports. In 2003, only 200 organizational defendants were sentenced nationally, compared to 70,258 individual defendants.[2] Because preparation of organizational presentence reports has been a relatively rare task, the Probation System had not developed a format or standards for organizational presentence reports. Publication of Chapter Eight of the Sentencing Guidelines, "Sentencing an Organization," necessitated development of standards and a structure for the preparation of an organizational presentence report.

The guidelines for organizations pose new challenges to probation officers, who must not only interpret the guidelines, but also provide the court with the information necessary to support the officer's findings. Additionally, officers must provide the court with the same accurate and concise background information regarding an organization that they provide for individual defendants. Since the primary punitive sentence that can be imposed on an organization is a fine, the greatest responsibility, if not challenge, is the determination of the organization's ability to pay the financial sanctions required by the guidelines. Probation officers are trained investigators; just as officers have developed the necessary skills and techniques to provide the court with an accurate and concise picture of an individual defendant's background, with training and experience, they can produce organizational reports of equal quality. In collecting and analyzing background information and financial records of organizations, officers rely on the same tested methods of investigation.

For preparation of many sections of the organizational presentence report, officers will rely on the same sources of information and verification techniques employed during the investigation of an individual defendant. For example, the sources of information for such sections as Charges and Convictions, The Offense Conduct, Victim Impact, and Sentencing Options will often be the same sources as for an individual defendant. However, there are certain areas of guideline application that are unique for organizations. Investigative procedures and methods of gathering information for an organization's prior history of misconduct and organizational characteristics will be discussed, as well as suggestions for determining the effectiveness of an organization's program to prevent and detect violations, commonly known as a compliance plan. Because of the importance of determining the ability of an organization to pay financial sanctions, techniques for gathering and analyzing the financial background of an organization will be discussed in detail.

Part B. History of Misconduct

The sources of information for an organization's prior history of misconduct include state and Federal civil and criminal court records, regulatory agencies, the assistant U.S. attorney, case agents, and, for public corporations, 10K reports filed with the Securities and Exchange Commission (10K reports will be described in detail below).

[2] Source: United States Sentencing Commission.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
273

Part C. Organizational Characteristics

Organizations are not much different than individuals. Like people, they are born (or created) and have histories and lifestyles. The history of the organization is somewhat analogous to the biography of an individual defendant. The officer describes where and when the organization was formed, the type of organization, who created it, and how much investment or capital was provided. Pertinent questions that should be answered within the Organizational Characteristics section include: Who owns the organization and how much do they own? What is the purpose of the organization and the nature of its business? How did it evolve, i.e., what is the organization's developmental history? Does it have divisions or subsidiaries and, if so, what are the different business objectives of these separately managed profit centers? Discuss the structure of the organization, key officers, the composition of management, and the number of employees. To assist in collecting this information, the Probation Form 1-B, Worksheet for Organizational Presentence Report, has been developed.

Interview

Many of the organizational characteristics can be obtained by interviewing the organization's representative. In most cases, the organization will be a rather small closely held corporation and the corporation's representative will be its president, owner, and often, its codefendant. It is important to conduct an interview with the representative as soon as possible and have this individual provide the necessary background information. It is desirable to schedule the interview at the organization's place of business because the representative will have access to records the officer will be requesting. In addition, an on-site inspection can be conducted.

Site Visit

A visit to the organization's place of business is essential. After learning about the nature of the business, take a tour with the representative. Ask for an explanation of activities and do not be timid about asking questions. Do your observations coincide with the nature of business as described by the organization's representative? Does it look like a legitimate business, i.e., if it is a retail store, does it have inventory? If it is a manufacturing firm, does the organization have the necessary personnel and equipment to manufacture? Observe the manufacturing process in action.

Effective Compliance and Ethics Program

In order to evaluate the effectiveness of an organization's program to prevent and detect violations of law, also known as a compliance plan, the officer requests information from the organization's representative, appropriate governmental authorities, and the case agents. Federal or state law enforcement, regulatory agencies, or program officials having jurisdiction over regulations applying to the organization may be of particular assistance in assessing whether a program is effective.

Some Basic Definitions

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
274

Any investigation of an organization will require the gathering of records to verify and expand information already provided on behalf of the organization. However, the type of records that are available for investigation largely depends on the nature of the organization.

An organization is "a person other than an individual." 18 U.S.C. § 18. The term includes corporations, partnerships, associations, joint-stock companies, unions, trusts, pension funds, unincorporated organizations, governments and political subdivisions thereof, and non-profit organizations.[3] Most organizations will fall into the categories of public or closely held corporations.

Corporation

A corporation is an entity legally separate from the persons owning it. Corporations are registered with state governments and their activities are regulated by law. A corporation is owned by its stockholders (also called shareholders), who hold stock or shares in the corporation. A corporation can own property, buy and sell, enter into contracts, borrow money, and take any other business action that an individual can take, subject to state law.

Articles of Incorporation

The organization's Articles of Incorporation may be useful to verify certain information provided by the organization's representative. The Articles will identify the officers of the company, the purpose of the company, and information about stock ownership.

Public Corporation (AKA: Open Corporation)

A public corporation is a corporation whose stock is available for sale to the public, subject to regulation by state and federal agencies. All public corporations are regulated by the Securities and Exchange Commission (SEC). Other state and Federal agencies may regulate a public corporation depending on the nature of the corporation's business. For example, a public corporation producing pharmaceuticals, such as Merck, Sharp, and Dome, is subject to regulation by the Federal Drug Administration. A public corporation providing telecommunications services, such as American Telephone and Telegraph (AT&T), is subject to regulation by the Federal Communications Commission. Public corporations file F-1120 tax forms.

Closely Held Corporations and Partnerships (AKA: Closed Corporations)

A corporation that is owned by a small group of people and whose stock is not available for sale to the general public.

[3] U.S.S.G. § 8A1.1, Application Note 1.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
275

Types of Closely Held Corporations

1. **Incorporated Entities**

   A business entity that is legally separate from the individuals owning it. The owners who hold stock or shares in the corporation are known as stockholders or shareholders. Incorporated entities file F-1120 or F-1120A tax forms.

2. **Subchapter S Corporation**

   A corporation that files a tax return but generally pays no taxes. Income is passed on to the owners who pay taxes on it as individuals, as in a partnership. Allows certain small businesses to enjoy the benefits of incorporation without the burden of double taxation. Subchapter S corporations file F-1120S tax forms.

Partnership

An unincorporated business that is owned by two or more individuals. Partnerships are either general or limited. In a general partnership, each of the partners has authority to participate in the management of the business. A limited partnership is one in which individuals may invest without actually taking part in the operation of the business. Interests in limited partnerships are sold much like stocks. Partnerships file F-1065 tax forms.

What to Request and Where to Obtain it.

Once the type of organization has been determined, probation officers will find the records available that will provide important information.

Public Corporations

Although public corporations can pose complex investigative issues, i.e., subsidiaries, numerous business objectives, sophisticated management structure, intimidating financial statements, etc., the good news is they also provide the most in-depth and reliable background and financial information available. Some of the records will provide information that overlaps; however it is important to obtain as many of these items as possible for verification and comparison purposes. The more records that the officer obtains and reviews, the more comfortable the officer will be that the presentence report is as accurate as possible.

10K Report

A 10K is a report that public corporations are required to file annually with the Securities and Exchange Commission (SEC). Federal securities laws enacted in the 1930's established requirements for filing the 10K report requiring that it contain:

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
276

- corporate history/background
- organizational structure (subsidiaries, divisions)
- names of officers and board of directors
- background of key officers
- identity of significant stockholders
- where and when company was incorporated and where it now does business
- discussion of any significant current litigation
- discussion of any other significant legal issues, including indictment, bankruptcy
- audited financial statement

10K reports are the most reliable financial statements because they are filed under penalty of perjury. 10K reports will often include management's discussion of operations during the previous year and what they expect in the future. These are typically self-serving statements, not required by the SEC, nor scrutinized for accuracy. Such statements may be self-serving in that 10K reports are often submitted with loan applications. Nonetheless, these statements regarding the corporation's future projections are important since they are typically prepared prior to conviction and can be compared with what the corporation will represent about its future post-conviction.

10Q Reports

A 10Q is a quarterly filing with the SEC. A 10Q may provide more current information than a 10K, but they contain unaudited information. Accordingly, the information in a 10K is more reliable than the information in a 10Q.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
277

Checklist for Public Corporation (Open Corporation)

* Documents containing financial statements.

