

1994



1993

# United States Sentencing Commission

1992

1991



1990

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121594

## Annual Report

1988

1987

1986

U.S. Department of Justice  
National Institute of Justice

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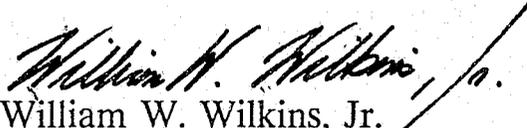
LETTER FROM THE CHAIRMAN

To the President,  
the Congress, and  
the Judicial Conference  
of the United States of America

*I am pleased to transmit this report chronicling the activities and accomplishments of the United States Sentencing Commission in 1988. This report is expanded beyond the calendar year to include several significant events that transpired during the first months of 1989.*

*The Supreme Court's validation in January 1989 of the constitutionality of the Commission and the Sentencing Reform Act cleared the way for full implementation of the guidelines. The Commission is committed to refining the guidelines in the years ahead to ensure that this new sentencing system, which already has significantly improved the federal criminal justice system, realizes its full potential.*

Respectfully submitted,

  
William W. Wilkins, Jr.  
Judge, United States Court of Appeals  
for the Fourth Circuit

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# I: INTRODUCTION

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The United States Sentencing Commission, established in the 98th Congress after more than a decade of bipartisan effort, is an independent agency in the Judicial Branch of government. The Commission consists of seven voting members appointed by the President and confirmed by the Senate and two non-voting, *ex-officio* members.

The Commission's primary function is to promulgate sentencing policies and practices for the federal courts that include guidelines prescribing the appropriate form and severity of punishment for offenders convicted of federal crimes.

The Commission was created by the Sentencing Reform provisions of the Comprehensive Crime Control Act, Pub. L. No. 98-473 (1984) and its authority and duties are set out in Chapter 58 of Title 28, United States Code. Procedures for implementing guideline sentencing are prescribed in a new chapter 227 of Title 28.

As specified in 28 U.S.C. § 991(b), the sentencing guidelines established by the Commission are designed to:

- Effectuate the purposes of sentencing enumerated in 18 U.S.C. § 3553(a)(2). In brief, those purposes are just punishment, deterrence, incapacitation, and rehabilitation;
- Provide certainty and fairness in meeting the purposes of sentencing by avoiding unwarranted disparity among offenders with similar characteristics convicted of similar criminal conduct, while permitting sufficient judicial flexibility to take into account relevant

aggravating and mitigating factors; and

- Reflect, to the extent practicable, advancement in the knowledge of human behavior as related to the criminal justice process.

Organized in October 1985, the Commission submitted its initial *Sentencing Guidelines and Policy Statements* to Congress on April 13, 1987. Prior to the submission, the Commission held 13 public hearings, published two drafts for public comment, and received more than 1,000 letters and position papers from hundreds of individuals and organizations. After the requisite period of Congressional review, the guidelines became effective on November 1, 1987, and apply to all offenses committed on or after that date.

Shortly after implementation of the guidelines, defendants throughout the country began challenging the constitutionality of the Sentencing Reform Act, claiming violations of the separation of powers and delegation doctrines.

On January 18, 1989, the U.S. Supreme Court in *U.S. v. Mistretta* laid to rest these challenges and upheld the constitutionality of the Commission as an independent judicial branch agency. Prior to the Supreme Court's ruling, three courts of appeals and more than 300 district courts had addressed the issue.

Due to the constitutional litigation, implementation of guideline sentencing in 1988 was incomplete. Post-*Mistretta*, however, the guidelines and related provisions of the Sentencing Reform Act have been uniformly applied.

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According to the Commission's monitoring data, judges are imposing sentences within the appropriate guideline range in 82.3 percent of the cases. In 2.9 percent of the cases, judges are departing upward and imposing sentences higher than that called for by the guidelines, while in 9.1 percent of the cases judges are departing downward and imposing sentences lower than that prescribed by the guidelines. Finally, in 5.7 percent of the cases, judges are departing downward from the guideline range upon motion of the government due to the defendant's substantial assistance to authorities.

Importantly, the rate at which defendants chose to plead guilty has remained constant after implementation of the guidelines. Monitoring statistics show that 90.2 percent of the guideline sentences result from convictions after a plea of guilty, reflecting approximately the same ratio of pleas versus trials the federal system experienced before guideline sentencing.

The Commission invested considerable resources in 1988 equipping U.S. probation offices across the country with computer hardware and software to ease guideline application and facilitate case management. It also conducted advanced guideline application training sessions in five regions of the country in early 1989. The sessions involved at least two probation officers, assistant U.S. Attorneys, and federal defenders or defense attorneys from each judicial district.

During the year, the Commission's Technical Assistance Service responded to more than 1,700 questions on guideline application from judges and probation officers. Also in 1988, the Commission began focusing on drafting sentencing guidelines for organizations convicted of

federal offenses. Testimony from experts at public hearings in New York and California provided the Commission with valuable perspectives on this complex issue.

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## II: ADMINISTRATION

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### *Organization*

The Commission staff is divided into five offices: Legal, Research, Guidelines Production, Communications, and Administration. The supervisor in each office reports to the Staff Director, who is responsible for planning, coordinating, and directing Commission activities. The Staff Director in turn reports to the Commissioners.

During fiscal year 1988, employment averaged 51 workyears, with approximately 40 percent of the staff involved in research, monitoring, evaluation, and training. The Commissioners' offices, administration, and legal staffs each accounted for approximately 15 percent of staff resources.

The Commission utilizes professionals in the fields of criminal justice, economics, sociology, and statistics to supplement its permanent staff through contractual arrangements or loans from other federal agencies.

### *Staff*

The **Legal Staff** provides support to the Commission on a variety of legal issues, including the operation of the agency, the scope of its authority, and the formulation and application of guidelines and guideline amendments. The General Counsel and members of his staff represented the Commission as *amicus curiae* in court proceedings challenging the constitutionality of the Sentencing Reform Act and the Commission. The legal staff also monitors district and circuit court interpretations and application of the guidelines as well as constitutional challenges to individual

guidelines. In addition, the staff advises the Commission on statutes and legislation affecting the Commission's work.

The research office encompasses the monitoring, evaluation, training, and Technical Assistance Service functions. **Monitoring** staff are developing a comprehensive data collection system to track application of the guidelines. The monitoring reports provide significant information for the Commission to review when it considers amending individual guidelines. The monitoring unit also produces periodic reports on guideline implementation and updates a master file of guideline sentencing statistics to be made available through the Inter-university Consortium for Political and Social Research.

Research conducted by the **Evaluation** staff focuses exclusively on the Congressionally mandated four-year evaluation of the guidelines and will incorporate the Commission's monitoring data. The **Training** staff trains judges, probation officers, attorneys, and investigative agents on guideline application. The **Technical Assistance Service** operates a "hotline" for judges and probation officers with questions on guideline application. The unit also reviews probation officers' application of the guidelines on a district-by-district basis.

**Research** staff provide analysis and support to the Commission on various issues, including the effect of proposed guideline amendments on federal prison population, alternatives to incarceration, and empirical analysis of sentencing practices related to organizational defendants.

## *United States Sentencing Commission*

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The **Guidelines Production** unit is responsible for implementing substantive policy decisions made by the Commission. Pursuant to Commission directives, the unit coordinates drafting of proposed amendments to existing guidelines or the creation of new guidelines in response to Congressional enactment or modification of criminal statutes.

The **Communications Unit** is the Commission's public information office and responds to inquiries from the press, the courts, attorneys, and the general public. The unit is responsible for coordinating all Commission publications, including amendments to the *Guidelines Manual*, the *Trainer's Manual*, guideline worksheets, and the annual report.

The **Administration** staff provides planning and management of budget and finance, contracts, procurement, personnel, library, computers, equipment, facilities, and general support services.

### *Budget and Expenditures*

Public Law 100-202 provided an appropriation of \$5,129,000 and 54 full-time permanent staff positions for fiscal year 1988. The Commission's average employment for fiscal year 1988 was 51, and it expended \$5,108,000 of the \$5,129,000 appropriated. The Commission requested \$5,350,000 and 69 full-time permanent positions for fiscal year 1989 in order to add support to its monitoring and evaluation responsibilities, guidelines production, legal, and general administrative staff. The Congress appropriated \$5,183,000 for fiscal year 1989; in addition to that amount, the Commission plans to use much of the remaining balance of its start-up appropriation (\$1,170,000) to support certain staff increases and special projects. See Table I.

**TABLE I:  
BUDGET AND EXPENDITURES  
(IN THOUSANDS)**

	FY 1988 Obligations	FY 1989 Estimate
<b>Budget Authority</b>	<b>\$5,129</b>	<b>\$6,353*</b>
Personnel Compensation	\$2,178	\$3,015
Personnel Benefits	\$ 393	\$ 603
Travel and Transportation	\$ 676	\$ 676
Communications, Utilities, and Other Rent	\$ 641	\$ 776
Printing and Reproduction	\$ 130	\$ 180
Other Services	\$ 660	\$ 765
Supplies and Materials	\$ 77	\$ 90
Equipment	\$ 353	\$ 248
<b>Total Obligations</b>	<b>\$5,108</b>	<b>\$6,353</b>

\* Includes \$1,170,000 in start-up funds carried forward from prior years.



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## III: LEGAL ISSUES

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### A. CONSTITUTIONAL LITIGATION

#### Overview

In *Mistretta v. United States*, 109 S. Ct. 647 (1989), the United States Supreme Court upheld the constitutionality of the Sentencing Commission against multiple separation of powers and excessive delegation challenges. The 8-1 decision on January 18, 1989, was preceded by more than a year of extraordinary litigation in which similar issues were argued before hundreds of district court judges and several U.S. Courts of Appeals. Over the course of the litigation, approximately 120 district judges ruled that the guidelines were constitutional, while more than 200 district judges invalidated the guidelines and all or part of the Sentencing Reform Act. In the courts of appeals, a divided panel of the Ninth Circuit struck down the guidelines (*United States v. Chavez-Sanchez* and *Gubiensio-Ortiz v. Kanahale*, 857 F.2d 1245 (9th Cir. 1988)), while the Third Circuit upheld them (*United States v. Frank*, 864 F.2d 992 (1988)), and the Fifth Circuit, after reviewing briefs and hearing oral argument, issued a supervisory order (*United States v. White*, 855 F.2d 201 (5th Cir. 1988)) requiring that all district courts in that circuit apply the guidelines pending the U.S. Supreme Court decision.

#### Litigation History

The Commission had anticipated the probability of extensive constitutional litigation involving the guidelines well before the initial guidelines took effect on November 1, 1987. Accordingly, it had retained Professor Paul M. Bator of the firm of Mayer, Brown & Platt to assist in advising and representing the Commission with respect to constitutional challenges to its authority.<sup>1</sup> The Commission supplemented the services of Professor Bator and other attorneys in his firm with its own legal staff. The Commission's General Counsel coordinated the filing of *amicus* briefs and the presentation of oral arguments in the lower courts.

Litigation challenging the constitutionality of the guidelines on separation of powers and excessive delegation grounds commenced soon after the guidelines took effect. The initial suit was a civil action for declaratory and injunctive relief filed by two federal defender organizations in the United States District Court for the District of Columbia on November 23, 1987. The Commission and the Department of Justice moved to dismiss the suit for lack of standing and on February 22, 1988, Judge Stanley Sporkin granted that motion. *Federal Defenders of San Diego, Inc. v. United States Sentencing Commission*, 680 F. Supp. 26 (D. D.C. 1988).

1. Retention of its own legal counsel was deemed necessary by the Commission in part because the Department of Justice initially chose not to defend the Sentencing Reform Act as written, but instead contended that the Commission be considered as part of the Executive Branch for constitutional purposes. In contrast, the Commission believed that Congress' designation of the Commission as an independent body within the Judicial Branch was both constitutionally permissible and sound public policy.

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Meanwhile, several criminal defendants in the Southern District of California, among the first scheduled to be sentenced under the Sentencing Reform Act, moved to have the Act and the guidelines struck down, alleging both constitutional and statutory infirmities. When similar motions were presented soon thereafter to other judges in the same district, a decision was made to consolidate oral argument *en banc*, although the judges reserved the right to issue independent decisions. Oral argument was presented on February 17, 1988, with counsel for the Department of Justice, the defendants, and the Commission as *amicus curiae* participating. Two days later, the first district court judge ruled the guidelines unconstitutional because of the placement of the Commission in the Judicial Branch and the inclusion of three Article III judges among its members. *United States v. Arnold*, 678 F. Supp. 1463 (S.D. Cal. 1988).

The manner in which the judges of the Southern District of California consolidated oral argument on the constitutional issues was repeated in several other districts. A number of districts decided the issues by majority vote, much like a court of appeals, with the majority decision binding on all judges in the district. Still other districts considered constitutional challenges to the guidelines in the routine manner, with each judge deciding the matter individually and issuing a ruling binding only on cases heard by that particular judge.

The sharp division of opinion among district court judges soon produced wide variations in the law to be applied at sentencing even within the same district. Further complicating the situation was the fact that judges who invalidated the guidelines came to widely varying conclusions regarding the portions of the Sentencing

Reform Act that were necessarily invalid or, alternatively, that could be severed and preserved. These decisions ranged from a conclusion that only the mandatory use of the guidelines was invalid (see e.g., *United States v. Estrada*, 680 F. Supp. 1312 (D. Minn. 1988)) to a determination that the entire Sentencing Reform Act was invalid (see e.g., *United States v. Tolbert*, 682 F. Supp. 1517 (D. Kan. Apr. 8, 1988) and *Gubiensio-Ortiz v. Kanahele*, 857 F.2d 1245 (9th Cir. 1988)). This resulted in some judges imposing non-guideline sentences under which the defendant was ineligible for parole, while other judges imposed non-guideline sentences under which parole was available.

Clearly, a definitive resolution of the important constitutional issues as soon as practicable was needed in order to restore a uniform law of sentencing. Therefore, the Solicitor General and Public Citizen Litigation Group (counsel who had represented a number of defendants in various districts), together with the strong support of the Sentencing Commission, petitioned the United States Supreme Court on May 19 and 20, 1988, (Nos. 87-1904 and 87-7028) for a writ of *certiorari* before judgment to the United States Court of Appeals for the Eighth Circuit in the case of *United States v. Mistretta*. The Court granted the writ on June 13, 1988, and oral argument was presented in the Supreme Court on October 5, 1988.

As noted earlier, the Supreme Court on January 18, 1989, rejected the constitutional challenges in an opinion by Justice Blackmun. With respect to the claim of excessive legislative delegation, the Court held that the Sentencing Reform Act contained more than ample "intelligible principles" and legislative policy direction to the Commission to pass muster under the

delegation doctrine. *Mistretta v. United States*, 109 S.Ct. 647, 654-655 (1989). On the first of the critical separation of powers issues, the Court found no fault with the placement of the Commission in the Judicial Branch because the Commission does not exercise judicial power as a court under Article III of the Constitution or otherwise aggrandize or weaken the Judicial Branch. The Court also held that the Commission's functions are clearly related to the historical work of the courts. *Id.* at 661-667.

With respect to the composition of the Commission, the Court found that the statute's requirement that three federal judges serve on the Commission did not impermissibly interfere with the functioning of the judiciary. Justice Blackmun wrote that the nature of the Commission's work "is devoted exclusively to the development of rules to rationalize a process that has been and will continue to be performed exclusively by the Judicial Branch." The Court held that the Commission was "an essentially neutral endeavor . . . in which judicial participation is peculiarly appropriate." *Id.* at 673. Finally, on the issue of Presidential control of Commissioners through appointment (with the advice and consent of the Senate) and removal (for cause), the Court held that neither power significantly threatened judicial independence. *Id.* at 675.