	What	Where[4]
1.	U.S. Corporate Returns F-1120 for last 5 years (U.S. Corp. Tax Return)*	Corporate Officer or IRS (IRS requires release)
2.	10 K's - filing that public corps must submit to SEC annually (5 years)*	Corporate Officer or SEC
3.	Audited Financial Statement*	Corporate Officer or Chief Financial Officer
4.	Annual Reports (5 years)*	Corporate Officer or state regulatory agency (e.g., comptroller, secretary of state)
5.	Price per share of stock	Business section of newspaper or library
6.	Reports from Standard and Poors, Dunn and Bradstreet, and/or Moody's reports*	Public library
7.	Bankruptcy history	Bankruptcy court, corporate officer and 10K filings
8.	Company's current financial projections with assessment of impact of convictions on the business	Corporate Officer and/or Chief Financial Officer

[4] The U.S. attorney and the investigating agents may have information regarding all of these areas.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
278

Standard and Poor's, Dun and Bradstreet, and Moody's Reports

Standard and Poor's, Dun and Bradstreet, and Moody's are private companies that prepare reports containing descriptions of various, mostly public, corporations. Dun and Bradstreet provides reports of some very large private corporations. Although their reports differ in format, they typically contain corporate history, organizational structure, subsidiaries, number of employees, names of officers and Board of Directors, and two to five years of consolidated financial statements, and financial statements for the most recent quarters. These reports often analyze the financial health of a corporation using standard business ratios which will be discussed later.

The reports rate companies according to their present or forecasted general financial health. It may be beneficial to obtain several different reports on an organization. Moody's reports are particularly helpful because Moody's publishes separate manuals for industrial companies, banking and financial institutions, international companies, public utilities and municipalities and governments. While a Moody's report is often an excellent source for a description of the organizational structure of a company, including divisions and subsidiaries, a Standard and Poor's stock report often provides 10 years of financial statements on a company. Standard and Poor's stock reports are published every six months and, in the event there are significant financial developments in a company, more frequently. Therefore, a Moody's report and a Standard and Poor's stock report may provide complementary information on a company.

Annual Reports

Annual reports are the vehicle through which public corporations present themselves to their stockholders. They usually contain a succinct, audited financial statement, often simpler than the financial statement in a 10K report. In essence, annual reports are glorified 10K reports and contain self-serving projections. They are an excellent source of information.

Stock Price

The price per share of stock is available in the business section of the newspaper or in the public library. It may be instructive to compare the price of stock prior to the indictment with the current price to determine the effect the indictment and negative publicity associated with the prosecution has had on the company.

Closely Held Corporations

In contrast to a public corporation that generate public records, in completing the organizational data section on a closely held corporation or partnership, the probation officer must rely on the representations provided by the organization's representative. Occasionally, the assistant U.S. attorney, Government agents, or state or Federal regulatory agencies may be able to verify an provide additional background.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
279

Checklist for Closely Held Corporation (Closed Corporation)

* Documents containing financial statements.

	What	Where[5]
1.	U.S. Corporate Tax Return F-1120* or F-1120-S*; or U.S. Partnership Returns F-1065* for last 5 years	Corporate officer or IRS (IRS requires release)
2.	Audited Financial Statement* (preferred) or Compilation Report (unaudited)*	Corporate officer or CPA
	A compilation is an unaudited financial report. For verification it may be necessary to request:	
	a. bank records	Corporate officer or banks (with release)
	b. business invoices	Corporate officer
	c. real property records	Corporate officer or county/local records
3.	Request information regarding:	
	a. outstanding judgments and/or liens	County or local public records
	b. pending civil suits	Corporate officer or county records
	c. contingent (future) assets and contingent liabilities	Corporate officer or county records

[5] The U.S. attorney and the investigating agents may have information regarding all of these areas.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
280

Checklist for Closely Held Corporation - Continued

	d. bankruptcy history	Bankruptcy court and/or corporate officer
4.	Financial statements filed with banks (filed for loans, line of credit, etc.)*	Corporate officer
5.	Company's current financial projections of impact of convictions on business	Corporate Officer and/or Chief Financial Officer with assessment

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

Financial Condition: Ability to Pay

Conducting financial investigations of organizations is a continual learning process. In each case, a probation officer has opportunities to learn more about corporate finances and techniques to investigate them. In general, businesses want to put "their best foot forward" in working with the court and will provide information upon request. It is therefore important to know what to ask for. The courts, prosecutors, and defense attorneys are aware that probation officers are usually not experts in the subject of corporate finance. Accordingly, if an officer does not understand something submitted by the organization's representative, it is important to ask for an explanation. This section is designed to provide assistance in understanding basic concepts of corporate financial statements, direction in knowing what to ask for, and guidance in knowing what to do with the information upon receipt. As with any new complex responsibility undertaken by probation officers, such as sentencing guidelines, case law, or electronic monitoring, the process becomes easier with experience, but there will always be something new to learn. In this section, the process for determining an organization's ability to pay financial sanctions will be presented. However, for more detail, officers are referred to the *Financial Investigation: Desk Reference for U.S. Probation and Pretrial Services Officers*, published by the Federal Judicial Center as part of a training curriculum.

In the Financial Condition: Ability to Pay section of the report, the goal is to determine an organization's ability to pay restitution and a fine. The officer conducts an investigation of the organization's financial condition and provides a summary in a manner that will be easy for the court and attorneys to review and understand.

A financial investigation is not a static assessment; rather it is a process of incorporating an assessment over time. Organizations have financial histories and lifestyles. It is more accurate to assess and predict an organization's ability to pay by analyzing data over time. An accurate assessment of ability to pay is not a snapshot of the organization's current financial picture. It is more like a movie in which conditions and fortunes may change over time.

In assessing the ability of an organization to pay restitution and/or a fine, it is important to obtain financial records for several years. Unlike assessing the financial condition of an individual defendant, the current financial profile of an organization may not portray an accurate picture of the organization's ability to pay. Looking at the history of a company or organization will be of value in predicting the financial health of the organization in the future. For example, if an officer is evaluating a company that is currently not making much profit because the criminal prosecution has resulted in negative publicity and the value of the stock has dropped, it would be instructive to know that for the past three years the company has made large profits. In such a circumstance, the officer would consider whether

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
282

the company's profits have a strong potential for recovery in the future. Conversely, an officer may receive a current financial statement from a company suggesting that it could pay a large fine over time. However, an assessment of the past three years shows indications that the company's solvency has been diminishing at an increasing rate each year and may indicate that the company is headed toward bankruptcy. Accordingly, it is preferable to obtain financial documents for the past three to five years.

The key element of any financial investigation is to obtain an analyze the organization's financial statements. Financial statements are needed to determine if the organization has the ability to pay financial sanctions. Many of the items that appear on the checklists above are marked with an (*), indicating they provide financial statements.

The most reliable financial statements for a public corporation are the 10K and the 1120 tax returns since both are submitted under penalty of law. Remember to request three to five years of financial statements to assist in analyzing the organization's financial history.

Types of Financial Statements

Although financial statements prepared by Certified Public Accountants (CPAs) all follow the same general format, they are prepared with different degrees of thoroughness. It is important to be able to recognize the standard types, to know how they are prepared, and to understand how much you can rely on each of them.

Compilation Report

The compilation report is the quickest and least expensive kind of statement to prepare. As the name suggests, all the accountant does is take the figures provided by his client and arrange them into a standard format. Accountants offer no independent assurance about the reliability of the figures since they have done nothing more than compile them. The report should include a brief disclaimer explaining this fact. Compilations can look very authentic and impressive but have little value for verification purposes. Without further investigation, the probation officer has no way of knowing whether the defendant simply made up the figures that were provided to the accountant. To verify the information, it may be helpful to request copies of bank records and/or inspect the books, invoices, accounts payable, and accounts receivable.

Review Report

The review report is only slightly more reliable. In preparing this statement, the accountant also asks the client about his record keeping procedures and how he arrived at his figures. The accountant then makes a limited analysis to see if the

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
283

figures seem consistent with what the client told him. The report should include a statement similar to that found in the compilation.

Audited Financial Statement

The audited financial statement is by far the most reliable. Theoretically, all of the information in the statement has been verified by independent auditors following a strict set of rules. Auditors verify the financial records, observe inventory, send letters to customers, creditors and lending institutions to verify the company's financial transactions. The CPA attaches a statement to the audited financial statement certifying that it has been prepared using proper accounting methods and that it accurately represents the financial condition of the business. The officer can generally rely on the accuracy of information contained in an audited financial statement. In actuality, the officer is relying on the integrity of the CPA that prepared the audited statement.

Financial Statement Filed With Banks

On occasion, there may be value in obtaining copies of financial statements that an organization has filed with banks. These are commonly filed with loan applications and applications for lines of credit. Such financial statements provide a profile of the organization at a certain point in time.