The *Mistretta* decision essentially settled the debate regarding the Commission's constitutionality and cleared the way for uniform, nationwide application of the guidelines. However, the decision did not end all constitutional litigation regarding the guidelines, nor did it resolve numerous issues regarding the Commission's implementation of the Sentencing Reform Act.

The principal constitutional objection remaining after *Mistretta* is the argument that the guidelines constrain the courts' discretionary authority to individualize sentencing in violation of a defendant's Fifth Amendment right to due process of law. Originally raised *sua sponte* by a court in the Western District of Pennsylvania (*United States v. Frank*, 682 F. Supp. 815 (W.D. Penn., 1988)), the theory garnered some support thereafter among district courts prior to the *Mistretta* decision, but has been uniformly rejected by all nine of the circuit courts that have faced the issue to date. *United States v. Seluk*, 873 F.2d 15 (1st Cir. 1989); *United States v. Vizcaino*, 870 F.2d 52 (2d Cir. 1989); *United States v. Frank*, 864 F.2d 992 (3d Cir. 1989); *United States v. Bolding*, 876 F.2d 21 (4th Cir. 1989); *United States v. White*, 869 F.2d 822 (5th Cir. 1989); *United States v. Allen*, 873 F.2d 963 (6th Cir. 1989); *United States v. Pinto*, 875 F.2d 143 (7th Cir. 1989); *United States v. Brittman*, 872 F.2d 827 (8th Cir. 1989); *United States v. Harris*, No. 88-3223 (11th Cir. July 11, 1989). Similarly, various defendant contentions regarding statutory compliance by the Commission have to date, with few exceptions, been rejected by the district courts.

### Conclusion

After more than a year of litigation, nationwide implementation of the Sentencing Reform Act and the guidelines is being achieved. The activity in the courts has settled into the format Congress envisioned when, as part of the regime of sentencing reform, it provided for sentences to be based upon explicit legal standards and guidelines issued by the Sentencing Commission with a limited right to appellate review of sentences. See 18 U.S.C. §3742.

The Commission's role, and that of its legal staff, has shifted from one of active *amicus* participation in constitutional litigation to monitoring the development of "the law of sentencing" in the courts.

## **B. AMENDMENTS TO STATUTORY AUTHORITY**

In response to a legislative proposal from the Commission, the Second Session of the 100th Congress enacted a number of changes in the Commission's organic statute, set out at 28 U.S.C. § 991 *et seq.*, along with several amendments to the sentencing provisions of Title 18, Chapter 227. Initially, these proposals were passed by the Senate on June 17, 1988, as part of S.2485, the Minor and Technical Criminal Law Amendments Act of 1988 (see Sec. 311 *et seq.*). The House did not act favorably on that bill, but rather incorporated its provisions into H.R. 5210, the Anti-Drug Abuse Act of 1988, which became law on November 18, 1988 (Pub. L. 100-690) (see Sec. 7102 *et seq.*, of Subtitle C, Title VII of that Act).

These amendments provide flexibility to courts to send the Commission either a transcript of the sentencing proceeding or other appropriate public record showing the court's reasons for imposition of sentence; reorganize and clarify the standards of appellate review, including addition of a "due deference" standard governing review of district court application of the sentencing guidelines to the underlying facts of the case; and provide limited flexibility to the Commission to amend its annual regular amendment report following its submission to Congress and alter the proposed effective date of the submitted amendments.

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## IV: GUIDELINE AMENDMENTS

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The legislation creating the Sentencing Commission envisioned that the guidelines promulgated by the Commission would be subject to modification and refinement. The Congress provided that . . . "The Commission periodically shall review and revise, in consideration of comments and data coming to its attention, the guidelines promulgated pursuant to the provisions of this section." 18 U.S.C. § 994(o).

In its *Sentencing Guidelines and Policy Statements*, the Commission reflected this approach to guideline drafting, stating that the initial draft was "but the first step in an evolutionary process." After promulgation of the initial guidelines, the Commission's responsibilities include refinement and modification pursuant to monitoring of guideline implementation and Congressional enactment of new statutes.

### *Permanent and Emergency Amendment Authority*

By statute, the Commission may transmit amendments to the Congress on or after the beginning of a regular session of Congress but not later than the first day of May. Such amendments must remain before the Congress for at least 180 days before taking effect. At the expiration of this review period, the guideline amendments become effective automatically, unless the Congress provides otherwise by enactment of law.

Congress has also provided the Commission with authority to promulgate temporary emergency amendments during the initial phase of guideline implementation. Emergency amendments take effect with-

out a period of Congressional review but must be submitted as permanent amendments to remain in effect. The Commission has utilized the temporary emergency guideline promulgation authority to clarify and improve the guidelines and to respond to legislative enactments.

### *Amendments Promulgated*

A major accomplishment of the Commission during 1988 was refinement of the guidelines. Because of the short time period allotted the Commission to prepare the initial guidelines, there were inevitable ambiguities and technical inconsistencies. In an effort to clarify and improve the guidelines, the Commission promulgated 38 amendments under its emergency amendment authority. These amendments became effective on January 15, 1988. The Commission subsequently promulgated an additional 25 amendments under its emergency amendment authority that took effect on June 15, 1988.

The Commission promulgated its first set of regular permanent amendments that became effective on October 15, 1988. Two of the amendments expanded the guidelines to cover offenses not covered in the initial guidelines. The third amendment increased the guideline sentence for the offense of engaging in a continuing criminal enterprise. In addition, the Commission's first set of emergency amendments, which became effective on January 15, 1988, were sent to the Congress as permanent amendments as required by statute.

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On May 1, 1989, the Commission sent to Congress a series of additional amendments to clarify, improve, and expand the existing guidelines. The effective date for these amendments is November 1, 1989, barring Congressional action to the contrary.

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# V: RESEARCH

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## A. MONITORING

### 1. Background

#### *Statutory Requirements*

The Commission's monitoring unit was developed to collect, prepare, and analyze data on guideline sentencing to support the Commission's varied activities. Among the Commission's responsibilities mandated by Congress are:

- to establish a research and development program within the Commission for the purpose of serving as a clearinghouse and information center for the collection, preparation, and dissemination of information on federal sentencing practices (28 USC § 995(a)(12));
- to publish data concerning the sentencing process (28 USC § 995(a)(14));
- to collect systematically and disseminate information concerning sentences actually imposed and the relationship of such sentences to the factors set forth in section 3553(a) of title 18, United States Code (28 USC § 995(a)(15));
- to collect systematically and disseminate information regarding effectiveness of sentences imposed (28 USC § 995(a)(16));
- to monitor the performance of probation officers with regard to sentencing recommendations, including applica-

tion of the Sentencing Commission guidelines and policy statements (28 USC § 995(a)(9); and

- to review and revise, in consideration of comments and data coming to its attention, the guidelines promulgated pursuant to the provisions of this section (28 USC § 994(o)).

In establishing the Commission, Congress envisioned systematic collection and reporting of information on guideline cases.

The appropriate judge or officer shall submit to the Commission in connection with each sentence imposed (other than a sentence imposed for a petty offense, as defined in title 18, for which there is not applicable sentencing guidelines) a written report of the sentence, the offense for which it is imposed, the age, race, and sex of the offender, information regarding factors made relevant by the guidelines, and such other information as the Commission finds appropriate. The Commission shall submit to Congress at least annually an analysis of these reports and any recommendations for legislation that the Commission concludes is warranted by that analysis (28 USC §994(w)).

Pursuant to its authority under 28 USC §§994(w) and 995(a)(8) and after discussions with the Criminal Law and Probation Administration Committee of the Judicial Conference and the Administrative Office of the U.S. Courts (AO), the Commission requested that the probation offices in

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each judicial district submit to the Commission the following documents on every case sentenced under the guidelines:

- Presentence Report
- Guideline Worksheets
- Report on the Sentencing Hearing (statement of reasons for imposing sentence as required by 18 USC § 3553(c))
- Written Plea Agreement (if applicable)
- Judgment of Conviction

### *Implementation of the Guidelines*

In response to the request for documentation,<sup>1</sup> the Commission has received (as of April 26, 1989) information on 8,030 cases sentenced under the guidelines from November 1, 1987, through February 28, 1989. Figure I depicts the number of guideline cases received that were sentenced each month during this period.

The number of guideline cases received during this reporting period may appear low relative to the approximately 40,000 defendants sentenced in the federal system each calendar year. Several factors have slowed the use of the guidelines during the early stages of implementation. First, many judges throughout the country ruled the guidelines or the Sentencing Reform Act unconstitutional. A review of district court rulings found that 206 judges had found the guidelines or the Sentencing Reform Act unconstitutional and sentenced without guidelines. An additional 71 judges who initially found the

guidelines constitutional later sentenced without guidelines pursuant to the Ninth Circuit's decision in *United States v. Chavez-Sanchez* and *Gubiensio v. Kanahale*, 857 F.2d 1245 (9th Cir. 1988). Table I indicates the number of district judges who sentenced pursuant to the guidelines prior to the *Mistretta* decision.

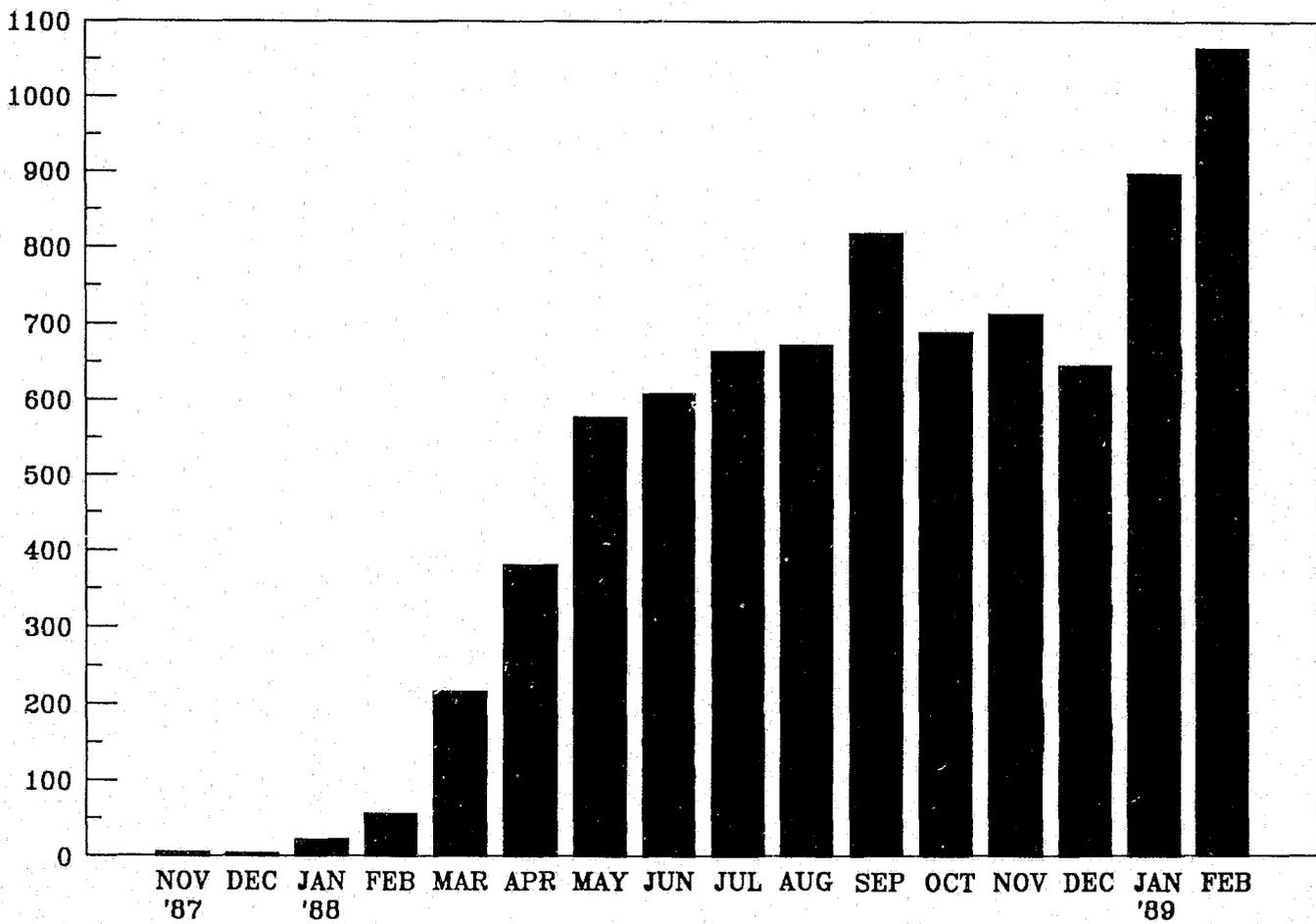
Second, the Sentencing Reform Act and guidelines are applicable only to offenses that occur on or after November 1, 1987. This has resulted in gradual application of the guidelines due to the time lag involved in normal case processing.

These two factors resulted in only 15 percent of federal criminal cases (as reported to the AO through the Federal Probation Sentencing and Supervision Information System or FPSSIS) being sentenced under the guidelines in the 15 months prior to the *Mistretta* decision. In the first month and a half since the *Mistretta* decision, 40 percent of the cases in the federal system have been sentenced under the guidelines. Figure II depicts the number of guideline cases in relation to non-guideline cases between November 1, 1987, and February 28, 1989. The percentage of cases sentenced under the guidelines will gradually increase each month.

1. The Commission's request for documentation was transmitted by memorandum from Mr. L. Ralph Meham, Director of the Administrative Office of the U.S. Courts, to the court community on March 7, 1988.