Requesting Copies of Tax Returns

In requesting organizations to provide copies of tax returns, there are a few considerations to keep in mind. A corporation with subsidiaries may file separate returns for the subsidiaries or may file a "consolidated" tax return that includes the subsidiaries. The decision regarding how to file the returns will depend upon the tax considerations and which method would be most beneficial to the company. Thus, when asking for copies of tax returns, the probation officer should inquire about subsidiaries and ask whether the company files a consolidated return.

Remember that organizational tax returns are financial statements. Income or the profit/loss statement is on the front page and the balance sheet is on Schedule L of the return. Some corporate returns are voluminous because of the extensive backup information that is submitted with the return. In all circumstances, the officer should request copies of the IRS forms (F-1120, F-1120-S, or F-1065) and the schedules (IRS required addendums).

Corporations are rarely indicted alone. Corporate defendants often have corporate officers charged as individual codefendants. In such a case, the probation officer also requests

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
284

copies of the F-1040 tax returns (individual tax returns) regarding the codefendant corporate officers. The probation officer will be able to examine the corporate returns and the individual returns to see how compensation flowed from the corporation to the individual. Obviously, compensation paid as wages should be reflected in the individual's W-2 income statement. Director fees paid to a corporate officer, a form of compensation that is not considered wages, are typically reported on a F-1099 report. By obtaining the tax returns for both the company and the individual defendants, the probation officer will be able to examine the flow of funds. In doing so the officer may discover discrepancies. In comparing the returns, it is important to be aware that while individuals are required to file their tax returns on the basis of the calendar year, organizations may define a fiscal year for the time frame covered in their tax returns based upon their accounting procedures. Accordingly, the figures transferred from a corporate return to an individual return may not be consistent if the time frames differ.

Bankruptcy History

When an organization files for bankruptcy, it is required to file a financial statement under penalty of perjury, including the company's net worth. A bankruptcy file, whether it is an old file or a current file, will pinpoint the financial condition of an organization at a given point in time. If the company is currently undergoing bankruptcy proceedings, the officer contacts the trustee in order to determine the feasibility of collecting restitution and a fine.

A filing under Chapter 11 is a request for temporary protection from creditors with the intention to reorganize, pay creditors, and continue operations. A filing under Chapter 7 is indicative of an organization's intent to liquidate available assets, pay creditors, and cease business operations. On occasion, Chapter 11 protection may serve as a prelude to the filing of a Chapter 7.

Financial Projections

Ask the individual presenting the organization for a statement of the company's projections for the future, including an assessment of the impact of the conviction(s) on the organization. Such projections will be helpful in several ways. The officer can compare what the organization is stating now with what the organization previously represented to the public in its annual reports and 10K reports. Projections will also assist in evaluating the future financial health of the organization. It is important to inquire about contingent (future) assets and contingent liabilities. For example, a pending major contract that will bring substantial funds to the company is an example of a contingent asset. An example of a contingent liability is when a company will be entering into a legal settlement in the near future and the financial plan must allow for payment. Another example is a company that must retool in the next six months. Requesting a statement from the organization regarding its financial projections is also a good procedure in that the officer is, in essence, providing the organization the opportunity to provide its statement as to ability to pay.

What do you do with the information?

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
285

In order to understand the documents, definitions of a financial statement and the contents are provided below and clarifying comments follow in italics.

Financial Statement

A financial statement is a formal report prepared by an accountant, reflecting the financial condition of a business. It includes a balance sheet, an income or profit and loss statement, and possibly other tables reflecting changes in the financial condition of the business. Financial statements are the basic tools for both collecting and presenting financial information. It is essential to be able to use them effectively in analyzing the ability of an organization to pay restitution and fines.

Balance sheet

A balance sheet is a formal report prepared by an accountant reflecting the assets, liabilities, and owner's equity in a company on a specific date.

Assets

An asset is something that is owned and has value (can be sold). *A liquid asset is one that can be converted to cash. In a balance sheet format, assets are listed in order of their relative liquidity, with the most liquid assets appearing first.*

current assets

Current assets include cash and those assets (accounts receivable and inventory) which the organization expects will be turned into cash within a year. *Current assets are used by the organization to pay its current liabilities. Current assets may also be the source for immediate payment of financial sanctions.*

fixed assets

Fixed assets include assets not intended for sale that are used to manufacture the product, display it, warehouse it, or transport it. Examples include land, buildings, machinery, equipment, furniture, automobiles and trucks. *A financial statement will conservatively display the value of an organization's fixed assets, listing them at purchase price less accumulated depreciation. The value listed on the balance sheet may not have any correlation to fair market value. Fixed assets are often not useful as a source for immediate payment of a fine or restitution since they are necessary for the continued operation of the company.*

other assets

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
286

Other assets include any other property with perceived value, often including intangibles (e.g, a trademark, a logo, goodwill, or a patent). *These assets are generally the least readily available to convert to cash.*

Liabilities

A liability is money owed to another; a debt. *A liability is a creditor's claim against assets.*

current liabilities

Current liabilities include accounts payable and other debts due within a year.

long term liabilities

Long term liabilities are debts that are not expected to be paid or satisfied within one year. *Long term debt is generally secured against a specific asset. Long term liabilities are generally used to finance the purchase of fixed assets.*

Stockholders' Equity

Stockholder's equity is the net worth of the organization and represents the collective owners' claim against the assets. Stockholders' equity consists of capital stock, capital surplus, and accumulated retained earnings.

capital stock

Capital stock represents ownership of a corporation, as evidenced by a stock certificate. A corporation's stock is divided into a specified number of shares.

capital surplus

Capital surplus is any monies received by the organization from the sale of stock which is in excess of the stock's par value. Par value is a specified amount printed on the face of a stock certificate; not to be confused with market value. The difference between par value and market value is designated as capital surplus on a balance sheet.

accumulated retained earnings

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
287

After payment of dividends, accumulated retained earnings represent the yearly profit or loss which is held by the organization and which accumulates over time.

Income Statement (profit and loss statement)

Also known as a Profit and Loss Statement, the Income Statement is a formal report prepared by an accountant reflecting the income, expenses, and net profit of a business over a specified period of time. The income statement displays the cash flow of the organization; **sufficient cash flow may provide a source for payment of financial sanctions over time**.

gross receipts

Gross receipts represent the primary source of money received by the organization from its customers for goods sold or services rendered.

cost of goods sold (adjustment to income)

Cost of goods sold include the costs of manufacturing, producing, and delivering goods and services sold.

gross profit

Gross profit is the difference between the gross receipts and the cost of goods sold.

other income

Other income includes all other sources of income not directly related to the nature of the business.

total income (revenue)

Total income represents the gross profit plus other income.

expenses

Expenses are costs incurred by an organization to conduct its day to day operation. *Expenses are not to be confused with liabilities.*

Net Profit

Net profit is total income minus expenses, costs, and tax obligations. *It is important to remember that the tax liability in Subchapter S corporations and partnerships*

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
288

becomes the responsibility of their owner(s) and is transferred to the individual's tax return (F-1040).

Formatting the Information

The officer examines the information in the documents looking for consistency. The officer then selects the source with the most reliable information to look for financial patterns. When comparing the figures, an effective method is to take the financial statements from the same source (e.g., tax filings) for several years and compare the figures by laying them out on one page. The financial condition on the following page exhibits a format for plotting the information.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
289

BALANCE SHEET

	1990	1989	1988	1987
ASSETS				
Cash	$ 43,737	$ 116,522	$ 479,512	$ 330,857
Accounts Receivable	896,060	943,229	1,051,516	1,407,758
Inventory	393,000	375,000	400,000	569,200
Other Current Assets	61,978	75,818	214,126	191,435
Loans to Shareholders	520,000	180,000	80,000	50,000
Fixed Assets less depreciation	5,955,606	4,483,119	4,977,238	5,598,180
Other Assets	3,700	3,700	3,700	3,700
TOTAL ASSETS	**7,874,081**	**6,177,388**	**7,206,092**	**7,151,130**
LIABILITIES				
Accounts Payable	619,520	538,729	347,704	292,689
Mortgages, Notes	462,731	315,482	223,182	399,892
Other Current Liabilities	73,119	104,010	508,003	499,794
Long Term Liabilities	5,603,129	4,277,890	1,357,720	1,726,115
TOTAL LIABILITIES	**6,758,499**	**5,236,111**	**2,436,609**	**2,918,490**
EQUITY				
Stock	1,000	1,000	1,000	1,000
Paid-in Capital	1,298,566	1,321,793	2,672,208	3,334,367
Retained Earnings	(183,984)	(381,516)	2,096,275	1,897,273
TOTAL EQUITY	**1,115,582**	**941,277**	**4,769,483**	**5,232,640**
TOTAL LIABILITIES & EQUITY	**$7,874,081**	**$6,177,388**	**$7,206,092**	**$8,151,130**

PROFIT/LOSS

INCOME				
Gross Sales	$8,171,714	$3,853,417	$8,137,317	$8,035,990
Cost of Goods	5,471,207	4,364,730	6,376,090	5,534,339
Gross Profit	2,700,507	(511,313)	1,761,227	2,501,651
Other Income	195,884	218,204	900,195	153,300
Total Income	**2,896,391**	**(293,109)**	**2,661,422**	**2,654,951**
EXPENSES				

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
290

Compensation to Officers	73,850	80,000	80,000	83,077
Wages				
Rents	124,791	350,454	447,415	407,236
Interest	1,157,800	1,045,738	1,016,740	799,163
Depreciation	768,906	618,704	179,135	153,302
Other Deductions	52,444	59,738	62,314	93,526
Total Deductions	521,068	432,285	574,300	345,788
	2,698,859	**2,586,919**	**2,359,904**	**1,882,092**
Taxable Income				
Tax	197,532	(2,880,028)	301,518	772,859
	0	(401,237)	102,516	298,721
Net Income				
	197,532	**(2,477,791)**	**199,002**	**474,138**

Analyzing the Financial Information

In examining the financial statements for several years, the officer is looking for patterns of growth and decline. In determining the ability of an organization to pay financial sanctions, it is important to be able to assess the quality of a business. Is it healthy? Is it just holding its own? Or is it heading toward bankruptcy? Is it a legitimate, income-producing activity or simply a "front" or "cover" used to conceal other sources of income? These questions can be answered by analyzing the financial statement using certain standard formulas. These formulas, known as "key business ratios", are used to measure how solvent and how profitable a business is:

Name	Formula	Comments
1. Current Ratio	Current Assets / Current Liabilities	A measure of working capital. the higher the ratio, the higher the probability that the business will be able to meet its short-term obligations to creditors. A ratio of 2.0 is normally considered healthy, although ratios as low as 1.5 can be acceptable in some cases.
2. Quick Ratio	Cash + Receivables / Current Liabilities	Another measure of solvency. It indicates the ability to meet short-term obligations without selling inventory, which might be overvalued or hard to move. A ratio of 1.0 or better indicates a liquid business.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
291

3. Total Liabilities to Net Worth	Total Liabilities / Net Worth	A final measure of solvency. It should generally be less than 100%, otherwise the creditors have more of a stake in the business than the owners. The lower the percentage the better. A very high percentage usually indicates approaching bankruptcy.
4. Return on Sales (Profit Margin)	Net Profit / Net Sales	Varies depending on the type of business. Compare to the industry norms discussed below for the type of business involved.
5. Return on Net Worth	Net Profit / Net Worth	A second measure of profitability indicating the return owners received on their investment. A ratio of 10% is usually considered good. Compare the return to what the owners could have received by simply putting their money in the bank or selecting other investments requiring no effort on their part.

The desirable ratios given above are a general guide. The ratios for an organization can be compared to those for similar businesses nationwide. Dun and Bradstreet, Inc., is a commercial credit reporting agency that maintains these statistics and publishes them in a booklet entitled "Industry Norms and Key Business Ratios," which is available at the public library.

Once you have a financial statement, it is a simple matter to compute the ratios and compare them to the general standards and industry norms. Significant irregularities should be explored through further questioning of the organization's representatives. Unexplained irregularities may indicate that the business is in trouble or that it is not intended to make a profit (a common situation with a "front" or "cover" criminal organization and warrants further investigation). By displaying the financial statement information on an organization for several years, the probation officer can calculate the ratios and look for trends in growth, solvency, and profitability.

Some Additional Tips in Analyzing Financial Information

In assessing general trends of growth and decline over time, it may be helpful to look for:

Growth: Look for a rise in assets and decline in liabilities. The end product would be an increase in the stockholders' equity.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
292

Expansion: Look for a growth in assets and similar growth in liabilities (because the organization is borrowing more money to expand) and little change in equity. The assets must equal liabilities plus net worth. Ask what the expected outcome of the expansion will be. Does the organization forecast a change in sales? Obviously an expected increase in sales may improve the organization's ability to pay financial sanctions in the future. If an organization is in the process of expansion, we may need to look to the future for full payment of restitution and a fine.

Liquid Assets: Liquid assets include cash and those assets that can be quickly converted into cash. **Liquid assets will provide the basis for immediate payment of financial sanctions.**

Fixed Assets and Depreciation: The fixed assets are used by the organization to conduct business and typically include land, buildings, equipment, etc. If the organization asserts that it must replace equipment to remain solvent, look to see if the equipment has been depreciated in value. Capital outlay for purchase of equipment may reduce liquid assets and the ability of the organization to make a lump sum payment at sentencing. An assessment should be made as to whether or not the organization needs the new equipment to remain solvent. If the company is out of business, it may not be able to pay full restitution and a fine.

Loans to Stockholders (bleeding the corporation): A method to bleed money from a corporation is to make loans to the stockholders. The loans become assets of the company, but stockholders' equity (the value of the business) may have less value than represented. Bleeding money from the company may indicate a criminal organization. If an organization is not solvent but large amounts of money have been diverted to a principal officer who is also charged criminally, it may be appropriate to fine that individual with the amount the corporation would have been required to pay. If the money from the company is diverted to a principal officer year after year, the company may be a shell or alter ego of that principal officer.

Money Laundering: If large amounts of money are coming into the corporation from stockholders and the company is cash rich, look to see where the money is going. Sometimes laundered money will be hidden as a mortgage. If the mortgage is not secured with collateral, such a situation flags the potential for money laundering. A mortgages implies the purchase of an asset. Since mortgages must be filed with local authorities, check the mortgage if the situation looks suspicious. Money coming into a corporation from stockholders that is subsequently returned to stockholders as loans may indicate money laundering.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

Sample Analysis of an Organization's Financial Statements

On the next page is the financial condition of a company that was previously displayed to demonstrate a method to format the information from financial statements. The following analysis was developed by comparing the company's financial statements for four years, looking for trends and using the standard business ratios.

Analysis: This table represents the company's consolidated financial statement for years 1987 through 1990. Assembling the accounts for several years on a single sheet of paper allows the probation officer to look for trends, as well as identify red flags (i.e., unusual entries or drastic changes) that require further explanation by the company's representative or accountant.

The two most important components to the financial statement are the balance sheet and the income statement. The balance sheet is always presented first and the most current year is always presented in the far left column.

Typically, we look to the balance sheet for an immediate fine payment. Assets are listed in order of liquidity. First, we look to cash. This is not a cash rich company.

The Accounts Receivables appear substantial. The company may be able to secure a loan against them and use the money to pay a fine.

Look at the Loans to Shareholders account, which increased $340,000 in 1990. Notice the increase to this account and the decrease to the cash account in the same year. If you can collect it from the shareholder, use it to pay a fine. If the shareholder is a codefendant and cannot pay, the company's equity is only half of what it now represents.

When the Fixed Assets account is quickly depreciated, it may be indicative of a company that may argue that they need to retool. That is not the case with this company. Fixed Assets and Long Term Liabilities both rose proportionally in 1990. Remember that Long Term Liabilities are typically the source to finance fixed assets.

Notice the negative retained earnings in 1989 and 1990 as compared to 1987 and 1988. Look at the Gross Profit and negative Taxable Income in 1989. Something happened to the company in 1989 (red flag) and the probation officer needs to look into this. However, notice how sales rebounded in 1990 to pre-1989 levels and the company was again profitable. Remember to look at the Income Statement when determining if the company can pay a fine over time.