# FIGURE I:

## Number of Guideline Cases Received at USSC by Month Sentenced\*



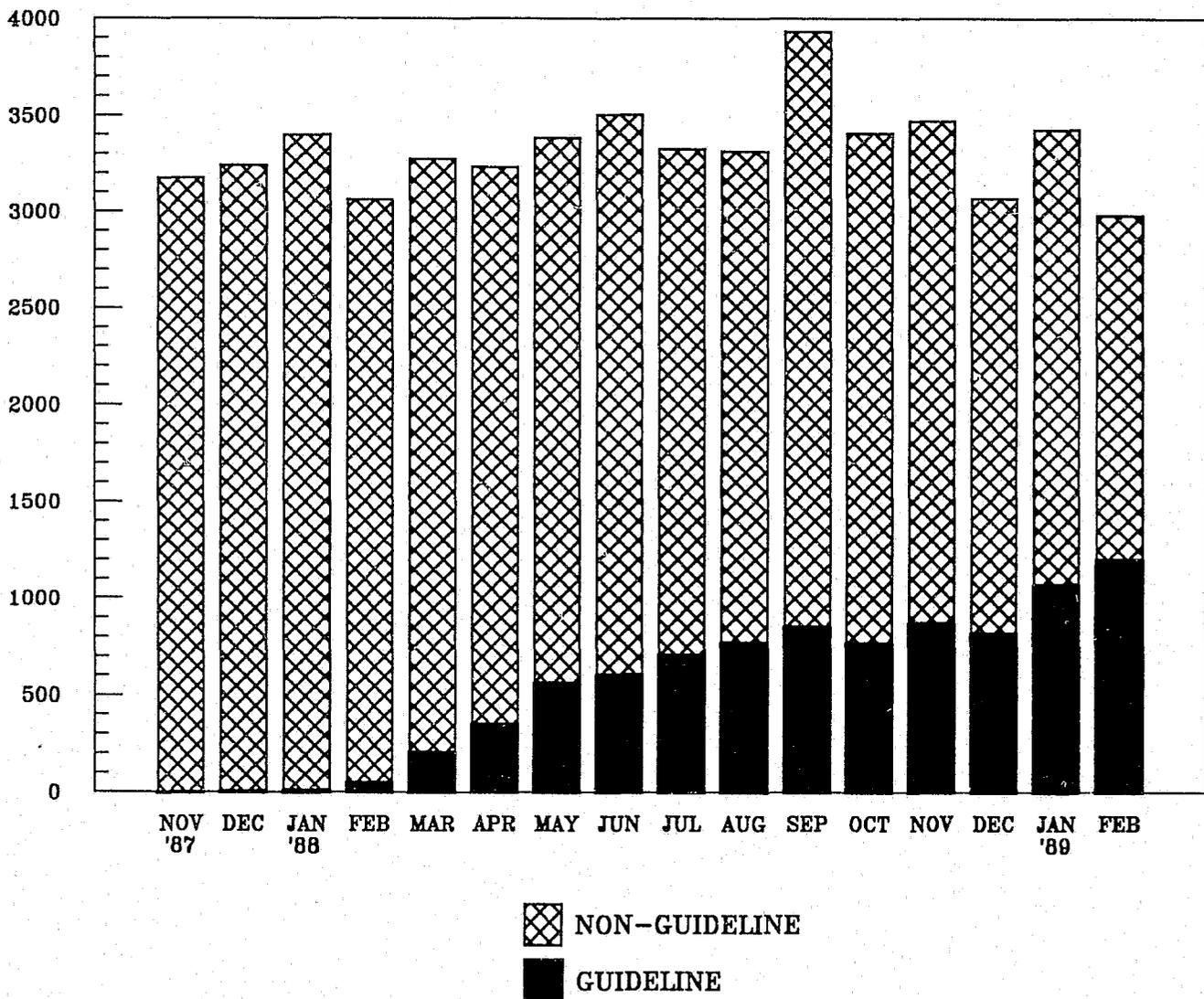
\*Source: USSC data file (MON289) for cases received as of April 26, 1989.

**TABLE I:  
DISTRICT JUDGES SENTENCING  
UNDER GUIDELINES PRIOR TO CIRCUIT COURT RULINGS\*  
AND THE MISTRETTEA DECISION**

District (Circuit #)	Number of Judges Sentencing Under Guidelines	Number of Judges Not Sentencing Under Guidelines	District (Circuit #)	Number of Judges Sentencing Under Guidelines	Number of Judges Not Sentencing Under Guidelines
Alabama (11th)			Montana (9th)	3	0
Northern	0	10	Nebraska (8th)	0	3
Southern	1	2	Nevada (9th)	6	0
Middle	4	0	New Hampshire (1st)	2	0
Alaska (9th)	3	0	New Jersey (3rd)	15	1
Arizona (9th)	10	1	New Mexico (10th)	2	2
Arkansas (8th)			New York (2nd)		
Eastern	0	5	Northern	4	1
Western	3	0	Southern	19	19
California (9th)			Eastern	13	2
Northern	17	1	Western	5	0
Southern	5	4	North Carolina (4th)		
Eastern	9	1	Eastern	4	1
Central	0	32	Western	1	1
Colorado (10th)	4	4	Middle	4	0
Connecticut (2nd)	2	6	North Dakota (8th)	5	0
Delaware (3rd)	6	0	Ohio (6th)		
District of Columbia	15	6	Northern	10	2
Florida (11th)			Southern	8	0
Northern	4	0	Oklahoma (10th)		
Southern	0	16	Northern	1	3
Middle	9	2	Eastern	1	2
Georgia (11th)			Western	2	3
Northern	5	6	Oregon (9th)	5	0
Southern	3	0	Pennsylvania (3rd)		
Middle	3	0	Eastern	20	2
Guam (9th)	1	0	Western	11	3
Hawaii (9th)	5	0	Middle	6	0
Idaho (9th)	1	1	Puerto Rico (1st)	7	0
Illinois (7th)			Rhode Island (1st)	4	0
Northern	22	8	South Carolina (4th)	9	0
Southern	3	0	South Dakota (8th)	5	0
Central	3	0	Tennessee (6th)		
Indiana (7th)			Eastern	3	0
Northern	4	0	Western	3	2
Southern	5	0	Middle	0	4
Iowa (8th)			Texas (5th)		
Northern	3	0	Northern	12	0
Southern	4	0	Southern	8	4
Kansas (10th)	5	2	Eastern	8	0
Kentucky (6th)			Western	7	1
Eastern	6	0	Utah (10th)	0	6
Western	5	0	Vermont (1st)	0	3
Louisiana (5th)			Virgin Islands (3rd)	1	0
Eastern	12	1	Virginia (4th)		
Western	8	0	Eastern	10	2
Middle	2	0	Western	5	0
Maine (1st)	2	0	Washington (9th)		
Maryland (4th)	1	13	Eastern	1	2
Massachusetts (1st)	12	1	Western	5	4
Michigan (6th)			West Virginia (4th)		
Eastern	20	0	Northern	3	0
Western	4	0	Southern	5	0
Minnesota (8th)	4	6	Wisconsin (7th)		
Mississippi (5th)			Eastern	6	0
Northern	4	0	Western	0	2
Southern	4	0	Wyoming (10th)	3	0
Missouri (8th)					
Eastern	6	0			
Western	6	3			
			<b>TOTAL</b>	<b>507</b>	<b>206</b>

\* 9th Circuit Mandate (9/19/88): guidelines were unconstitutional and not to be applied. 5th Circuit Order (9/8/88): apply the guidelines. 3rd Circuit Mandate (1/12/89): apply the guidelines.

**FIGURE II:**  
**Guideline vs. Non-Guideline Cases Sentenced**  
**Per Month\***



\*Source: Administrative Office of the U.S. Court's FPSSIS data file (April 5, 1989). Due to the start-up of a new data collection system for guideline variables, it is anticipated that underreporting may have occurred during earlier months.

## *United States Sentencing Commission*

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### *Data Collection*

New reporting requirements traditionally experience a phase-in period in which underreporting and errors occur. The reporting of guideline cases to the Commission and the AO is no exception. It is difficult at this point to assess the degree of underreporting of guideline cases to the Commission because of the initial confusion over how data were to be reported. Initial investigation suggests that approximately 10 percent of cases reported to the AO as guideline cases were not submitted to the Commission and another 10 percent submitted to the Commission were not reported to the AO.

In addition, submission of incomplete documentation has been a problem throughout the first year and a half of guideline implementation. In general, submission rates for several documents are quite good: 98 percent for the presentence report, 96 percent for the Judgment of Conviction, and 97 percent for the guideline worksheets. Additionally, the Commission has received written plea agreements in 36 percent of all cases sentenced under the guidelines.

The document submitted least regularly is the Statement of Reasons for Imposing Sentence or transcript of proceedings. Although required by statute in all cases, many courts are either not developing or not providing this document. The Commission has received Statements of Reasons for 40% of the guideline cases sentenced as of February 28, 1989. One explanation for this low submission rate may be that judges feel that a statement of reasons is not required when a sentence is within the appropriate guideline range. Judge Edward R. Becker, Chairman of the Criminal Law and Probation Administration

Committee of the Judicial Conference, is working with the Commission to encourage courts to improve the submission rate of this document.

### *Monitoring Plan*

The Monitoring Unit is currently working to develop a comprehensive data file on guideline cases sentenced since November 1, 1987. The master plan includes the development of nine coding modules collecting case information relevant to specific documents or topics. All data collection modules can be integrated for analysis by matching unique case identifiers. At the time of this report, three modules have been put into place and data collection is proceeding. The remaining modules are in various stages of development.

The **Receipt Control** module serves as a document control system by providing a mechanism for identifying cases and importing FPSSIS data from the AO. As documents are received from the field, identifying information on each case is logged into the computer through Receipt Control. The case file that results contains several unique identifiers and the submission status of the required documents. The case is screened to determine its guideline eligibility and constitutionality posture and an attempt is made to match with the FPSSIS database. If a match occurs, FPSSIS information is imported into the Receipt Control database, providing a significant amount of information for analysis. Currently, 90 percent of the cases received at the Commission match with AO data. This module is fully operational, includes all cases received by the Commission, and is updated as new cases arrive.

The J&C (**Judgment of Conviction**) module captures sentencing information on each case as documented in the Judgment of Conviction order. Among the elements collected are length of imprisonment for each count, total length of probation or supervised release, supervision conditions, and use of sentencing alternatives. This module has been implemented and data collected on all cases received.

The **Basic PSR** module captures statutory provisions and background information from the presentence report; e.g., statutes cited for each count of conviction, relevant statutory minimums and maximums, citizenship status, number of dependents, and net worth. The module is developed and data is currently being coded.

The remaining modules are in various stages of development and will be phased in as resources and staffing patterns allow. The next module for which data collection will begin is the departure (or **Statement of Reasons**) module. This module will capture information from the Statements of Reasons, including the resolution of factual disputes, guideline range determined by the court, departure status, and reasons for departure. This module is currently ready for data entry.

The **Guideline Application** module, currently in the final testing phase, will capture the guideline calculations reflected in the

presentence report. The **Real Offense Conduct** module will collect information concerning the offense and conduct surrounding the offense as reflected in the presentence report. The **Criminal History** module will collect data on prior criminal offenses, convictions, and sentences. The **Plea** module will capture information from written plea agreements received by the Commission including stipulations of fact, recommended sentences, and dismissed counts. Finally, the **Advanced PSR** module will collect information in the presentence report concerning impact of the plea agreement, possible reasons for departure, and objections by parties.

## 2. Descriptive Statistics on Guideline Cases

The information provided in the following section is based on cases reported to the Commission that were sentenced under the guidelines during the first 16 months of guideline applicability (November 1, 1987, through February 28, 1989).<sup>2</sup>

An adjustment period in the federal criminal justice system is anticipated in response to the guidelines and provisions of the Sentencing Reform Act. As a result, the short-term findings discussed in this report are not necessarily indicative of the intermediate or long-range patterns to be anticipated under guideline sentencing.

2. The data file used to produce this report is MON289. Further specifications on the contents of this file are available upon request from the Commission. The Administrative Office of the U.S. Courts' FPSSIS data file provides a major portion of the variables currently in MON289.

While the file MON289 contains records on 8,030 cases sentenced between November 1, 1987, and February 28, 1989, not all cases are reported in every table shown in this section. The variation is due to missing data in certain variables. Approximately 10 percent of the cases in MON289 did not match with the Administrative Office's FPSSIS data and consequently all FPSSIS information is missing for those cases. In addition, even with a match of Sentencing Commission and FPSSIS data, some FPSSIS variables were coded as missing prior to importation into MON289.

*Distribution of Guideline Cases*

Nationwide implementation of the guidelines during the first 16 months was greatly affected by the speed with which cases became eligible for sentencing under the guidelines (i.e., offenses occurring after November 1, 1987) and constitutionality decisions. This distribution should change post-*Mistretta* as a greater proportion of cases in all districts become guidelines eligible. As this distribution changes, many other district-related factors reported here will also change.

Table II shows the distribution of guideline cases across the 94 judicial districts. One of the more significant findings is that almost one quarter of all guideline cases in the first 16 months were sentenced in either the Southern or Western Districts of Texas. This is due not only to district and circuit constitutionality decisions, but also to the nature of crimes in these districts that bring a large percentage of cases to sentencing shortly after the offenses are committed. For example, smuggling drugs and aliens across the border often results in a quick arrest and disposition; thus, these guideline cases would enter the system rapidly.

TABLE II:  
NUMBER OF GUIDELINE  
CASES PER DISTRICT\*  
(SENTENCED BETWEEN NOV. 1, 1987, AND FEB. 28, 1989)

District (Circuit #)	Number of Cases	Percent of Cases	District (Circuit #)	Number of Cases	Percent of Cases
Alabama (11th)			Montana (9th)	28	.3%
Northern	22	.3%	Nebraska (8th)	2	.0%
Southern	8	.1%	Nevada (9th)	31	.4%
Middle	72	.9%	New Hampshire (1st)	4	.0%
Alaska (9th)	27	.3%	New Jersey (3rd)	159	2.0%
Arizona (9th)	137	1.7%	New Mexico (10th)	110	1.4%
Arkansas (8th)			New York (2nd)		
Eastern	14	.2%	Northern	36	.4%
Western	35	.4%	Southern	172	2.1%
California (9th)			Eastern	249	3.1%
Northern	45	.6%	Western	0	.0%
Southern	254	3.2%	North Carolina (4th)		
Eastern	95	1.2%	Eastern	51	.6%
Central	96	1.2%	Western	66	.8%
Colorado (10th)	39	.5%	Middle	92	1.1%
Connecticut (2nd)	14	.2%	North Dakota (8th)	63	.8%
Delaware (3rd)	23	.3%	Ohio (6th)		
District of Columbia	150	1.9%	Northern	103	1.3%
Florida (11th)			Southern	155	1.9%
Northern	106	1.3%	Oklahoma (10th)		
Southern	102	1.3%	Northern	13	.2%
Middle	236	2.9%	Eastern	3	.0%
Georgia (11th)			Western	49	.6%
Northern	107	1.3%	Oregon (9th)	65	.8%
Southern	72	.9%	Pennsylvania (3rd)		
Middle	46	.6%	Eastern	40	.5%
Guam (9th)	0	.0%	Western	47	.6%
Hawaii (9th)	37	.5%	Middle	50	.6%
Idaho (9th)	9	.1%	Puerto Rico (1st)	151	1.9%
Illinois (7th)			Rhode Island (1st)	13	.2%
Northern	47	.6%	South Carolina (4th)	80	1.0%
Southern	31	.4%	South Dakota (8th)	74	.9%
Central	35	.4%	Tennessee (6th)		
Indiana (7th)			Eastern	48	.6%
Northern	24	.3%	Western	101	1.3%
Southern	54	.7%	Middle	23	.3%
Iowa (8th)			Texas (5th)		
Northern	14	.2%	Northern	290	3.6%
Southern	23	.3%	Southern	1112	13.3%
Kansas (10th)	61	.8%	Eastern	43	.5%
Kentucky (6th)			Western	744	9.3%
Eastern	77	1.0%	Utah (10th)	0	.0%
Western	278	3.5%	Vermont (1st)	23	.3%
Louisiana (5th)			Virgin Islands (3rd)	44	.5%
Eastern	196	2.4%	Virginia (4th)		
Western	61	.8%	Eastern	165	2.1%
Middle	15	.2%	Western	23	.3%
Maine (1st)	21	.3%	Washington (9th)		
Maryland (4th)	80	1.0%	Eastern	0	.0%
Massachusetts (1st)	37	.5%	Western	39	.5%
Michigan (6th)			West Virginia (4th)		
Eastern	123	1.5%	Northern	46	.6%
Western	11	.1%	Southern	123	1.5%
Minnesota (8th)	82	1.0%	Wisconsin (7th)		
Mississippi (5th)			Eastern	41	.5%
Northern	15	.2%	Western	14	.2%
Southern	22	.3%	Wyoming (10th)	21	.3%
Missouri (8th)					
Eastern	74	.9%			
Western	97	1.2%			
			TOTAL	8030	100%

\* 9th Circuit Mandate (9/19/88): guidelines were unconstitutional and not to be applied. 5th Circuit Order (9/8/88): apply the guidelines. 3rd Circuit Mandate (1/12/89): apply the guidelines.