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
294

BALANCE SHEET

	1990	1989	1988	1987
ASSETS				
Cash	$ 43,737	$ 116,522	$ 479,512	$ 330,857
Accounts Receivable	896,060	943,229	1,051,516	1,407,758
Inventory	393,000	375,000	400,000	569,200
Other Current Assets	61,978	75,818	214,126	191,435
Loans to Shareholders	520,000	180,000	80,000	50,000
Fixed Assets less depreciation	5,955,606	4,483,119	4,977,238	5,598,180
Other Assets	3,700	3,700	3,700	3,700
TOTAL ASSETS	7,874,081	**6,177,388**	**7,206,092**	**7,151,130**
LIABILITIES				
Accounts Payable	619,520	538,729	347,704	292,689
Mortgages, Notes	462,731	315,482	223,182	399,892
Other Current Liabilities	73,119	104,010	508,003	499,794
Long Term Liabilities	5,603,129	4,277,890	1,357,720	1,726,115
TOTAL LIABILITIES	**6,758,499**	**5,236,111**	**2,436,609**	**2,918,490**
EQUITY				
Stock	1,000	1,000	1,000	1,000
Paid-in Capital	1,298,566	1,321,793	2,672,208	3,334,367
Retained Earnings	(183,984)	(381,516)	2,096,275	1,897,273
TOTAL EQUITY	**1,115,582**	**941,277**	**4,769,483**	**5,232,640**
TOTAL LIABILITIES & EQUITY	**$7,874,081**	**$6,177,388**	**$7,206,092**	**$8,151,130**

PROFIT/LOSS

INCOME				
Gross Sales	$8,171,714	$3,853,417	$8,137,317	$8,035,990
Cost of Goods	5,471,207	4,364,730	6,376,090	5,534,339
Gross Profit	2,700,507	(511,313)	1,761,227	2,501,651
Other Income	195,884	218,204	900,195	153,300
Total Income	**2,896,391**	**(293,109)**	**2,661,422**	**2,654,951**
EXPENSES				
Compensation to Officers	73,850	80,000	80,000	83,077
Wages				
Rents	124,791	350,454	447,415	407,236
Interest	1,157,800	1,045,738	1,016,740	799,163
Depreciation	768,906	618,704	179,135	153,302
Other Deductions	52,444	59,738	62,314	93,526
Total Deductions	521,068	432,285	574,300	345,788
	2,698,859	**2,586,919**	**2,359,904**	**1,882,092**
Taxable Income				
Tax	197,532	(2,880,028)	301,518	772,859
	0	(401,237)	102,516	298,721
Net Income				
	197,532	**(2,477,791)**	**199,002**	**474,138**

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
295

Remember that current ratios of 2.0 are normally considered healthy and 1.5 can be acceptable in some cases. (Current ratio = current assets divided by current liabilities). Our company had a current ratio of 1.21 in 1990 and 1.58 in 1989. Red Flag: If you can convert the $520,000 from the shareholders into cash, you will increase the current assets, which then increases the current ratio to a more healthy 1.66 for 1990.

Remember that quick ratios of 1.0 are normally considered healthy. (Quick ratio = cash + receivables divided by current liabilities). Our company has a quick ratio of .81 for 1990 and 1.11 for 1989. Reg Flag: If you can collect the $520,000 shareholder loan, you would increase the cash and the quick ratio to a healthy 1.26.

The primary questions for the probation officer are: How much can this company realistically pay? -- and -- Where will it come from?

Our best source to obtain a fine payment in a lump sum rests in the ability to convert the loans to shareholders to cash (in other words, collect the loans from the shareholders). There is a potential lump sum payment of $520,000.

If that is not possible, the company only has the ability to make a much smaller, immediate payment (perhaps $50,000). Since the company returned to profitability in 1990, it should be able to make fine payments over time (perhaps $100,000 annually).

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
296

Sources of Financial Information

SOURCE	INFORMATION	RECORDS
Internal Revenue Service	Taxable Income Assets Liabilities Expenditures Detailed Accounting on Self-Employment Previous Employers	F-1120, F-1120A, F-1120S, F-1065, all with schedules
Bank Records	Income (Deposits) Expenses (checks & withdrawals) Hidden Assets Associates Unreported Transactions	Statements Canceled Checks Microfilm Copies (from bank)
County Recorders	Real Estate Transactions - Date purchased/sold - To/from whom - Price - Amount financed - Monthly payment - Payoffs - Claims by or against subject Lawsuits Income Tax Problems	Deeds Mortgages Liens Judgments Satisfactions Other Instruments Relative to Ownership Transfer of Encumbrance
County Tax Assessor	Property Owned Address/Legal Description Dimensions Improvements Date of Purchase Name(s) of Owner(s) Address(es) of Owner(s) Assessed Value Taxes Paid or Due Delinquent Taxes Former Owners	Indexes - Name - Legal Description - Address
Court Clerk - Civil County & Federal	Allegations concerning financial transactions	Civil Suits Bankruptcy Files

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
297

	- Financial statements - Affidavits - Depositions - Stipulations - Agreements - Settlements - Copies of Instruments & Documents	
Fictitious Name Register County Courthouse	Ownership of DBAs (doing business as) Time in Business	Indexes Affidavits
Occupational License Bureaus - County & City	Ownership Time in Business	Original Application
Better Business Bureau	Unreported Transactions Potential Witnesses or Sources of Information	Consumer Complaints
Securities and Exchange Commission (SEC) **Federal Trade Commission** (FTC) **Commodities and Futures Trading Commission** (CFTC) **State Securities Agency**	10K Reports Licensing Civil & Criminal Enforcements	Licensing Records Violator Files
Occupational Regulation Agencies	Ownership Time in Business Disciplinary Actions	Licensing Records
Department of Motor Vehicles	Vehicles Owned by Organization	Title Records
Newspaper Library or Morgue	Leads for Further Investigation	Newspaper Articles
Bureau of Unemployment Compensation	Compensation Received Payment of Taxes by Organization	Compensation Records Employer Contribution

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org
298

PRISON CHARITABLE CORPORATION
Prison Professors Charitable Corporation / PO Box 50996 / Irvine CA 92619
IRS 501c3 #85-2603315 / www.PrisonProfessors.org
Email: Impact@PrisonProfessors.org

Appendix F

Model Sentencing Language

Model Sentencing Language

For Defendants Sentenced Under the Sentencing Reform Act of 1984

Office of Probation and Pretrial Services
Administrative Office of the United States Courts
Washington, D.C.
March 2006

Table of Contents

Imprisonment and Supervised Release 1
- One-Count Convictions 1
- Count Convictions 1
- Sentence Consecutive to Prior Sentences 2
- Sentence Concurrent With Prior Federal Sentence 2
- Sentence Concurrent With Prior State Sentence 3

Probation 3
- One-Count Convictions 3
- Multiple-Count Convictions 3

Conditions of Probation or Supervised Release 4
- Community Confinement 4
- Intermittent Confinement 4
- Payment of Fine or Restitution 5
- Requirement of Community Service 5
- Requirement of Drug or Alcohol Treatment 5
- Compliance With Order of Notice to Victims 5

Restitution 6
- Single-Defendant Cases 6
- Multiple-Defendant Cases 6
- Timing and Mode of Payment 8

Fine 9
- One-Count Conviction 9
- Multiple-Count Conviction 9
- Terms of Payment 9

Special Assessment 10

Voluntary Surrender; Surrender to Marshal 10
- Voluntary Surrender at Institution 10
- Surrender to United States Marshal 11

Order of Notice to Victims 11

Injunction prohibiting regulated transactions involving listed chemicals 11

Death 12

Probation Without Judgment 12
Dismissal of Case Upon Successful Completion 13

Expungement of Official Records of Certain Youthful Drug Offenders 13

Disposition of Juvenile Delinquent 14

Commitment for Care or Treatment Upon Finding of Mental Disease or Defect 15

IMPRISONMENT AND SUPERVISED RELEASE

One-Count Convictions

Pursuant to the Sentencing Reform Act of 1984, and considering provisions found in 18:USC: 3553, it is the judgment of the court that the defendant,_____, is hereby committed to the custody of the Bureau of Prisons[1] to be imprisoned for a term of _____ months.

Upon release from imprisonment, the defendant shall be on supervised release for a term of ____ years. The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons and comply with all mandatory and standard conditions that apply. (Omit, if supervised release is not ordered.)

Multiple-Count Convictions[2]

Pursuant to the Sentencing Reform Act of 1984, and considering provisions found in 18:USC: 3553, it is the judgment of the court that the defendant,_____, is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of _____ months. This term consists of...

a. _____ months on each count, all terms to be served concurrently (To be used if every count carries a maximum that encompasses the total term.) or

[1] Under 18 U.S.C. § 3621(a), a person sentenced to a term of imprisonment is to be committed to the custody of the Bureau of Prisons rather than, as formerly, the custody of the Attorney General.

[2]The suggested form for a multiple-count sentence reflects the fact that the guideline term of imprisonment is first determined for all counts taken together and is then translated into a count-by-count sentence. The three alternative statements implement the instructions in U.S.S.G § 5G1.2 for determining the sentence on each count. Except where a statute mandates a consecutive sentence, and subject to statutory maximum and minimum terms, U.S.S.G § 5G1.2(c) states that the sentence imposed on each count should equal the total term of imprisonment. If the sentence on the count with the highest statutory maximum term cannot accommodate the total term, U.S.S.G § 5G1.2(d) instructs that "the sentence imposed on one or more of the other counts shall run consecutively, but only to the extent necessary to produce" the total sentence. Thus, it is apparently contemplated that sentences on some counts will be partly concurrent and partly consecutive.