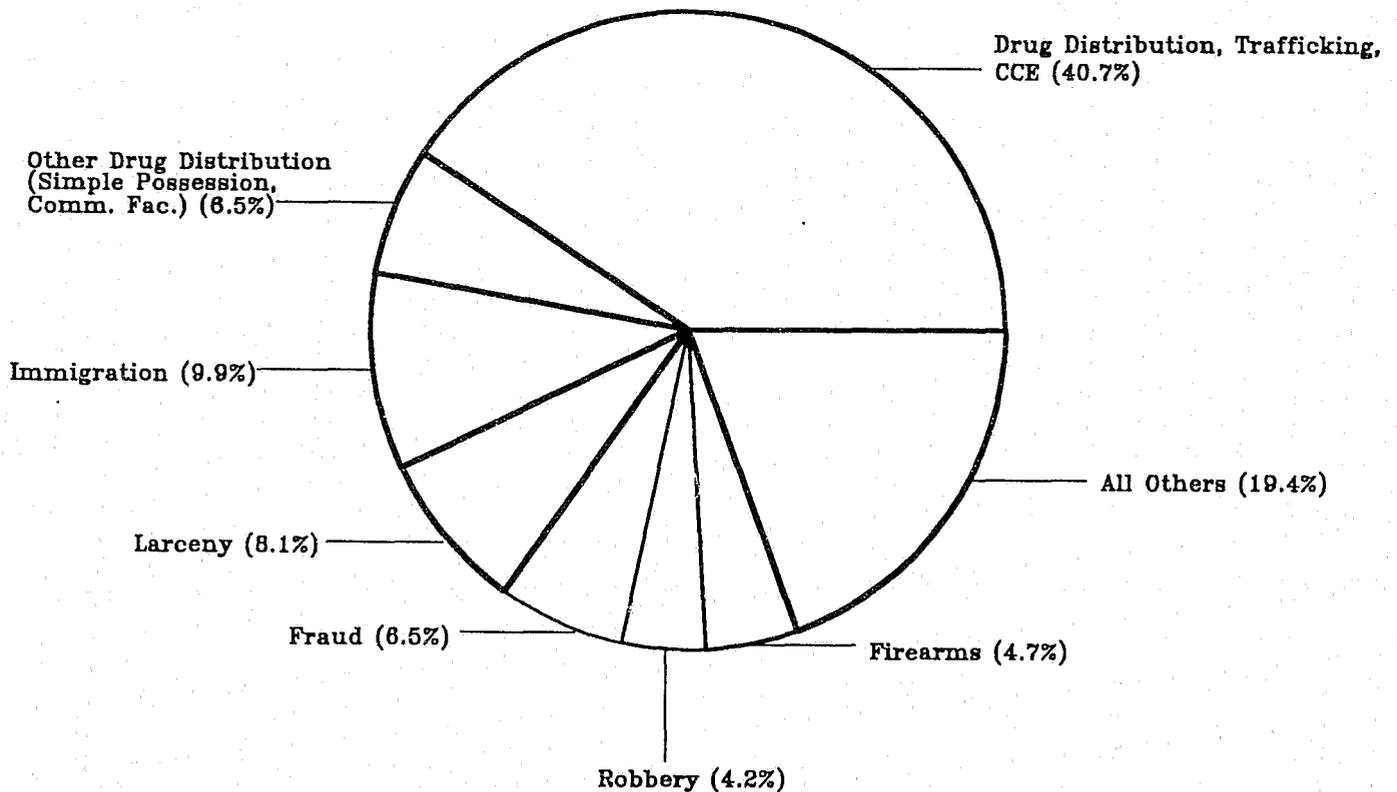
*Major Categories of Offenses*

During the first 16 month reporting period, almost half (48.2%) of the defendants sentenced under the guidelines were convicted of drug offenses, with the majority involved in drug distribution or trafficking. Other major offense categories include immigration (9.9%), larcenies (8.1%), and frauds (6.5%). See Figure III.

As with other patterns unique to the early period of guideline implementation, the distribution of offenses should also change during subsequent years. Many offense types that typically take long periods of time to detect, investigate, and prosecute (e.g., tax and major fraud) are minimally represented during the first 16 months of guideline implementation.

**FIGURE III:**

**Distribution of Cases Received by Primary Offense Category\***



\*Categories identified here are collapsed from the FPSSIS indicator for primary offense.

### *Race of Defendant*

Of all defendants sentenced under the guidelines during the first 16 months, 42.2 percent were identified as white, 24 percent as black, 31.2 percent as Hispanic, 1.7 percent as American Indian or Alaskan Native, and 1 percent as Asian or Pacific Islanders. Table III displays the distribution of these race and ethnic groups for the major offense categories.

White defendants are highly represented in robbery, tax, auto theft, bribery, continuing criminal enterprise, racketeering, and kidnapping offenses. Black defendants are most highly represented in robbery, larceny, embezzlement, use of communication facilities for drug distribution, and obstruction of mail offenses. The majority of Hispanic defendants are involved in either drug distribution or immigration offenses and are overrepresented (based on proportion of the entire defendant population) in both. American Indian and Alaskan Natives are highly represented in homicide (77.8%), assault, burglary, and sex offense. This final statistic is not surprising given the unique situation on Indian reservations that brings these offenses under federal jurisdiction.

### *Sex of Defendant*

On average, males are defendants in 86 percent of all guideline cases. This distinction is less dramatic within offense categories of embezzlement (with 43.9% committed by females), gambling and lottery (36.8% by females), use of a communication facility for distribution of drugs (32.6% by females), obstruction of mail (31.2% by females), and larcenies (26.7% by females). See Table IV.

### *Pleas and Convictions at Trial*

The great majority (90.2%) of cases received were sentenced subsequent to a plea of guilty. Deviation from this average figure varied little among offense categories. While embezzlements, use of a communication facility for drug distribution, and burglaries were slightly more likely to be sentenced after a plea, kidnapping, drug distribution and trafficking, continuing criminal enterprise, and assault were slightly more likely to be sentenced upon conviction at trial. See Table V.

**TABLE III:  
RACE/ETHNIC BACKGROUND BY  
PRIMARY OFFENSE CATEGORY\*  
(SENTENCED BETWEEN NOV. 1, 1987, AND FEB. 28, 1989)**

Primary Offense	White	Black	Hispanic**	Asian & Pacific Islanders	American Indians and Alaskan Natives	Total
Homicide	2 (11.1%)	2 (11.1%)	0 (0.0%)	0 (0.0%)	14 (77.8%)	18
Robbery	179 (60.9%)	101 (34.4%)	12 (4.1%)	0 (0.0%)	2 (0.7%)	294
Assault	32 (25.0%)	32 (35.0%)	18 (14.1%)	1 (0.8%)	45 (35.2%)	128
Burglary/B&E	17 (50.0%)	8 (23.5%)	2 (5.9%)	2 (5.9%)	5 (14.7%)	34
Larceny	285 (49.9%)	220 (38.5%)	38 (6.7%)	19 (3.3%)	9 (1.6%)	571
Embezzlement	109 (58.3%)	66 (35.3%)	8 (4.3%)	3 (1.6%)	1 (0.5%)	187
Taxes	5 (83.3%)	0 (0.0%)	1 (16.7%)	0 (0.0%)	0 (0.0%)	6
Fraud	165 (36.3%)	139 (30.6%)	133 (29.2%)	18 (4.0%)	0 (0.0%)	455
Auto Theft	63 (87.5%)	5 (6.9%)	3 (4.2%)	0 (0.0%)	1 (1.4%)	72
Forgery/ Counterfeiting	150 (57.9%)	86 (33.2%)	19 (7.3%)	4 (1.5%)	0 (0.0%)	259
Sex Offenses	17 (51.5%)	6 (18.2%)	1 (3.0%)	0 (0.0%)	9 (27.3%)	33
Bribery	7 (70.0%)	1 (10.0%)	2 (20.0%)	0 (0.0%)	0 (0.0%)	10
Escape	89 (55.3%)	36 (22.4%)	26 (16.2%)	1 (0.6%)	9 (5.6%)	161
Firearms	171 (51.4%)	100 (30.0%)	54 (16.2%)	3 (0.9%)	5 (1.5%)	333
Immigration	90 (12.9%)	22 (3.2%)	578 (82.8%)	6 (0.9%)	2 (0.3%)	698
Drugs						
•Distribution, Trafficking	905 (34.4%)	627 (23.9%)	1076 (40.9%)	7 (0.3%)	13 (0.5%)	2628
•Continuing Criminal Enterprise	187 (80.6%)	24 (10.3%)	20 (8.6%)	1 (0.4%)	0 (0.0%)	232
•Simple Possession	172 (47.1%)	71 (19.5%)	120 (32.9%)	1 (0.3%)	1 (0.3%)	365
•Communication Facilities	47 (53.4%)	31 (35.2%)	9 (10.2%)	0 (0.0%)	1 (1.1%)	88
Extortion, Racketeering	67 (70.5%)	17 (17.9%)	10 (10.5%)	1 (1.1%)	0 (0.0%)	95
Gambling and Lottery	13 (68.4%)	6 (31.5%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	19
Kidnapping	17 (81.0%)	4 (19.1%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	21
Obstruction of the Mail	11 (34.4%)	17 (53.1%)	4 (12.5%)	0 (0.0%)	0 (0.0%)	32
Other	167 (57.2%)	63 (21.6%)	57 (19.5%)	3 (1.0%)	2 (0.7%)	292
<b>TOTAL</b>	<b>2967 (42.2%)</b>	<b>1684 (24.0%)</b>	<b>2191 (31.2%)</b>	<b>70 (1.0%)</b>	<b>119 (1.7%)</b>	<b>7031</b>

\* Categories identified here are collapsed from the FPSSIS indicator for primary offense.

\*\* The FPSSIS categories "Black Hispanic" and "White Hispanic" have been collapsed to create this category. The former contained 90 cases and the latter 2101.

**TABLE IV:  
SEX BY PRIMARY OFFENSE CATEGORY\*  
(SENTENCED BETWEEN NOV. 1, 1987, AND FEB. 28, 1989)**

Primary Offense	Male	Female	Total
Homicide	17 (94.4%)	1 (5.6%)	18
Robbery	274 (94.2%)	17 (5.8%)	294
Assault	108 (84.4%)	20 (15.6%)	128
Burglary/B&E	32 (94.1%)	2 (5.9%)	34
Larceny	419 (73.3%)	153 (26.7%)	572
Embezzlement	105 (50.1%)	82 (43.9%)	187
Taxes	5 (83.3%)	1 (16.7%)	6
Fraud	385 (84.2%)	72 (15.8%)	457
Auto Theft	70 (97.2%)	2 (2.8%)	72
Forgery/ Counterfeiting	221 (85.3%)	38 (14.7%)	259
Sex Offenses	33 (100.0%)	0 (0.0%)	33
Bribery	10 (100.0%)	0 (0.0%)	10
Escape	134 (83.2%)	27 (16.8%)	161
Firearms	319 (95.8%)	14 (4.2%)	333
Immigration	638 (91.1%)	62 (8.9%)	700
Drugs			
•Distribution and Trafficking	2335 (88.5%)	304 (11.5%)	2639
•Continuing Criminal Enterprise	198 (85.0%)	35 (15.0%)	233
•Simple Possession	304 (82.2%)	66 (17.8%)	370
•Communication Facilities	60 (67.4%)	29 (32.6%)	89
Extortion, Racketeering	83 (87.4%)	12 (12.6%)	95
Gambling and Lottery	12 (63.2%)	7 (36.8%)	19
Kidnapping	19 (90.5%)	2 (9.5%)	21
Obstruction of the Mail	22 (68.8%)	10 (31.2%)	32
Other	252 (86.0%)	41 (14.0%)	293
<b>TOTAL</b>	<b>6058 (85.9%)</b>	<b>997 (14.1%)</b>	<b>7055</b>

\* Categories identified here are collapsed from the FPSSIS indicator for primary offense.

**TABLE V:  
PLEAS AND CONVICTIONS AT TRIAL BY  
PRIMARY OFFENSE CATEGORY\*  
(SENTENCED BETWEEN NOV. 1, 1987, AND FEB. 28, 1989)**

Primary Offense	Plea	Conviction At Trial	Total
Homicide	16 (88.9%)	2 (11.1%)	18
Robbery	268 (91.2%)	26 (8.8%)	294
Assault	106 (83.5%)	21 (16.5%)	127
Burglary/B&E	33 (97.1%)	1 (2.9%)	34
Larceny	553 (96.7%)	19 (3.3%)	572
Embezzlement	186 (99.5%)	1 (0.5%)	187
Taxes	7 (100%)	0 (0.0%)	7
Fraud	438 (95.6%)	20 (4.4%)	458
Auto Theft	69 (95.8%)	3 (4.2%)	72
Forgery/ Counterfeiting	245 (94.6%)	14 (5.4%)	259
Sex Offenses	30 (90.9%)	3 (9.1%)	33
Bribery	9 (90.0%)	1 (10.0%)	10
Escape	152 (94.4%)	9 (5.6%)	161
Firearms	288 (86.5%)	45 (13.5%)	333
Immigration	675 (96.4%)	25 (3.6%)	700
Drugs			
•Distribution, Trafficking	2225 (84.3%)	413 (15.7%)	2638
•Continuing Criminal Enterprise	197 (84.6%)	36 (15.4%)	233
•Simple Possession	350 (94.6%)	20 (5.4%)	370
•Communication Facility	87 (97.8%)	2 (2.2%)	89
Extortion, Racketeering	87 (91.6%)	8 (8.4%)	95
Gambling and Lottery	19 (100%)	0 (0.0%)	19
Kidnapping	14 (66.7%)	7 (33.3%)	21
Obstruction of the Mail	32 (100%)	0 (0.0%)	32
Other	278 (94.9%)	15 (5.1%)	293
<b>TOTAL</b>	<b>6364 (90.2%)</b>	<b>691 (9.8%)</b>	<b>7055</b>

\* Categories identified here are collapsed from the FPSSIS indicator for primary offense.

### *Type of Sentence*

The majority of guideline cases (77.8%) received by the Commission and sentenced as of February 28, 1989, resulted in a sentence of imprisonment. Probation without a confinement condition (17.5%) or with a condition for participation in a community facility or intermittent confinement (3.2%) accounted for an additional 20 percent of the cases. The least frequent alternative utilized was a combination of imprisonment and community confinement, with less than 1 percent of cases receiving this sentence. No supervision (i.e., no probation, community facility, or imprisonment) was imposed in 1.1 percent of all cases. In the majority of these cases (81.1%) the defendant received a fine or restitution. See Table VI.

Predictably, the type of sentences most frequently utilized by the courts varied by type of offense. Violent crimes (homicide, robbery, assault, and kidnapping), major drug offenses (distribution, trafficking, and continuing criminal enterprise), and escapes had the highest rates of imprisonment (all more than 90%). Other serious offenses (e.g., burglary, firearm offenses, extortion, and racketeering) had rates of imprisonment of more than 80 percent. Larceny and embezzlement, as well as simple drug possession charges, were least likely to result in imprisonment and were given probationary sentences in more than 50 percent of the cases.

### *Average Prison Sentences*

Offenses receiving the longest average terms of imprisonment include the violent crimes of homicide, kidnapping, and robbery, as well as drug distribution and trafficking, and continuing criminal enterprise

(all averaging between 58 and 112 months). Alternatively, the shortest average prison sentences were imposed for embezzlement, larceny, and simple possession of drugs (2 — 4 months). The average and range of prison sentences for each major offense category is provided in the first column of Table VII.