Prior to guideline sentencing, there was mixed authority on the issue of the constitutionality of increasing the sentence on one count of a conviction after reversal of another count in order to preserve the sentencing "package" of the original sentence. Some courts held that this practice was generally unconstitutional, because such an increase was a presumptively vindictive action taken because of the defendant's successful appeal. Some courts, on the other hand, did not find it unconstitutional for a court to attempt to preserve its original sentencing plan after reversal of a component of that plan. Compare U.S. v. Pisano, 787 F.2d 71 (2d Cir. 1986), with U.S. v. Bentley, 850 F.2d 1988 (7th Cir. 1987), cert. denied, 488 U.S. 970 (1988). It has yet to be determined whether the more structured sentencing system and the requirement for statements of reasons for sentencing under the Sentencing Reform Act will provide more latitude to restructure sentences after partial reversal.

b. _____ months on counts _____ and _____ months on counts _____, all to be served concurrently. (To be used and modified as necessary, if at least one count carries a maximum that encompasses the total term but others carry lower maximums.) or

c. _____ months on counts _____, to be served concurrently, and _____ months on counts _____, to be served concurrently with each other but consecutively to the custody term(s) imposed on counts ____, to the extent necessary to produce a total term of _____ months. (To be used and modified as necessary, if no count carries a maximum that encompasses the total term or if a statute requires consecutive sentences.)

Upon release from imprisonment, the defendant shall be on supervised release for a term of ____ years. This term consists of _____ years on counts _____ and _____ years on counts _____, all such terms to run concurrently.[3] The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons and comply with all mandatory and standard conditions that apply. (Omit, if supervised release is not ordered.)

Sentence Consecutive to Prior Sentences

The term(s) of imprisonment imposed by this judgment shall run consecutively to the defendant's imprisonment under any previous state or Federal sentence.[4]

Sentence Concurrent With Prior Federal Sentence

The term(s) of imprisonment imposed by this judgment shall run concurrently with the defendant's term of imprisonment pursuant to the judgment in docket number _____, _____ District of _____.

[3]Terms of supervised release run "concurrently with any Federal, state, or local term of probation or supervised release or parole for another offense to which the person is subject or becomes subject during the term of supervised release." 18 U.S.C. § 3624(e).

[4]Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that they are to run concurrently. 18 U.S.C. § 3584(a). U.S.S.G § 5G1.3 instructs that they should run consecutively "unless one or more of the instant offense(s) arose out of the same transactions or occurrences as the unexpired sentences."

Sentence Concurrent With Prior State Sentence

The court recommends that the Bureau of Prisons designate _____ (institution where the defendant is serving the state sentence) to be the place of service of this sentence, thereby making this sentence concurrent with the defendant's imprisonment pursuant to the judgment in docket number _____, court.[5]

PROBATION

One-Count Convictions

Pursuant to the Sentencing Reform Act of 1984, and considering provisions found in 18:USC: 3553, it is the judgment of the court that the defendant,_____, is hereby placed on probation for a term of _____ year(s).[6]

Multiple-Count Convictions

Pursuant to the Sentencing Reform Act of 1984, and considering provisions found in 18:USC: 3553, it is the judgment of the court that the defendant,_____, is hereby placed on probation for a term of _____ years. This term consists of _____ years on counts _____ and _____ on counts _____. All such terms to run concurrently.[7]

---

[5]In effect, when a court orders a Federal sentence to run concurrently with a state sentence, the Federal court is designating the state institution as the place of confinement. Under old law, the designation function was exclusively within the authority of the Attorney General by virtue of 18 U.S.C. § 4082(b) (repealed, Pub. L. No. 98-473, title II, chapter II, sec. 218, 98 Stat. 1837, 2027 (Oct. 12, 1984)). Under 18 U.S.C. § 3584(a), however, the court has the explicit authority to run a Federal sentence concurrently with a sentence a defendant is serving at the time of the Federal sentencing. There is evidence in the legislative history that this provision was specifically intended to change the law and permit the Federal sentencing court to order a Federal sentence to run concurrently with a state sentence.

[6]Under 18 U.S.C. § 3561, probation is a sentence in its own right. The traditional language about suspension of imposition or execution of sentence is not used.

[7]Terms of probation, "whether imposed at the same time or at different times, run concurrently with each other" and also with "any Federal, state or local term of probation, supervised release, or parole for another offense to which the defendant is subject or becomes subject during the term of probation." 18 U.S.C. § 3564(b).

Probation is not authorized for an individual defendant if the offense carries a maximum sentence of 20 years or more for offenses committed before November 18, 1988, 25 years or more for offenses committed on or after November 18, 1988 (see18 U.S.C. § 109). 18 U.S.C. §§ 3561(a)(1), 3559(a)(1).

Probation may not be imposed if the defendant is sentenced at the same time to a term of imprisonment for the same or a different offense. 18 U.S.C. § 3561(a)(3). Where a period of supervision in the community is to follow a term of imprisonment, supervised release should be used.

CONDITIONS OF PROBATION OR SUPERVISED RELEASE

While on (probation) (supervised release), the defendant shall not commit another Federal, state, or local crime, shall comply with the mandatory and standard conditions that have been adopted by this court,[8] and shall comply with the following additional conditions:[9]

Community Confinement

The defendant shall reside for a period of _____ days, to commence _____(immediately, immediately following release from imprisonment, one specified date), in _____ (name of community treatment center, halfway house, or similar residential facility) and shall observe the rules of that facility.

Intermittent Confinement - Probation only[10]

The defendant shall be confined in the custody of the Bureau of Prisons....

a. from _____ p.m. each Friday until _____ a.m. each Monday for ____ consecutive weekends, commencing _____,or

b. from ___ p.m. each evening to ___ a.m. each morning for a period of ___ weeks, commencing _____, or

c. from ___ p.m. each evening Monday through Thursday to ___ a.m. the following morning, and from ____ p.m. each Friday until ____ a.m. each Monday, for a period of ___ weeks, commencing _____.

---

[8]This assumes that the court has adopted standard conditions, reflecting provisions of the Anti-Drug Abuse Act of 1988, that prohibit illegal possession of controlled substances and prohibit possession of firearms (including destructive devices). The prohibition of illegal possession of controlled substances is mandatory under 18 U.S.C. §§ 3563(a)(3) and 3583(d). The firearms condition is implicitly required for probationers, since 18 U.S.C. § 3565(b) mandates revocation of probation for possession of a firearm; there is no similar provision governing supervised release.

[9]The particular conditions shown are common conditions that involve something more than simply prohibiting certain conduct. The authorized probation conditions are found at 18 U.S.C. § 3563; all except intermittent confinement are authorized for supervised release under 18 U.S.C. § 3583(d). The Sentencing Commission's recommended conditions are found at U.S.S.G § 5B1.4.

[10]Under U.S.S.G § 5C2.1., probation with a condition of intermittent confinement or community confinement may sometimes be substituted for part or all of the prison term otherwise called for by the guidelines.

Payment of Fine or Restitution[11]

If this judgment imposes a special assessment, restitution, or fine, it is a condition of (probation/supervised release) that the defendant pay in accordance with the Schedule of Payments sheet of this judgment

Requirement of Community Service

The defendant shall perform ___ hours of community service as directed by the probation officer.

Requirement of Drug or Alcohol Treatment

The defendant shall participate in a program of testing and treatment for (drug) (alcohol) abuse, as directed by the probation officer, until such time as the defendant is released from probation by the probation officer if such treatment is deemed necessary by the probation officer.

Compliance With Order of Notice to Victims

The defendant shall comply with the portion of this judgment that requires that notice be given to victims of the offense.

[11]If the defendant is placed on probation for a felony, the conditions of probation must include one or more of the following as a special condition of probation: a fine, restitution, or community service, unless the court finds on the record that extraordinary circumstances make such a condition plainly unreasonable. 18 U.S.C. § 3563(a)(2). If the court finds such extraordinary circumstances, it must impose one or more of the other conditions in 18 U.S.C. § 3563(b).

RESTITUTION

Obligation To Make Restitution[12]

Single-Defendant Cases:

a. The defendant must make restitution to the following payee(s) _____ in the amount(s) of $_____. [Payment of any interest is waived by the court (if appropriate)]

Multiple-Defendant Cases:[13]

a The defendant shall make restitution to the following payee(s)_____ in the amount(s) of $_____. [Payment of any interest is waived by the court.(if appropriate)] [This restitution is to be paid joint and several with codefendants_____ (if appropriate)] or

---

[12] If neither imprisonment nor probation is imposed, the introductory language must be modified.

18 U.S.C. § 3551(b) states that imprisonment, probation, or a fine must be imposed in every case and that restitution may be imposed in addition. 18 U.S.C. § 3663(a), which permits restitution to be imposed "in lieu of any other penalty authorized by law" in misdemeanor cases, was added to 18 U.S.C. § 3663 in 1986, Pub. L. No. 99-646, § 20(a), 100 Stat. 3592, 3596, and presumably prevails as the later enactment. Thus, restitution may not be used as the entire sentence in felony cases but probably may be used in misdemeanor cases.

If restitution is ordered and the defendant is placed on probation or ordered to serve a term of supervised release, any unpaid restitution balance must be a condition of supervision. 18 U.S.C. § 3663(g).

[13] The limited body of case law suggests that if an offense was committed jointly, it is within the discretion of the court to determine whether to apportion the restitution obligation among defendants or to impose joint and several liability. U.S. v. Trettenaro, 601 F. Supp. 183 (D. Colo. 1985); see U.S. v. Tzakis, 736 F.2d in 867 (2d Cir. 1984) (under the former probation statute), followed in U.S. v. Van Cauwenberghe, 827 F.2d 424, 435 (9th Cir. 1987), cert. denied,108 S. Ct. 773 (1988). The alternative statements of the restitution obligation for multiple-defendant cases are intended to accommodate that discretion. The last two alternatives also accommodate a modified form of joint and several liability, in which an individual defendant's exposure is limited to an amount smaller than the entire compensable injury. The court may wish to impose such a limitation after considering the defendant's financial resources and the financial needs of the defendant and dependents. See 18 U.S.C. § 3663(a).

If more than one victim is to be paid, the court may wish to establish priorities among victims as an alternative to proportionate sharing of payments. The differing needs of victims may suggest that some victims be given priority over others. In addition, if there are victims whose proportionate shares of individual payments would be very small, an alternative should be fashioned as to them to avoid administrative problems, particularly if the Justice Department is to serve as an intermediary.

b. The court finds that _____ has suffered injury compensable under the Victim and Witness Protection Act in the amount of $_____. It is ordered that the defendant make restitution to _____ of $_____, except that no further payment shall be required after the sum of the amounts actually paid by all defendants has fully covered the compensable injury. (Use in one-victim cases if restitution obligation is to be joint and several.) or

c. The court finds that the following persons have suffered injuries compensable under the Victim and Witness Protection Act in the amounts indicated: (List victims and amounts.) It is ordered that the defendant make restitution to such persons totaling $_____, except that no further payment shall be required after the sum of the amounts actually paid by all defendants has fully covered all of the compensable injuries. Any payment made by the defendant shall be divided among the persons named in proportion to their compensable injuries. (Use in multiple-victim cases if restitution obligation is to be joint and several.)

Timing and Mode of Payment[14]

The restitution shall be paid...

a. in a lump sum of _____ due immediately, or

b. no later than ____ days, or

c. in accordance with a payment schedule of $____ per (week)(month) until paid in full.

Payments shall be made...

a. directly to _____, or

b. to the Department of Justice for transfer to _____.[15]

Unless the court has expressly ordered otherwise, if this judgment imposed imprisonment, payment of criminal monetary penalties is due during imprisonment. The court is aware of the Federal Bureau of Prisons' Inmate Financial Responsibility Program and agrees with the provisions of that program.

---

[14]Two circuits have held that the provisions of section 3663(f), which limit the time within which a delayed payment or an installment payment schedule may be ordered, limits the obligation of the defendant to pay a restitution sentence. That section provides that the court order the defendant to pay restitution, if sentenced to probation, by the end of the period of probation; if sentenced to a term of imprisonment, within five years after the term of imprisonment; within five years of the sentence in any other case. U.S. v. Joseph, 914 F.2d 780 (6th Cir. 1990), and U.S. v. Bruchey, 810 F2d 456 (4th Circ 1987), provide that if full restitution is not paid within these periods, the remainder may not be collected. Accordingly, in the Fourth and Sixth Circuits, it is particularly important to provide for a payment schedule that, while realistic, is calculated to result in the greatest possible payment within the time periods set out in section 3663(f).

[15]18 U.S.C. § 3663(h) provides that an order of restitution "may be enforced by the United States in the manner provided" for the collection of fines. When the Fine Enforcement Act was in effect, the Department of Justice took the position that the quoted language made interest payable on installment payments of restitution to the same extent as on installment payments of fines. W. Weld, W. Hendricks, D. Foster & M. Schnell, Restitution Pursuant to the Victim and Witness Protection Act 44-45 (U.S. Dep't of Justice 1987). The Department may seek to collect interest under present law on restitution amounts of more than $2,500.

FINE[16]

The defendant shall pay to the United States a fine in the amount of $_____.[17]

Terms of Payment

Lump sum payment of $ _____ is due immediately, or

This fine (including any interest required by law) must be paid in full within ___ days. or

This fine must be paid in installments of $_____, the first installment to be paid on _____ and later installments to be paid each (week) (month) until the full amount (including any interest required by law) has been paid.

---

[16]This form reflects the fine amendments included in Pub. L. No. 100-185, enacted December 11, 1987.

[17]If the sentence is for a fine only, the introductory language must be modified.

[18]Ibid.

[19]If immediate payment of the fine is not ordered, the period for payment may not exceed 5 years, excluding any period of imprisonment for the offense. 18 U.S.C. § 3572(d). This limitation apparently applies only to the payment of principal.

Under 18 U.S.C. § 3612(f), interest will accrue on a fine of more than $2,500 beginning 15 days after sentencing unless the fine is paid in full before that date. Payments made will be allocated to principal until the principal has been fully paid; interest is not compounded. The rate of interest is tied to the auction price for 52-week Treasury bills, and will always be known precisely at the time of sentencing. As a rule of thumb, if the fine is to be paid in equal installments starting shortly after sentencing, the amount of interest payable will be half the amount of the fine (i.e., the average

SPECIAL ASSESSMENT

The defendant shall pay to the United States a special assessment of $____, which shall be due immediately.

VOLUNTARY SURRENDER; SURRENDER TO MARSHAL[20]

Voluntary Surrender at Institution

It is further ordered that the defendant, _____, surrender himself at the institution designated by the Bureau of Prisons....

a. before 2 p.m. on date, or

b. as notified by the United States marshals, or

c. as notified by the probation office.

---

unpaid balance), times the anticipated annual interest rate, times the number of years allowed for payment. For example, if a $6,000 fine is to be paid in equal monthly installments of $100 over 5 years and the interest rate is 7 percent, the interest will be approximately $3,000 x .07 x 5 years, or $1,050; the interest would in this case add a year to the payment period.

If the court determines that the defendant does not have the ability to pay interest, the court may waive the interest requirement or modify it in prescribed ways. 18 U.S.C. § 3612(1)(3).

If probation is imposed, payment of the fine must be made a condition. 18 U.S.C. § 3563(a).

18 U.S.C. § 3572(e) was apparently intended to prohibit the practice of ordering a defendant to stand committed until a fine is paid. See S. Rep. No. 98-225, 98th Cong., 1st Sess. 109 n.251 (1983) (subsection is "in opposition to " old § 3565, which referred to cases in which "the judgment directs imprisonment until the fine or penalty is paid").

If the fine exceeds $100, the written judgment must include the defendant's social security number, mailing address, and residence address. 18 U.S.C. § 3612(b).

[20]Before ordering that the defendant report for sentence at a future date, the judge must find by clear and convincing evidence that the defendant is not likely to flee or pose a danger to the safety of any other person or the community if released. 18 U.S.C. § 3143(a). If such a finding is made, the defendant is released under the provisions of 18 U.S.C. § 3142(b) and (c), governing conditions of release before trial. It should be noted, however, that the Mandatory Detention for Offenders Convicted of Violent Crimes Act of 1990 (Pub. L. 101-647, title IX, 104 Stat. 4789, 4826 (Nov. 29, 1990) precludes voluntary surrender for those defendants covered by its terms. Failure to surrender for service of sentence pursuant to the court's order is a violation of the Failure to Appear statute 18 U.S.C. § 3146(a)(2).

Surrender to United States Marshal

It is further ordered that the defendant, _____, surrender himself to the United States Marshal for this district...

a. at time on date, or

b. as notified by the marshals.