Table VII also provides average prison sentences for offenders with varying prior criminal histories. In almost all major offense categories, offenders with the lowest criminal history scores averaged the shortest sentences, while those with the highest scores received the longest average sentences.

Table VIII focuses on characteristics of various offense types. The table provides average prison sentences for the most frequently occurring offenses by characteristics that were found to significantly affect the length of prison sentence. In addition to criminal history score, the characteristics found to most significantly influence the length of prison sentence for drug offenders included drug amount, role in the offense, and whether the defendant was armed. Imprisonment terms for immigration offenses were most significantly affected by role in the offense. Length of prison terms for offenders involved in larcenies, frauds, and robberies were most significantly affected by monetary loss and role in the offense; robbery terms were additionally affected by the presence and use of a firearm or dangerous weapon. Sentences for firearm charges were most significantly affected by victim injury.

All characteristics identified in Table VIII were found through regression analysis to impact on length of prison sentence at the 95 percent significance level.

**TABLE VI:  
TYPE OF SENTENCE IMPOSED  
FOR PRIMARY OFFENSE CATEGORIES\*  
(SENTENCED BETWEEN NOV. 1, 1987, AND FEB. 28, 1989)**

Primary Offense	No Probation, CTC, Int. Conf. or Prison	Probation Only	CTC or Intermittent Confinement Only	Prison Plus CTC or Intermittent Confinement	Prison	Total
Homicide	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	18 (100.0%)	18
Robbery	0 (0.0%)	1 (0.3%)	2 (0.7%)	0 (0.0%)	291 (99.0%)	294
Assault	0 (0.0%)	6 (5.5%)	4 (3.7%)	0 (0.0%)	98 (90.7%)	108
Burglary/B&E	0 (0.0%)	2 (5.9%)	1 (2.9%)	1 (2.9%)	30 (88.2%)	34
Larceny	32 (5.6%)	331 (58.3%)	26 (4.6%)	2 (0.3%)	177 (31.2%)	568
Embezzlement	0 (0.0%)	117 (63.9%)	20 (10.9%)	7 (3.8%)	39 (21.3%)	183
Tax	1 (14.3%)	1 (14.3%)	0 (0.0%)	1 (14.3%)	4 (57.1%)	7
Fraud	9 (2.0%)	124 (27.1%)	26 (5.7%)	1 (0.2%)	297 (65.0%)	457
Auto Theft	1 (1.4%)	10 (13.9%)	3 (3.2%)	1 (1.4%)	57 (79.2%)	72
Forgery/ Counterfeiting	1 (0.4%)	76 (29.7%)	32 (12.5%)	5 (1.9%)	142 (55.5%)	256
Sex Offense	0 (0.0%)	6 (18.7%)	0 (0.0%)	1 (3.1%)	25 (78.1%)	32
Bribery	0 (0.0%)	1 (10.0%)	2 (20.0%)	0 (0.0%)	7 (70.0%)	10
Escape	0 (0.0%)	10 (6.2%)	1 (0.6%)	0 (0.0%)	150 (93.2%)	161
Firearm	1 (0.3%)	31 (9.3%)	9 (2.7%)	3 (0.9%)	288 (86.7%)	332
Immigration	6 (0.9%)	85 (12.3%)	30 (4.3%)	2 (0.3%)	567 (82.2%)	690
<b>Drugs</b>						
•Distribution, Trafficking	3 (0.1%)	74 (2.8%)	15 (0.6%)	2 (0.1%)	2543 (96.4%)	2637
•Continuing Criminal Enterprise	1 (0.4%)	4 (1.7%)	5 (2.1%)	3 (1.3%)	219 (94.4%)	232
•Simple Possession	15 (4.0%)	193 (52.2%)	14 (3.8%)	2 (0.5%)	146 (39.5%)	370
•Communication Facilities	0 (0.0%)	10 (11.2%)	8 (9.0%)	0 (0.0%)	71 (79.8%)	89
Extortion, Racketeering	0 (0.0%)	8 (8.4%)	4 (4.2%)	0 (0.0%)	83 (87.4%)	95
Gambling and Lottery	0 (0.0%)	5 (26.3%)	3 (15.8%)	0 (0.0%)	11 (57.9%)	19
Kidnapping	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	19 (100.0%)	19
Other	4 (1.4%)	122 (43.6%)	16 (5.7%)	1 (0.3%)	137 (48.9%)	280
<b>TOTAL</b>	<b>74 (1.1%)</b>	<b>1217 (17.5%)</b>	<b>221 (3.2%)</b>	<b>32 (0.5%)</b>	<b>5419 (77.8%)</b>	<b>6963</b>

\* Offense categories identified here are collapsed from the FPSSIS indicator for primary offense. Sentence categories may or may not include the use of fines or restitution as additional punishments. CTC means community treatment center or halfway house.

**TABLE VII:  
AVERAGE AND RANGE OF PRISON  
SENTENCES FOR PRIMARY OFFENSE  
CATEGORIES BY CRIMINAL HISTORY SCORE\*  
(SENTENCED BETWEEN NOV. 1, 1987, AND FEB. 28, 1989)**

Primary Offense	Total	Criminal History Score		
		Low	Medium	High
<b>Homicide</b>				
Average Months Prison (# of cases)	73 mo. (18)	30 mo. (7)	88 mo. (7)	120 mo. (4)
Range	0-360	10-108	0-180	22-360
<b>Robbery</b>				
Average Months Prison (# of cases)	77 mo. (294)	43 mo. (81)	57 mo. (92)	114 mo. (121)
Range	0-552	0-144	0-336	15-552
<b>Assault</b>				
Average Months Prison (# of cases)	29 mo. (108)	25 mo. (47)	27 mo. (32)	36 mo. (29)
Range	0-147	0-147	0-78	0-100
<b>Burglary/B&amp;E</b>				
Average Months Prison (# of cases)	34 mo. (34)	18 mo. (13)	39 mo. (14)	54 mo. (7)
Range	0-183	0-41	0-120	27-183
<b>Larceny</b>				
Average Months Prison (# of cases)	4 mo. (570)	1 mo. (409)	7 mo. (93)	19 mo. (68)
Range	0-108	0-60	0-48	0-108
<b>Embezzlement</b>				
Average Months Prison (# of cases)	2 mo. (187)	1 mo. (160)	4 mo. (24)	9 mo. (3)
Range	0-36	0-36	0-27	6-12
<b>Taxes</b>				
Average Months Prison (# of cases)	19 mo. (7)	19 mo. (7)	— (0)	— (0)
Range	0-60	—	—	—
<b>Fraud</b>				
Average Months Prison (# of cases)	9 mo. (458)	5 mo. (316)	11 mo. (79)	24 mo. (63)
Range	0-120	0-60	0-48	0-120
<b>Auto Theft</b>				
Average Months Prison (# of cases)	13 mo. (72)	5 mo. (26)	11 mo. (25)	24 mo. (21)
Range	0-60	0-20	0-24	0-60
<b>Forgery/Counterfeiting</b>				
Average Months Prison (# of cases)	9 mo. (259)	4 mo. (141)	10 mo. (61)	22 mo. (57)
Range	0-108	0-60	0-36	0-108
<b>Sex Offense</b>				
Average Months Prison (# of cases)	31 mo. (32)	20 mo. (26)	89 mo. (5)	24 mo. (1)
Range	0-365	0-71	12-365	—
<b>Bribery</b>				
Average Months Prison (# of cases)	8 mo. (10)	8 mo. (9)	14 mo. (1)	— (0)
Range	0-27	0-27	—	—

Primary Offense	Total	Criminal History Score		
		Low	Medium	High
Escape				
Average Months Prison (# of cases)	17 mo. (161)	9 mo. (17)	13 mo. (39)	20 mo. (105)
Range	0-60	0-20	0-48	0-60
Firearm				
Average Months Prison (# of cases)	37 mo. (332)	24 mo. (100)	28 mo. (97)	53 mo. (135)
Range	0-567	0-324	0-567	0-480
Immigration				
Average Months Prison (# of cases)	8 mo. (690)	5 mo. (394)	10 mo. (167)	15 mo. (129)
Range	0-100	0-100	0-60	0-60
Drugs				
•Distribution, Trafficking				
Average Months Prison (# of cases)	58 mo. (2636)	52 mo. (1759)	60 mo. (630)	97 mo. (247)
Range	0-600	0-408	0-540	0-600
•Continuing Criminal Enterprise				
Average Months Prison (# of cases)	72 mo. (232)	56 mo. (127)	93 mo. (63)	87 mo. (42)
Range	0-780	0-365	0-780	0-300
•Simple Possession				
Average Months Prison (# of cases)	2 mo. (369)	2 mo. (254)	2 mo. (83)	6 mo. (32)
Range	0-30	0-12	0-12	0-30
•Communication Facilities				
Average Months Prison (# of cases)	16 mo. (89)	14 mo. (66)	19 mo. (15)	28 mo. (8)
Range	0-96	0-96	0-96	5-88
Extortion, Racketeering				
Average Months Prison (# of cases)	32 mo. (95)	25 mo. (72)	45 mo. (19)	97 mo. (4)
Range	0-240	0-84	0-180	26-240
Gambling and Lottery				
Average Months Prison (# of cases)	8 mo. (19)	4 mo. (11)	14 mo. (7)	5 mo. (1)
Range	0-48	0-24	0-48	—
Kidnapping				
Average Months Prison (# of cases)	112 mo. (19)	68 mo. (7)	88 mo. (7)	206 mo. (5)
Range	30-360	36-102	30-168	46-360
Other				
Average Months Prison (# of cases)	11 mo. (281)	5 mo. (194)	10 mo. (58)	52 mo. (29)
Range	0-576	0-71	0-72	0-576

\* Offense categories identified here are collapsed from the FPSSIS indicator for primary offense.

The calculations for average prison sentence includes 0 for individuals receiving no prison term.

Criminal History score is calculated using the following formula—(3 X sentences over 1 year) + (2 X sentences 31 days to 1 year) + (number of other prior adult convictions) (up to 4) + (2 if already in criminal justice control) + (2 (or 1) if incarcerated within last 24 months). This formula attempts to mirror as closely as possible that the guideline calculations for criminal history using available FPSSIS indicators.

**TABLE VIII:  
AVERAGE LENGTH OF IMPRISONMENT  
FOR OFFENSE CATEGORIES BY OFFENSE/OFFENDER  
CHARACTERISTICS AND CRIMINAL HISTORY SCORE\*  
(SENTENCED BETWEEN NOV. 1, 1987, AND FEB. 28, 1989)**

**DRUG DISTRIBUTION,  
TRAFFICKING, AND IMPORTATION**

Offense/Offender Characteristics	Criminal History Score		
	Low	Medium	High
Low Drug Amount; Lesser Role; Unarmed Avg. Months Imprisonment (# of cases) Range	15 mo. (86) 0-84	21 mo. (21) 0-77	84 mo. (9) 5-264
Low Drug Amount; Equal Role; Unarmed Avg. Months Imprisonment (# of cases) Range	55 mo. (5) 0-170	23 mo. (123) 0-87	59 mo. (41) 12-300
Low Drug Amount; Leadership, Supervisory Role; Unarmed Avg. Months Imprisonment (# of cases) Range	38 mo. (45) 0-240	35 mo. (21) 2-148	26 mo. (18) 6-60
Low Drug Amount; Lesser Role; Armed Avg. Months Imprisonment (# of cases) Range	22 mo. (14) 0-70	29 mo. (4) 12-72	49 mo. (2) 37-60
Low Drug Amount; Equal Role; Armed Avg. Months Imprisonment (# of cases) Range	18 mo. (285) 0-211	61 mo. (14) 8-151	61 mo. (6) 33-110
Low Drug Amount; Leadership, Supervisory Role; Armed Avg. Months Imprisonment (# of cases) Range	60 mo. (7) 15-170	65 mo. (9) 14-324	58 mo. (2) 55-60
Med. Drug Amount; Lesser Role; Unarmed Avg. Months Imprisonment (# of cases) Range	35 mo. (112) 0-121	47 mo. (37) 18-138	25 mo. (5) 15-40
Med. Drug Amount; Equal Role; Unarmed Avg. Months Imprisonment (# of cases) Range	43 mo. (252) 0-188	47 mo. (76) 5-120	81 mo. (25) 33-360
Med. Drug Amount; Leadership, Supervisory Role; Unarmed Avg. Months Imprisonment (# of cases) Range	48 mo. (108) 0-151	64 mo. (50) 6-240	103 mo. (17) 39-262
Med. Drug Amount; Lesser Role; Armed Avg. Months Imprisonment (# of cases) Range	53 mo. (13) 33-81	43 mo. (4) 0-120	— (0) —
Med. Drug Amount; Equal Role; Armed Avg. Months Imprisonment (# of cases) Range	64 mo. (25) 24-211	61 mo. (10) 15-120	99 mo. (3) 36-158
Med. Drug Amount; Leadership, Supervisory Role; Armed Avg. Months Imprisonment (# of cases) Range	88 mo. (10) 33-264	76 mo. (9) 51-97	151 mo. (7) 40-360
Large Drug Amount; Lesser Role; Unarmed Avg. Months Imprisonment (# of cases) Range	57 mo. (101) 0-188	88 mo. (22) 22-240	76 mo. (10) 24-151
Large Drug Amount; Equal Role; Unarmed Avg. Months Imprisonment (# of cases) Range	67 mo. (141) 0-188	98 mo. (28) 40-240	169 mo. (7) 60-265
Large Drug Amount; Leadership, Supervisory Role; Unarmed Avg. Months Imprisonment (# of cases) Range	93 mo. (61) 27-204	103 mo. (19) 22-250	197 mo. (5) 87-360
Large Drug Amount; Lesser Role; Armed Avg. Months Imprisonment (# of cases) Range	55 mo. (5) 48-70	104 mo. (2) 87-120	216 mo. (2) 36-396
Large Drug Amount; Equal Role; Armed Avg. Months Imprisonment (# of cases) Range	76 mo. (13) 0-151	102 mo. (3) 63-147	138 mo. (2) 36-240
Large Drug Amount; Leadership, Supervisory Role; Armed Avg. Months Imprisonment (# of cases) Range	129 mo. (16) 36-360	206 mo. (4) 66-360	120 mo. (2) 0-240

**IMMIGRATION OFFENSES**

Offense/Offender Characteristics	Criminal History Score		
	Low	Medium	High
Lesser or Equal Role Avg. Months Imprisonment (# of cases) Range	5 mo. (289) 0-100	9 mo. (121) 0-42	14 mo. (117) 0-54
Leadership, Supervisory Role Avg. Months Imprisonment (# of cases) Range	7 mo. (80) 0-60	12 mo. (32) 0-30	22 mo. (10) 0-60

**LARCENIES**

Offense/Offender Characteristics	Criminal History Score		
	Low	Medium	High
Lesser or Equal Role; Loss ≤ \$1,000 Avg. Months Imprisonment (# of cases) Range	0.1 mo. (273) 0-18	3 mo. (33) 0-15	6 mo. (21) 0-15
Supervisor, Leader, Etc.; Loss ≤ \$1,000 Avg. Months Imprisonment (# of cases) Range	2 mo. (6) 0-6	6 mo. (4) 0-9	10 mo. (5) 7-12
Lesser or Equal Role; Loss > \$1,000 Avg. Months Imprisonment (# of cases) Range	3 mo. (85) 0-27	11 mo. (39) 0-48	26 mo. (22) 5-108
Supervisor, Leader, Etc.; Loss > \$1,000 Avg. Months Imprisonment (# of cases) Range	5 mo. (12) 0-18	14 mo. (6) 0-27	29 mo. (9) 13-60

**FRAUD**

Offense/Offender Characteristics	Criminal History Score		
	Low	Medium	High
Loss ≤ \$100; Equal or Lesser Role Avg. Months Imprisonment (# of cases) Range	3 mo. (148) 0-45	5 mo. (25) 0-21	13 mo. (20) 0-37
Loss ≤ \$100; Leadership, Supervisory Role Avg. Months Imprisonment (# of cases) Range	2 mo. (7) 0-8	17 mo. (4) 0-48	67 mo. (2) 14-120
Loss — \$101—10,000; Equal or Lesser Role Avg. Months Imprisonment (# of cases) Range	4 mo. (49) 0-13	9 mo. (28) 0-45	26 mo. (15) 6-120
Loss — \$101—10,000; Leadership, Supervisory Role Avg. Months Imprisonment (# of cases) Range	8 mo. (13) 0-24	15 mo. (5) 12-18	23 mo. (5) 0-51
Loss > \$10,000; Equal or Lesser Role Avg. Months Imprisonment (# of cases) Range	15 mo. (33) 0-60	26 mo. (6) 6-46	36 mo. (3) 28-48
Loss > \$10,000; Leadership, Supervisory Role Avg. Months Imprisonment (# of cases) Range	16 mo. (7) 0-27	30 mo. (1) —	44 mo. (4) 18-60

**ROBBERY**

Offense/Offender Characteristics	Criminal History Score		
	Low	Medium	High
Lesser Role, Armed/No Use, Loss ≤ \$10,000 Avg. Months Imprisonment (# of cases) Range	27 mo. (2) 24-30	39 mo. (3) 24-60	(0) _____
Lesser Role, Armed/No Use, Loss > \$10,000 Avg. Months Imprisonment (# of cases) Range	43 mo. (3) 30-52	22 mo. (4) 2-30	75 mo. (4) 37-90
Equal or Leadership Role, Unarmed, Loss ≤ \$10,000 Avg. Months Imprisonment (# of cases) Range	32 mo. (28) 3-144	44 mo. (34) 24-240	96 mo. (55) 30-552
Equal or Leadership Role, Unarmed, Loss > \$10,000 Avg. Months Imprisonment (# of cases) Range	37 mo. (4) 0-96	29 mo. (16) 0-41	74 mo. (4) 15-144
Equal or Leadership Role, Armed/No Use, Loss ≤ \$10,000 Avg. Months Imprisonment (# of cases) Range	42 mo. (14) 30-71	62 mo. (17) 30-240	89 mo. (23) 30-264
Equal or Leadership Role, Armed/No Use, Loss > \$10,000 Avg. Months Imprisonment (# of cases) Range	70 mo. (7) 42-130	66 mo. (11) 37-108	147 mo. (11) 64-262
Lesser Role, Weapon Used, Loss > \$10,000 Avg. Months Imprisonment (# of cases) Range	(0) _____	(0) _____	144 mo. (1) _____
Equal or Leadership Role, Weapon Used, Loss ≤ \$10,000 Avg. Months Imprisonment (# of cases) Range	42 mo. (4) 37-46	47 mo. (3) 41-60	117 mo. (3) 57-168
Equal or Leadership Role, Weapon Used, Loss > \$10,000 Avg. Months Imprisonment (# of cases) Range	65 mo. (1) _____	(0) _____	250 mo. (1) _____

**FIREARMS**

Offense/Offender Characteristics	Criminal History Score		
	Low	Medium	High
No Victim Injury Avg. Months Imprisonment (# of cases) Range	16 mo. (87) 0-138	16 mo. (78) 0-94	39 mo. (108) 0-360
Victim Injured Avg. Months Imprisonment (# of cases) Range	60 mo. (1) _____	60 mo. (1) _____	73 mo. (4) 25-180

\* Offense categories identified here are collapsed from the FPSSIS indicator for primary offense.

Please refer to Table VII for the formula utilized to determine criminal history score.

Drug amount categories were determined by developing weight equivalencies (as specified in the guidelines) for heroin, cocaine, and marijuana amounts identified by FPSSIS indicators. Since other drugs are not specified by FPSSIS they could not be included in calculations and such cases are eliminated from this analysis. While guideline equivalencies are not based on purity of drugs, FPSSIS indicators only specify pure drug weight; therefore, the levels calculated by this model do not accurately mirror guideline equivalencies.

*Fines and Restitution*

Table IX shows the frequency of fines and restitution as part of a guideline sentence. A fine, restitution, or both were ordered in 31.2 percent of all cases sentenced under the guidelines. Neither sanction was ordered in 68.5 percent of all cases.

The use of fines and restitution orders varies greatly by offense category. Financial sanctions are most common in convictions for larceny, embezzlement, burglary, and obstruction of mail (approximately 45-70% of such cases). However, fines are more commonly imposed in larceny and obstruction of mail cases while restitution orders are more prevalent in embezzlement and burglary cases.

Financial sanctions are least likely utilized in escape and immigration offenses. This finding is not surprising given the institutionalization of defendants convicted of escape both before and after the offense and the alien status of defendants and their possible deportation in immigration cases. Financial sanctions are also infrequently used (less than 20%) in drug distribution, trafficking, and continuing criminal enterprise cases.

Table IX also provides the average and median payments ordered. Despite the low rates at which drug offenders are ordered to pay fines or restitution, once assessed they average much higher payment orders than offenders in other major offense categories. Individuals convicted of continuing criminal enterprise were ordered to pay an average of \$31,116 (median \$1,500). Drug distributors and traffickers were assessed an average \$18,106 (median \$1,513). Other offenses with average fines of over \$10,000 include robbery, fraud, and bribery. The fact that

these five offense categories represent 39 percent of the cases for which payments were ordered explains the high average fine/restitution payment of \$8,042 across all categories. The median across all categories was \$525.

**TABLE IX:  
ORDERS OF FINES AND RESTITUTION BY  
PRIMARY OFFENSE CATEGORY  
(SENTENCED BETWEEN NOV. 1, 1987, AND FEB. 28, 1989)**

Primary Offense	No Fine or Restitution Ordered	Restitution Ordered/No Fine	Fine Ordered/No Restitution	Both Fine and Restitution Ordered	Total	Amount of Payment Ordered (for cases with Payments ordered) Average/Median (# of cases)
Homicide	10 (55.8%)	8 (44.4%)	0 (0.0%)	0 (0.0%)	18	\$1974/\$1228 (8)
Robbery	160 (54.4%)	108 (36.7%)	16 (5.4%)	10 (3.4%)	294	\$11,950/\$1417 (134)
Assault	86 (67.2%)	19 (14.8%)	20 (15.6%)	3 (2.3%)	128	\$708/\$250 (42)
Burglary/B&E	15 (44.1%)	15 (44.1%)	2 (5.9%)	2 (5.9%)	34	\$2270/\$557 (19)
Larceny	152 (26.7%)	96 (16.8%)	278 (48.8%)	44 (7.7%)	570	\$4571/\$125 (418)
Embezzlement	60 (32.1%)	68 (35.3%)	41 (21.9%)	20 (10.7%)	187	\$3008/\$715 (127)
Fraud	267 (58.3%)	88 (18.8%)	83 (18.1%)	22 (4.8%)	458	\$12,377/\$1264 (191)
Auto Theft	44 (61.1%)	13 (18.1%)	8 (11.1%)	7 (9.7%)	72	\$2312/\$1450 (112)
Forgery/ Counterfeiting	147 (56.8%)	32 (12.4%)	68 (26.3%)	12 (4.6%)	259	\$979/\$500 (112)
Sex Offenses	18 (54.6%)	0 (0.0%)	15 (45.4%)	0 (0.0%)	33	\$1125/\$1000 (15)
Bribery	6 (60%)	0 (0.0%)	4 (40.0%)	0 (0.0%)	10	\$371/\$2085 (17)
Taxes	4 (57.1%)	0 (0.0%)	3 (42.9%)	0 (0.0%)	161	\$1167/\$3750 (11)
Escape	146 (90.7%)	1 (0.6%)	14 (8.7%)	0 (0.0%)	161	\$1558/\$750 (15)
Firearms	254 (76.5%)	6 (1.8%)	70 (21.1%)	2 (0.6%)	332	\$1326/\$671 (78)
Immigration	614 (87.7%)	3 (0.4%)	82 (11.7%)	1 (0.1%)	700	¥1088/\$500 (86)
Drugs						
•Distribution and Trafficking	2140 (81.2%)	22 (0.8%)	470 (17.8%)	4 (0.2%)	2636	\$18,106/\$1513 (496)
•Continuing Criminal Enterprise	190 (81.6%)	0 (0.0%)	43 (18.4%)	0 (0.0%)	233	\$31,116/\$1500 (43)
•Simple Possession	196 (53.1%)	2 (0.5%)	168 (45.5%)	3 (0.8%)	369	\$636/\$500 (173)
•Communication Facility	68 (76.4%)	0 (0.0%)	21 (23.6%)	0 (0.0%)	89	\$1918/\$1000 (21)
Extortion and Racketeering	59 (62.1%)	2 (2.1%)	34 (35.8%)	0 (0.0%)	95	\$3667/\$2301 (3)
Gambling and Lottery	13 (68.4%)	0 (0.0%)	6 (31.6%)	0 (0.0%)	19	\$13,793/\$1375 (4)
Kidnapping	10 (47.6%)	7 (33.3%)	2 (9.5%)	2 (9.5%)	12	\$2309/\$386 (136)
Obstruction of the Mail	15 (46.9%)	1 (3.1%)	15 (46.9%)	1 (3.1%)	32	\$8042/\$525 (2219)
Other	157 (53.6%)	19 (5.5%)	105 (35.8%)	12 (4.1%)	293	—
<b>Total</b>	<b>4831 (68.5%)</b>	<b>506 (7.2%)</b>	<b>1568 (22.2%)</b>	<b>145 (2.1%)</b>	<b>7050</b>	<b>\$8042/\$525 (2219)</b>

### **3. Compliance Study**

In preparation for this report, a compliance study was undertaken to determine the number of cases sentenced within the guidelines, the rate of departures from the guidelines, and the reasons given by courts for doing so.

The study was based on a 25 percent random sample of all cases sentenced between November 1, 1987, and March 31, 1989, received by the Commission as of May 9, 1989. The resulting sample included 2,324 cases.

Staff reviewed all files to determine departure status and reasons for departure as indicated by Statements of Reasons. If the sentence given by the court fell within the guideline range established by the court, the case was determined to involve no departure. If the sentence fell outside the guideline range established by the court, a departure was noted. Any reasons noted on the Statement of Reasons were also collected.

Telephone calls to probation officers were made to assist in determining the departure status of cases in the sample for which no documentation indicated the guideline range determined by the court.

No departure was assumed if the sentence from the Judgment of Conviction was within the guideline range suggested by the probation officer in the presentence report. It would be extremely unlikely for a judge to change a guideline range and then depart back to within the original range. To test this assumption, a random 25 percent sample of these cases for which there was no Statement of Reasons but the sentence from the Judgment of Conviction fell within the range recom-

mended by the probation officer was chosen and the probation officer assigned to the case was telephoned to determine the departure status. Of the 196 cases for which calls were made, none involved a departure from the guideline range. As a result, all cases meeting this criteria have been considered within-guideline sentences (no departures) for the purposes of this study.

If the sentence from the Judgment of Conviction did not correspond to the guideline range recommended by the probation officer, it could not be assumed that a departure had occurred. It would be likely that the court changed the guideline range and subsequently sentenced within the range determined by the court; thus, a discrepancy with the probation officer's recommendation would not necessarily indicate a departure. Therefore, probation officers assigned to all 355 cases falling into this category (no Statement of Reasons, sentence from the Judgment of Conviction fell outside the range recommended by the probation officer in the presentence report) were telephoned in order to determine the departure status of each case. Calls were also made in the 80 cases for which a comparison between the Judgment of Conviction and probation officer's recommendation could not be made due to an absence or inadequacy in the relevant documents.

**Results**

Of the 2,258 cases for which departure status could be determined,<sup>3</sup> 82.3 percent (1,858 cases) involved sentences within the guideline range established by the court. In 2.9 percent of the cases the court departed upward, giving a sentence higher than the appropriate guideline range. The court departed downward in 9.1 percent of the cases. Additionally, courts departed downward in 5.7 percent of the cases upon motion of the government for a reduction due to substantial assistance to authorities. Thus, there was an estimated 5.7 percent departure rate due to substantial assistance and a 12 percent departure rate (2.9% upward and 9.1% downward) for other reasons. Reasons for departure are further discussed later in this section.

The rates of departure varied greatly by district. Table X shows the number of departures by district for all cases in the compliance study. At one extreme, three districts (with at least 25 cases) had depar-

ture rates of less than 6 percent: Western Kentucky with a 5.2 percent departure rate for 77 cases; New Mexico, 5.4 percent for 37 cases; and Western Texas, 3.6 percent for 193 cases. At the other extreme, several districts had departure rates over 30 percent: Southern California had a 37.1 percent departure rate for 70 cases; Arizona, 38.2 percent for 34 cases; Northern Florida, 41.4 percent for 29 cases; Eastern New York, 38.6 percent for 70 cases; and Middle North Carolina, 50 percent for 28 cases. These five districts account for approximately one quarter of the departures identified in the study.

Attributing a departure pattern to all districts would be premature at this time given that many districts applied guidelines to only a few cases in the first 16 months and unconstitutionality decisions resulted in a lack of representation of all judges. Such district-by-district patterns will be better assessed in the future when an increasing number of guideline cases enter the system.

3. From the original sample size of 2,324, 66 cases could not be included in the compliance study for the following reasons: inability of field officer to determine departure status (18 cases); files unavailable (14); petty offenses — guidelines not applicable (11); unconstitutional cases (13); no analogous guideline (4); deferred judgment (1); diminished capacity (1); old law case (1); and corporate defendants (2).

**Rates of Compliance**

- 82.3% ● Sentences Within Guideline Range**
- 2.9% ● Sentences Above Guideline Range**
- 9.1% ● Sentences Below Guideline Range**
- 5.7% ● Sentences Below Guideline Range for Substantial Assistance on Motion of Government**

Departure rates also varied substantially by offense category. Clearly the greatest rates of downward departure were for drug offenses, primarily distribution and trafficking, and continuing criminal enterprise offenses. Although the number of cases involved are fewer, greater rates of downward departure are also identifiable for escape and extortion/racketeering convictions. Table XI indicates the number of departures for the major offense categories.

The reasons for departure given by the courts were determined in cases for which Statements of Reasons for Imposing Sentence had been received. Of the 176 cases involving departures for which statements had been received, 12 indicated no reasons for departing from the guidelines, 110 stated one reason for departure, and 54 indicated multiple reasons. Table XII shows the frequency when reasons appeared in at least two Statements of Reason.

The reason most frequently given for departure from the guidelines range was substantial assistance to authorities (32.4% of all departure cases). This statutorily-provided departure occurred most frequently in drug cases. Of all substantial assistance cases, 77 percent involved drug offenses. In addition to the 32.4 percent of departure cases citing substantial assistance, another 6.3 percent of the cases cited cooperation; however, there was no indication of a motion by the government in these cooperation cases. Other reasons given for departing downward (noted in at least ten cases) included the defendant's minimum role in the offense and unique lo-

cal conditions. These reasons were primarily utilized for departures in drug cases in the District of Arizona.