ORDER OF NOTICE TO VICTIMS[21]

It is further ordered that the defendant shall notify the victims of the offense of this conviction.

a. The notice shall be sent by first-class mail to (definition of class) at their last-known address, or

b. The notice shall be published through paid advertisements in (describe media, number of advertisements, size, and placement).

INJUNCTION PROHIBITING REGULATED TRANSACTIONS INVOLVING LISTED CHEMICALS

It is further ordered that the defendant is hereby enjoined, for a period of _____ (months) (years) (not to exceed 10 years), from distributing, receiving, selling, importing, or exporting a threshold amount of any chemical as specified by regulation of the Attorney General, that is used in manufacturing a controlled substance, and from distributing, importing, or exporting a tableting or encapsulating machine. This injunction shall not apply to transactions that are excluded from the definition of regulated transactions under 21 U.S.C. § 802(39).

---

[21]Order of notice, authorized for offense involving fraud or other intentionally deceptive practices, is in addition to any other penalties imposed. 18 U.S.c. § 3555.

An order of notice can be imposed only if the court has given notice to the parties that it is considering such an order and has provided them an opportunity to respond. 18 U.S.C. § 3553(d).

DEATH[22]

It is the judgment of the court that the defendant is sentenced to death.

The time, place, and manner of execution are to be determined by the Attorney General, provided that the time shall not be sooner than 61 days nor later than 90 days after the date of this judgment. If an appeal is taken from the conviction or sentence, execution of the judgment shall be stayed pending further order of this court upon receipt of the mandate of the court of appeals.[23]

The defendant is hereby committed to the custody of the Bureau of Prisons to be confined until the sentence is carried out.

PROBATION WITHOUT JUDGMENT UPON CONVICTION OF SIMPLE POSSESSION OF CONTROLLED SUBSTANCE

It is ordered that the defendant, _____, is hereby placed on probation for a term of (one year) (___ months).[24] The entry of judgment is deferred. If the defendant completes the term of probation without violation of the conditions imposed, the proceedings will be dismissed.

---

[22] The death penalty is authorized by 21 U.S.C. § 848(e). No statute prescribes the time, place, or manner of execution; the language suggested reflects the view that the executive branch should be permitted a reasonable degree of discretion in implementing the sentence. Former 18 U.S.C. § 3566, which was in effect before Furman v. Georgia, 408 U.S. 238 (1972), and was repealed before enactment of 21 U.S.C. § 848(e), provided that "the manner of inflicting the punishment of death shall be that prescribed by the laws of the place within which the sentence is imposed." If the sentence was imposed in a place that did not have the death penalty, the court was authorized to designate another place.

[23] The 61-day delay is intended to allow for an appeal to be filed. There is some ambiguity about the time for appeal because 21 U.S.C. § 848(q)(I) states that the notice of appeal must be filed within the time prescribed by 28 U.S.C. § 2107, a provision that governs only appeals in civil cases. A 9O-day period is prescribed for admiralty appeals and a 6O-day period for appeals in other civil cases in which the United States is a party.

The 9O-day maximum period is suggested to provide a reasonable period within which the sentence can be carried out. If the judge wishes, it is probably proper to set the date of execution.

[24] The maximum probation term that may be imposed under this procedure is one year. 18 U.S.C. § 3607(a). In addition, the defendant's consent is required.

DISMISSAL OF CASE UPON SUCCESSFUL COMPLETION OF PROBATION WITHOUT JUDGMENT

The court, pursuant to 18 U.S.C. § 3607, hereby discharges the defendant from probation and dismisses those proceedings under which probation has been ordered, and orders that the case files and other court records pertinent to this case be sealed and turned over to the clerk of this court.[25]

EXPUNGEMENT OF OFFICIAL RECORDS OF CERTAIN YOUTHFUL DRUG OFFENDERS

Upon application of the defendant, it is ordered that there be expunged from all official records, except the nonpublic records referred to in 18 U.S.C. § 3607(b), all references to the defendant's arrest for the offense of which the defendant was found guilty in this case and all references to the institution of criminal proceedings and to the conduct and outcome of those proceedings.[26]

---

[25]This has been adapted from a standard order that was approved by the Judicial Conference for use under former 21 U.S.C. § 844(b)(1), the predecessor of 18 U.S.C. § 36O7(a) and (b). (Conference Report, April 1973, at 14-15.)

[26]The following instructions to clerks of court was approved by the Judicial Conference under former 21 U.S.C. § 844(b)(2), the predecessor of 18 U.S.C. § 3607(c):

Pursuant to an order under this section, the Clerk shall first obliterate the name of the individual from all indexes, and shall withdraw the docket sheets and the file containing the papers of the case from the court records. He then shall notify the Administrative Office, the court reporter, the probation officer and the magistrate judge of the order, instructing them to make a similar obliteration and withdrawal of the papers in the case and delivery of the papers to the Clerk.

All the papers shall thereupon be expunged by being placed in the sealed records of the court to be opened only upon court order, and shall be physically destroyed after 10 years. (Conf. Reprt, March, 1971, at 5.)

DISPOSITION OF JUVENILE DELINQUENT[27]

It is adjudged that the defendant, _____, is a juvenile delinquent. Disposition is made under 18 U.S.C. § 5037, as amended effective November 1, 1987.[28]

a. It is the judgment of the court that the defendant, _____, is hereby committed to official detention in the custody of the Attorney General of the United States (until his 21st birthday) (for a term of _____ years), or

b. It is the judgment of the court that the defendant, _____, is hereby placed on probation (until his 21st birthday) (for a term of ____ years, [29] or

c. It is the judgment of the court that the defendant, _____, shall make restitution (use alternatives from restitution language).[30]

---

[27] In addition to the dispositions covered by the below language, 18 U.S.C. § 5037(a) authorizes the court to "suspend the findings of juvenile delinquency." The former 18 U.S.C. § 5037(b) authorized the court to "suspend the adjudication of delinquency of the disposition of the delinquent on such conditions as it deems proper." Elimination of the "such conditions" language suggests that suspension may have the effect of an unconditional discharge.

[28] Although the sentencing guidelines do not apply to adjudications of delinquency, the Sentencing Reform Act repealed the section authorizing parole release. Juveniles committed to custody will accordingly serve the full sentence, reduced only by good time. See 18 U.S.C. § 5037(c). There is no provision for supervised release. It is particularly important in custody cases to make clear whether the sentence is under the old law or the new.

[29] If the juvenile is placed on probation, use the language for probation for the conditions. Authorized periods of probation and detention are set forth in 18 U.S.C. § 5037(b) and (c). If the juvenile is 18 or older, terms may in some cases extend beyond the 21st birthday.

[30] Restitution orders were not specifically authorized under the old law, but restitution under the Victim and Witness Protection Act is authorized by the new law. The disjunctive language in 18 US.C. § 5037(a) may imply that restitution cannot be combined with detention or probation.

COMMITMENT FOR CARE OR TREATMENT UPON FINDING OF MENTAL DISEASE OR DEFECT[31]

It is the judgment of the court that the defendant, _____, is hereby committed to the custody of the Attorney General of the United States to be hospitalized in a suitable facility pursuant to 18 U.S.C. § 4244 in lieu of a sentence of imprisonment. If not sooner released under 18 U.S.C. § 4244(e), the defendant shall be released upon expiration of the maximum term that could have been imposed for the offense of conviction.[32]

It is further ordered that the defendant shall pay to the United States a special assessment of $ _____, which shall be due immediately.[33]

---

[31] 18 U.S.C. § 4244, which took effect October 12, 1984, sets forth the procedures that must be followed before ordering a commitment of this type. See supra Sec. 1.26, Mental Competency in Criminal Matters.

Defendants who are committed under 18 U.S.C. § 4244 are generally assigned to mental hospitals within prisons, and are not treated differently from those in need of care who have been sentenced to imprisonment. Hence, the principal effect of using this procedure is that it invokes different provisions about release from custody. Also, there appears to be no authority to impose a term of supervised release following custody.

Since a defendant is committed under this section "in lieu of being sentenced to imprisonment," 18 U.S.C. § 4244(d), it may be argued that restitution and/or a fine may also be imposed.

[32] 18 U.S.C. § 4244(d) states that commitment under this section "constitutes a provisional sentence of imprisonment to the maximum term authorized by law for the offense for which the defendant was found guilty." 18 U.S.C. § 4244(e), relating to discharge, does not state that the defendant must be discharged upon expiration of the provisional sentence. The second sentence of the above form is intended to fill that gap. It should be observed that it has been drafted for one-count convictions; the application to multicount convictions of the language quoted above is not free from doubt.

[33] The defendant having been convicted, the mandatory special assessment is applicable. If the defendant is unable to pay immediately, adapt language from deferred payment of fines.