In another 11 cases (6.3% of all departures), the court stated that the departure was made pursuant to a plea agreement. A review of written plea agreements showed six additional cases in which a lower guideline range or sentence was agreed upon in the plea agreement, but the reason given for departing made no mention of the agreement. Generalizing to all cases sentenced, it appears that approximately 1.4 percent of all cases may involve a departure that corresponds to a sentence or level agreed upon in the plea agreement.<sup>4</sup>

The reason most commonly stated for departing upward from the guideline range was that the criminal history category did not adequately reflect the seriousness of the defendant's prior criminal behavior (14 of 29 upward departure cases in which Statements of Reasons were submitted). Other reasons for upward departures include public welfare (3 cases), weapons or dangerous instrumentalities (3 cases), and drug purity or drug amount (5 cases).

### *Summary*

During the first 16 months of guideline implementation, the great majority of cases (82.3%) have resulted in sentences within the appropriate guideline range. The most frequent reason given for departure from the range (5.7%) was a motion by the government for reduction based on substantial assistance.

4. This does not include agreements to depart downward due to substantial assistance to authorities.

**TABLE X:  
GUIDELINE DEPARTURES BY DISTRICT  
(SENTENCED BETWEEN NOV. 1, 1987, AND FEB. 28, 1989)**

District	No Departure	Upward Departure	Downward Departure	Total
Alabama				
Northern	6 (85.7%)	0 (0.0%)	1 (14.3%)	7
Southern	7 (87.5%)	0 (0.0%)	1 (12.5%)	8
Middle	19 (95.0%)	0 (0.0%)	1 (5.0%)	20
Alaska	7 (100.0%)	0 (0.0%)	0 (0.0%)	7
Arizona	21 (61.8%)	0 (0.0%)	13 (38.2%)	34
Arkansas				
Eastern	3 (60.0%)	0 (0.0%)	2 (40.0%)	5
Western	11 (100.0%)	0 (0.0%)	0 (0.0%)	11
California				
Northern	9 (90.0%)	0 (0.0%)	1 (10.0%)	10
Southern	44 (62.9%)	8 (11.4%)	18 (25.7%)	70
Eastern	26 (89.7%)	2 (6.9%)	1 (3.4%)	29
Central	32 (88.9%)	1 (2.8%)	3 (8.3%)	36
Connecticut	4 (66.7%)	0 (0.0%)	2 (33.3%)	6
Colorado	16 (88.9%)	1 (5.6%)	1 (5.6%)	18
District of Columbia	39 (92.9%)	0 (0.0%)	3 (7.1%)	42
Delaware	5 (100.0%)	0 (0.0%)	0 (0.0%)	5
Florida				
Northern	17 (58.6%)	0 (0.0%)	12 (41.4%)	29
Southern	24 (70.6%)	0 (0.0%)	10 (29.4%)	34
Middle	47 (72.3%)	0 (0.0%)	18 (27.7%)	65
Georgia				
Northern	26 (89.7%)	0 (0.0%)	3 (10.3%)	29
Southern	17 (80.9%)	3 (14.3%)	1 (4.8%)	21
Middle	13 (86.7%)	0 (0.0%)	2 (13.3%)	15
Guam				
Hawaii	11 (91.7%)	1 (8.3%)	0 (0.0%)	12
Idaho	2 (100.0%)	0 (0.0%)	0 (0.0%)	2
Illinois				
Northern	10 (76.9%)	0 (0.0%)	3 (23.1%)	13
Southern	7 (70.0%)	1 (10.0%)	2 (20.0%)	10
Central	9 (90.0%)	1 (10.0%)	0 (0.0%)	10
Indiana				
Northern	7 (77.8%)	0 (0.0%)	2 (22.2%)	9
Southern	11 (68.8%)	0 (0.0%)	5 (31.3%)	16
Iowa				
Northern	2 (50.0%)	0 (0.0%)	2 (50.0%)	4
Southern	9 (100.0%)	0 (0.0%)	0 (0.0%)	9
Kansas	12 (75.0%)	0 (0.0%)	4 (25.0%)	16
Kentucky				
Eastern	13 (72.2%)	0 (0.0%)	5 (27.8%)	18
Western	73 (94.8%)	2 (2.6%)	2 (2.6%)	77
Louisiana				
Eastern	47 (92.2%)	0 (0.0%)	4 (7.8%)	51
Western	12 (75.0%)	2 (12.5%)	2 (12.5%)	16
Middle	3 (75.0%)	0 (0.0%)	1 (25.0%)	4
Maine	4 (80.0%)	0 (0.0%)	1 (20.0%)	5
Maryland	18 (90.0%)	0 (0.0%)	2 (10.0%)	20
Massachusetts	7 (77.8%)	0 (0.0%)	2 (22.2%)	9
Michigan				
Eastern	23 (67.7%)	1 (2.9%)	10 (29.4%)	34
Western	2 (100.0%)	0 (0.0%)	0 (0.0%)	2
Minnesota	21 (84.0%)	0 (0.0%)	4 (16.0%)	25

Mississippi				
Northern	4 (100.0%)	0 (0.0%)	0 (0.0%)	4
Southern	10 (100.0%)	0 (0.0%)	0 (0.0%)	10
Missouri				
Eastern	19 (95.0%)	0 (0.0%)	1 (5.0%)	20
Western	23 (92.0%)	0 (0.0%)	2 (8.0%)	25
Montana	7 (77.8%)	0 (0.0%)	2 (22.2%)	9
Nebraska				
Nevada	8 (88.9%)	0 (0.0%)	1 (11.1%)	9
New Hampshire	2 (100.0%)	0 (0.0%)	0 (0.0%)	2
New Jersey	37 (92.5%)	0 (0.0%)	3 (7.5%)	40
New Mexico	35 (94.6%)	0 (0.0%)	2 (5.4%)	37
New York				
Northern	11 (100.0%)	0 (0.0%)	0 (0.0%)	11
Southern	36 (75.0%)	1 (2.1%)	11 (22.9%)	48
Eastern	43 (61.4%)	4 (5.7%)	23 (32.9%)	70
Western				
North Carolina				
Eastern	13 (81.3%)	0 (0.0%)	3 (18.7%)	16
Western	21 (67.7%)	0 (0.0%)	10 (32.3%)	31
Middle	14 (50.0%)	3 (10.7%)	11 (39.3%)	28
North Dakota	16 (80.0%)	0 (0.0%)	4 (20.0%)	20
Ohio				
Northern	23 (85.2%)	0 (0.0%)	4 (14.8%)	27
Southern	32 (86.5%)	2 (5.4%)	3 (8.1%)	37
Oklahoma				
Northern	5 (83.3%)	0 (0.0%)	1 (16.7%)	6
Eastern				
Western	13 (81.3%)	0 (0.0%)	3 (18.7%)	16
Oregon	15 (88.2%)	1 (5.9%)	1 (5.9%)	17
Pennsylvania				
Eastern	9 (75.0%)	2 (16.7%)	1 (8.3%)	12
Western	12 (92.3%)	0 (0.0%)	1 (7.7%)	13
Middle	10 (76.9%)	0 (0.0%)	3 (23.1%)	13
Puerto Rico	35 (81.4%)	1 (2.3%)	7 (16.3%)	43
Rhode Island	2 (66.7%)	0 (0.0%)	1 (33.3%)	3
South Carolina	23 (85.2%)	0 (0.0%)	4 (14.8%)	27
South Dakota	18 (90.0%)	0 (0.0%)	2 (10.0%)	20
Tennessee				
Eastern	11 (68.8%)	1 (6.2%)	4 (25.0%)	16
Western	24 (85.7%)	1 (3.6%)	3 (10.7%)	28
Middle	6 (85.7%)	0 (0.0%)	1 (14.3%)	7
Texas				
Northern	67 (88.2%)	3 (3.9%)	6 (7.9%)	76
Southern	241 (80.1%)	13 (4.3%)	47 (15.6%)	301
Eastern	11 (91.7%)	0 (0.0%)	1 (8.3%)	12
Western	186 (96.4%)	1 (0.5%)	6 (3.1%)	193
Utah				
Vermont	5 (55.6%)	3 (33.3%)	1 (11.1%)	9
Virgin Islands	8 (66.7%)	1 (8.3%)	3 (25.0%)	12
Virginia				
Eastern	36 (83.7%)	3 (7.0%)	4 (9.3%)	43
Western	6 (100.0%)	0 (0.0%)	0 (0.0%)	6
Washington				
Eastern				
Western	13 (81.3%)	1 (6.3%)	2 (12.5%)	16
West Virginia				
Northern	11 (91.7%)	0 (0.0%)	1 (8.3%)	12
Southern	26 (81.3%)	1 (3.1%)	5 (15.6%)	32
Wisconsin				
Eastern	10 (100.0%)	0 (0.0%)	0 (0.0%)	10
Western	1 (33.3%)	0 (0.0%)	2 (66.7%)	3
Wyoming	4 (80.0%)	0 (0.0%)	1 (20.0%)	5

**TABLE XI:  
DEPARTURES BY PRIMARY OFFENSE CATEGORY  
(SENTENCED BETWEEN NOV. 1, 1987, AND FEB. 28, 1989)\***

Primary Offense	No Departure	Downward Departure**	Upward Departure	Total
Homicide	8 (100.0%)	0 (0.0%)	0 (0.0%)	8
Robbery	71 (91.0%)	5 (6.4%)	2 (2.6%)	78
Assault	21 (77.8%)	6 (22.2%)	0 (0.0%)	27
Burglary/B&E	8 (88.9%)	1 (11.1%)	0 (0.0%)	9
Larceny	135 (93.1%)	9 (6.2%)	1 (7.0%)	145
Embezzlement	54 (91.5%)	5 (8.5%)	0 (0.0%)	59
Fraud	112 (90.3%)	6 (4.8%)	6 (4.8%)	124
Auto Theft	15 (93.8%)	0 (0.0%)	1 (6.3%)	16
Forgery/Counterfeiting	58 (84.1%)	10 (14.5%)	1 (1.5%)	69
Sex Offenses	5 (62.5%)	3 (37.5%)	0 (0.0%)	8
Escape	29 (74.4%)	10 (25.0%)	0 (0.0%)	39
Firearms	72 (84.7%)	3 (3.5%)	10 (11.8%)	85
Immigration	163 (92.1%)	6 (3.4%)	8 (4.5%)	177
Drugs				
•Distribution, Trafficking	538 (73.7%)	179 (24.5%)	13 (1.8%)	730
•Continuing Criminal Enterprise	49 (67.1%)	20 (27.4%)	4 (5.5%)	73
•Simple Possession	96 (96.0%)	1 (1.0%)	3 (3.0%)	100
•Communications Facilities	21 (91.3%)	1 (4.4%)	1 (4.4%)	23
Extortion and Racketeering	9 (42.9%)	11 (52.4%)	1 (4.8%)	21
Gambling and Lottery	10 (100.0%)	0 (0.0%)	0 (0.0%)	10
Other	77 (84.6%)	9 (9.9%)	5 (5.5%)	91
<b>TOTAL</b>	<b>1551 (82.0%)</b>	<b>285 (15.1%)</b>	<b>56 (2.9%)</b>	<b>1892</b>

\* Categories identified here are collapsed from the FPSSIS indicator for primary offense. Since FPSSIS data on primary offense was not available for all cases in the departure study, 366 cases are not included here.

\*\* Downward departure category includes all departures pursuant to motion by the government for substantial assistance.

**TABLE XII:  
REASONS GIVEN FOR DEPARTURE FROM THE GUIDELINES\*  
(SENTENCED BETWEEN NOV. 1, 1987, AND FEB. 28, 1989)**

Reason Given for Departure	Number of Cases for Which Reason Was Given	Number Involving Upward Departure/ Downward Departure	% of Cases In Which Reason was Given**
No Reasons Given	12	0/12	6.8%
Substantial Assistance At Motion*** (not below mandatory minimum)	47	0/57	26.7%
Substantial Assistance At Motion (below mandatory minimum)	10		5.7%
Cooperation Without Motion	11	0/11	6.3%
Adequacy of Criminal History	17	14/3	9.7%
No Prior Record	8	0/8	4.5%
Adequate to Meet the Purposes of Sentencing	13	1/12	7.4%
Mule/Minimum Role In the Offense	12	0/12	6.8%
Pursuant to Plea Agreement	11	1/10	6.3%
Unique Local Conditions	9	0/9	5.1%
Age (5H1.1)	4	0/4	2.3%
Mental and Emotional Conditions (5H1.3)	5	0/5	2.8%
Physical Condition (5H1.4)	10	0/10	5.7%
Family Ties and Responsibilities (5H1.6)	3	0/3	1.7%
Weapons and Dangerous Instrumentalities (5K2.6)	3	3/0	1.7%
Coercion and Duress (5K2.12)	6	0/6	3.4%
Diminished Capacity (5K2.13)	3	0/3	1.7%
Public Welfare (5K2.14)	3	3/0	1.7%
Disagree with Career Offender	2	0/2	1.1%
Disagree with Role Adjustment	3	1/2	1.7%
Drug Purity	2	2/0	1.1%
Drug Amount	4	3/1	2.3%
To Decrease Disparity Among Co-defendants	5	0/5	2.8%
Guidelines Too High/Low	3	1/2	1.7%
General Aggravating or Mitigating Circumstances (Did not Specify)	6	2/4	3.4%
Other	36	15/21	20.5%

\* Reasons for departure were established for the 176 departure cases for which a Statement of Reasons for Imposing Sentence was submitted by the court.

\*\* Because more than one reason for departure may be given in a single case, percents in this category total to greater than 100%.

\*\*\* It was not always clear based on the Statement of Reasons whether the government actually made a motion for reduction. When Substantial Assistance or Cooperation was noted as a reason for departure the file was further reviewed. If the plea agreement or PSR noted that the government was likely to file such a motion, a forthcoming motion was assumed. If no such motion was noted, the reason was coded Cooperation Without Motion.

## B. EVALUATION

In the Sentencing Reform Act of 1984, Congress instructed the Commission to

provide the GAO, all appropriate courts, the Department of Justice, and the Congress with a report detailing the operation of the sentencing guidelines and making recommendations. The report shall include an evaluation of the impact of the sentencing guidelines on prosecutorial discretion, plea bargaining, disparities in sentencing, and the use of incarceration.

The scope of the evaluation and the research agenda began to take shape in 1988. Interviews with experts in statistics, sociology, criminal law, methodology, and other areas provided helpful advice on the research issues that need to be addressed. To assist in this effort, the Commission formed a Technical Advisory Group in late 1987 composed of nationally recognized experts in sentencing to advise the evaluation group on the complex conceptual and methodological issues inherent in a study of this size. Members of the group are Dr. Richard Berk, Dr. Shari Diamond, Dr. Phillip Cook, and Dr. Charles Wellford.

Additionally, the evaluation staff began preliminary assessments of the quality of available data.

### *Proposed Evaluation Plan*

The Commission plans to combine qualitative and quantitative evaluation methods in its research. This will involve process

evaluations that examine the operation of the guidelines (as required by the legislative mandate) in a designated number of districts primarily through qualitative research methods using replicable, standardized models. With this type of field research approach, the Commission hopes to identify patterns or dissimilarities among districts.

The process evaluations of selected districts will accomplish the following objectives:

- Identify problems that may be affecting the reliability and/or validity of the large aggregated databases;
- Inform the Commission of the day-to-day operations and problems that diverse districts may experience when applying the guidelines;
- Identify similarities and differences among the districts that could be extrapolated to all districts. For example, all sampled districts, regardless of their size, region, or urban/rural characteristics, may be experiencing the same type of problems in one particular area of guideline sentencing. Other problems may be unique to specific districts (e.g., rural courts);
- Identify areas the Commission may want to explore in more depth through a nationwide survey;
- Reveal new data sources, nonreactive indicators and appropriate impact/outcome indicators;
- Prescribe and guide new or modified data collection forms;

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- Provide an operational model for future evaluations.

In addition to the process evaluations of the operation of the guidelines, the evaluation staff plans to assess the impact of the guidelines on prosecutorial discretion, plea bargaining, disparity in sentencing, and the use of incarceration. In this effort the Commission will use its monitoring data, as well as data collected by the Federal Probation Sentencing and Supervision Information System (FPSSIS), the Criminal Masterfile of the Administrative Office of the U.S. Courts, Bureau of Prisons, Executive Office of the U.S. Attorneys, U.S. Parole Commission, and other relevant databases.

The results of the evaluation are due to the General Accounting Office by November 1991, one month before the GAO begins its six-month study of the Sentencing Commission and the guidelines. The GAO report is to be presented to the Congress in May 1992. The Commission expects that the information contained in both reports will be valuable to all branches of government and the criminal justice community.

### *Plea Negotiation and Prosecutorial Discretion*

The Commission completed a preliminary field survey and vignette study in 1988 to establish pre-guidelines process information designed to address the impact of the guidelines on plea negotiation and prosecutorial discretion. Ten sites were selected based on population, region, caseload volume, and representative nature of the criminal docket. Before conducting interviews, structured questionnaires were pretested in three districts. Following staff training and revision of the questionnaires

and vignettes, Commission staff conducted 130 interviews with assistant U.S. attorneys, federal defenders, private defense attorneys, and probation officers to document the pre-guideline sentencing process.

Within U.S. Attorneys' offices, a cross section of prosecutors were interviewed, including supervisors, sections chiefs, and line attorneys. When federal defenders' offices were stratified, a sampling of supervisors and line defenders were selected. Private defense attorneys were selected on the basis of experience in federal criminal court. In U.S. probation offices, experienced officers and supervisors were interviewed.

To explore one measure of pre-guideline prosecutorial discretion and plea negotiation practices, a set of vignettes describing various fact situations and offender characteristics was distributed to all assistant U.S. attorneys in the country who carry a criminal caseload. These data are being used as background for a variety of research purposes.

In 1988, the staff also began developing a comprehensive annotated bibliography of prosecutorial discretion and plea negotiation. As part of the Commission's mandate to serve as a clearinghouse of information on federal sentencing practices (28 U.S.C. § 995(a)(12)(A)), articles, books, and research reports are being collected to support the evaluation in this and other areas.

The Commission plans to use data from the AO and possibly the Executive Office of the U.S. Attorneys to determine charging practices. The use of extant data will reduce considerably the need to collect data in the field.

### *Use of Incarceration*

The use of incarceration project will look at both the in/out decision and length of incarceration. The in/out decision specifically addresses the circumstances under which an offender is sentenced to a term of incarceration and the factors that influence the length of the prison term. In 1988, the Commission initiated a pilot incarceration study using data from a selected district.

Empirical models are being developed to study pre-guidelines sentencing practices relating to the "out" decision, i.e., judges' use of alternatives such as fines and probation. Comprehensive annotated bibliographies are being developed for both projects.

### *Disparity in Sentencing*

According to the Congress, "[a] primary goal of sentencing reform is the elimination of unwarranted sentencing disparity."<sup>5</sup> Additionally, the Congress identified disparity as one of the four substantive considerations for the evaluation of the sentencing guidelines.

Generally speaking, the Commission accepts the popular definition of disparity as the imposition of dissimilar sentences on similarly situated individuals, and, conversely, similar sentences imposed on dissimilarly situated defendants.

In 1988, the Commission conducted a preliminary analysis of early AO data and compared the dispersion of sentences to forecasted sentences under a guideline system, assuming 100 percent compliance with the guidelines. While the study showed an apparent reduction in disparity under the guidelines, this preliminary analysis was designed to test various methodological techniques rather than provide a substantive finding on the issue of disparity. Several possible techniques proved fruitful and are currently being tested with Commission monitoring data.

A comprehensive annotated bibliography is being developed for the project that will include studies of discrimination as well as sentencing disparity.

5. S. Rep. No. 225, 98th Cong., 1st Sess. 52 (1983).

## C. ADDITIONAL PROJECTS

### 1. Prison Impact

During 1988 the Commission continued to cooperate with the Federal Bureau of Prisons to assess the impact of the guidelines on federal prison population, pursuant to 28 USC §§ 994(g) and (q).

#### *Prison Impact Model*

The prison impact model simulates both changes in average time served and changes in the size of the federal prison population. Changes in sentence length are reflected immediately in changes in estimated time served, while changes in prison population resulting from a statutory or guideline change may not appear for several years, depending upon the length of the average time served in the past for the particular offense. A given absolute change in the average sentence for an offense with a smaller average time served will have a more immediate impact on prison population than an equal change in time served for an offense with a larger average time served.

#### *Updating the 1987 Supplementary Report*

The Commission's estimates of time served and prison population projections have changed since the publication of the *Supplementary Report on the Initial Sentencing Guidelines and Policy Statements* on June 18, 1987. The changes derive from three sources.

First, correction of minor errors in the original projection model was required. Second, the model was modified to incor-

porate the amendment to the career offender guideline (§4B1.1) that took effect on January 15, 1988. The amendment corrected the guideline so that the table relating offense statutory maxima to offense levels is consistent with the current authorized statutory maximum terms. This was the only amendment to significantly affect average time served. Table 1 shows average time served as originally estimated in the Supplementary Report and before and after the career offender amendment. Table 2 shows prison population for each of the projections.

Third, in concert with the Bureau of Prisons, the future conviction rate trends for drug offenders was adjusted to take into account both the actual trends of 1986 through 1988, and future trends predicted by a March 1989 U.S. Judicial Conference report to Congress, entitled "Impact of Drug Related Criminal Activity on the Federal Judiciary." While these changes affect prison population projections, they do not affect average time served. Both the new low- and high-growth scenarios were within the upper and lower bounds of our original projections as reported in the Supplementary Report. The low-growth scenario assumes that the growth rate experienced in 1982-1986 continues through 1989, becoming a constant rate of 1 percent per year thereafter. The high-growth scenario assumes that the annual growth in criminal cases from 1987 to 1991 equals the relatively high rates of growth that occurred in the 1982-1986 period. The growth rate for the remainder of the period was chosen so as to equate the overall growth rate from 1987 to 2002 to that of 1971 to 1986.

**TABLE I:  
AVERAGE TIME SERVED  
(IN MONTHS)**

Offense	(1)	(2)	(3)
Robbery	75.4	74.6	69.0
Persons	75.2	77.6	77.0
Drugs	57.7	52.8	52.2
Burglary	16.5	10.9	10.5
Firearms	15.2	15.3	15.2
Fraud	8.0	8.2	8.2
Property	6.5	6.6	6.6
Immigration	5.2	5.4	5.4
Income Tax	11.9	8.6	8.6
<b>Total</b>	<b>29.5</b>	<b>27.4</b>	<b>26.9</b>

- (1) Projections as originally published in the *Supplementary Report*, June 18, 1987.
- (2) Original projections incorporating technical corrections.
- (3) Projections incorporating the January 15, 1988, career offender amendment.

**TABLE II:  
PRISON POPULATION PROJECTIONS**

**LOW GROWTH SCENARIO**

	(1)	(2)	(3)
1989	N/A	52,600	52,600
1992	72,000	73,500	74,600
1997	92,000	99,800	101,800
2002	105,000	114,600	116,200

**HIGH GROWTH SCENARIO**

	(1)	(2)	(3)
1989	N/A	52,600	52,600
1992	79,000	75,100	74,900
1997	118,000	109,700	109,100
2002	156,000	144,600	143,100

- (1) Projections as originally published in the *Supplementary Report*, June 18, 1987.
- (2) Original projections incorporating technical corrections.
- (3) Projections incorporating the January 15, 1988, career offender amendment.

## 2. ASSYST

In conjunction with implementation of the guidelines, the research staff developed a computer software program called ASSYST to help judges, probation officers, and attorneys apply the guidelines. ASSYST, in essence, is a computerized version of the Commission's guideline worksheets that are being used by probation officers across the country in preparing presentence investigation reports for the sentencing court. By completing all relevant sections of the worksheets, an officer calculates an individual's guideline sentencing range, fine range, and supervision requirements.

ASSYST enhances application of the guidelines by making available at the touch of a button entire sections of the *Guidelines Manual* text, commentary, and illustrative examples. A dictionary of terms is also included. The program performs all required calculations, including drug quantity conversions, and saves all responses permitting the recall and modification of worksheets. ASSYST was initially distributed to all U.S. probation offices and a number of interested judges and attorneys.

With cooperation from other agencies, the Commission made plans in 1988 to make the program available to other members of the court family. The Executive Office for U.S. Attorneys plans to distribute ASSYST to every U.S. Attorneys Office. Similarly, the Defender Services Division of the AO has agreed to distribute the program to all federal defender offices. The Commission plans to make ASSYST available to private defense attorneys and the public through the National Technical Information Service of the Commerce Department.

In early 1989, the Commission updated ASSYST with version 0.97. The new version, in addition to being more efficient and easier to use, incorporates all guideline amendments that had become effective through 1988.



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## VI: TRAINING

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Congress has directed the Commission to "devise and conduct periodic training programs of instruction in sentencing techniques for judicial and probation personnel and other persons connected with the sentencing process" (28 U.S.C. § 995(a)(18)). Before implementation of the initial set of guidelines, the Commission, in conjunction with the Federal Judicial Center, conducted three Train-the-Trainer seminars in October 1987 designed to familiarize federal judges and probation officers with guideline application.

A year later, it was clear that varied levels of guideline application skills existed across the country. This was attributable to the large number of constitutional challenges to the guidelines and Sentencing Reform Act and the fact that the guidelines apply only to offenses that occur on or after November 1, 1987.

### *Working Groups*

In an effort to determine training needs, the Commission convened working groups of judges and probation officers in 1988 to help define guideline training priorities.

The first group included 18 federal district and circuit court judges plus representatives from the Federal Judicial Center, and the Probation Division and General Counsel's Office of the Administrative Office of the U.S. Courts.

The second working group included 20 U.S. probation officers from across the country and representatives from the Probation Division and General Counsel's Office of the AO.

In general, the Probation Officer Working Group agreed with the judges that additional guideline training was needed. They were supportive of the Train-the-Trainer concept and strongly advocated the development of comprehensive training materials. Both groups were enthusiastic about a training manual in which specific guideline topics would be covered in detail through outlines, visual aids, and other teaching materials. The group concluded that training should be held as soon as possible after the Supreme Court decision.

The Federal Judicial Center requested that it retain administrative supervision over training for federal judges with the assurance that the Commission would provide faculty when the Center offered training on guideline application. Thus, the Commission concentrated its efforts on advanced training for probation officers, prosecutors and defense attorneys, although a number of federal judges have participated in Commission guidelines training on an individual basis.

In response to the suggestions of the working groups, the training unit organized advanced Train-the-Trainer seminars in five regions of the country in early 1989. The Commission trained at least two probation officers, assistant U.S. attorneys, and federal or private defenders from each district at the sessions. Details on the advanced Train-the-Trainer seminars will be included in the 1989 annual report.

### *Training Materials*

To provide a more comprehensive training program, the Commission developed a

*Trainer's Manual* for the Train-the-Trainer seminars. These advanced training materials on substantive areas of guideline application include a lecture outline, graphics designed to aid in instruction, case examples, exercises, and quizzes. To assist in the development of these materials, a number of U.S. probation officers were loaned to the Commission for short periods of time.

The training unit designed the manual based on priorities set by the Probation Officer Working Group. The manual contains seven sections: Guideline Application, Multiple Counts, Relevant Conduct, Criminal History, Departures, Imposition of Sentence, and ASSYST. Each section is divided into three subsections: the first provides a lecture outline of the topic area; the second, visual aids to support the lecture materials; and the third, case examples, exercises, and quizzes.

The **Guideline Application** section provides a general overview of guideline application. The material allows trainers to tailor the length and detail of their teaching sessions to individual training needs. Within the lecture outline, visual aids that illustrate the topic under discussion are referenced. In total, this section provides approximately eight hours of lecture materials.

**Multiple Counts, Relevant Conduct, Criminal History, Departures, and Imposition of Sentence** sections contain materials designed to provide advanced training in particular substantive areas. Lecture materials foster a more complete understanding of guideline application by providing an analytical procedure for dealing with individual cases. These materials are designed to illustrate the flexibility in guideline application as well as methods to

ease application for the more complex situations.

The final section, **ASSYST**, provides an instruction manual for the Commission's computerized version of its guidelines worksheets. ASSYST is designed to provide users with automated assistance in guideline application, but is not intended as a substitute for a thorough understanding of the *Guidelines Manual*.

### *In-District Training*

In addition to planning for the nationwide Train-the-Trainer program, the Commission's training staff responded to numerous requests for speakers at various in-district sessions. Individual Commissioners and staff lectured widely on the guidelines at training sessions, academic seminars, and professional meetings.

During 1988, Commissioners and staff conducted training sessions across the country involving thousands of judges, probation officers, prosecutors, defense attorneys, and investigative agents. L. Russell Burrell, U.S. Probation Officer from South Carolina on assignment to the Commission, continued his role in 1988 as the Commission's primary spokesperson on guideline training.

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## VII: TECHNICAL ASSISTANCE SERVICE

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The Technical Assistance Service unit, organized by the Commission late in 1987, became fully operational in 1988. The service provides guideline application assistance to federal judges and probation officers and supports the Commission on guideline application issues through its daily contact with criminal justice personnel applying the guidelines.

The Technical Assistance Service (TAS) is divided into three sections, each designed to provide a different service to the field.

- **Hotline.** This section responds to telephone inquiries from the field, assists the drafting staff in the guideline amendment process, and reviews amendments from a field officer's perspective.
- **Training.** Borrowing staff from other units of the Commission, (e.g., the legal and communications units), TAS staffs and coordinates all Commission training activities.
- **Case Review.** This project responds to the Commission's Congressional mandate to monitor the performance of probation officers under guideline sentencing. Through case review, the Commission provides the field with suggestions on correct guideline application based on review of cases received by the Commission's monitoring unit.

### *The Hotline*

Technical assistance questions that do not involve subjective judgments are readily answered by the TAS staff. For example, if a defendant is being sentenced for armed bank robbery (18 USC § 2113(d)) and use of a firearm during the robbery (18 USC § 924(c)), the TAS staff will instruct that because the 924(c) count carries a mandatory minimum consecutive five-year term of imprisonment, the specific offense characteristic in the robbery guideline for weapon use should not be used when calculating the defendant's guideline sentence.

Questions that involve a subjective determination by the judge, such as acceptance of responsibility, role in the offense, or a justification for a departure, are answered by directing the caller's attention to relevant guidelines, commentary, or policy statements. Where debatable questions or interpretations of correct application arise, TAS staff assist the caller in understanding the alternative approaches without recommending one approach over another. Legal questions or questions for which answers are not readily available are discussed with the legal and guideline production staffs.

The hotline is operational from Monday through Friday between the hours of 8:30 a.m. and 5:30 p.m. (Eastern Standard Time).

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### *Calls Received in 1988*

The Technical Assistance Service responded to a total of 1,772 questions in 1988, averaging over 147 questions per month. July 1988 was the month with the highest number of questions (193). The rate of calls tapered off throughout the remainder of the year as additional courts held the guidelines unconstitutional. Figure 1 illustrates the pattern of calls during 1988.

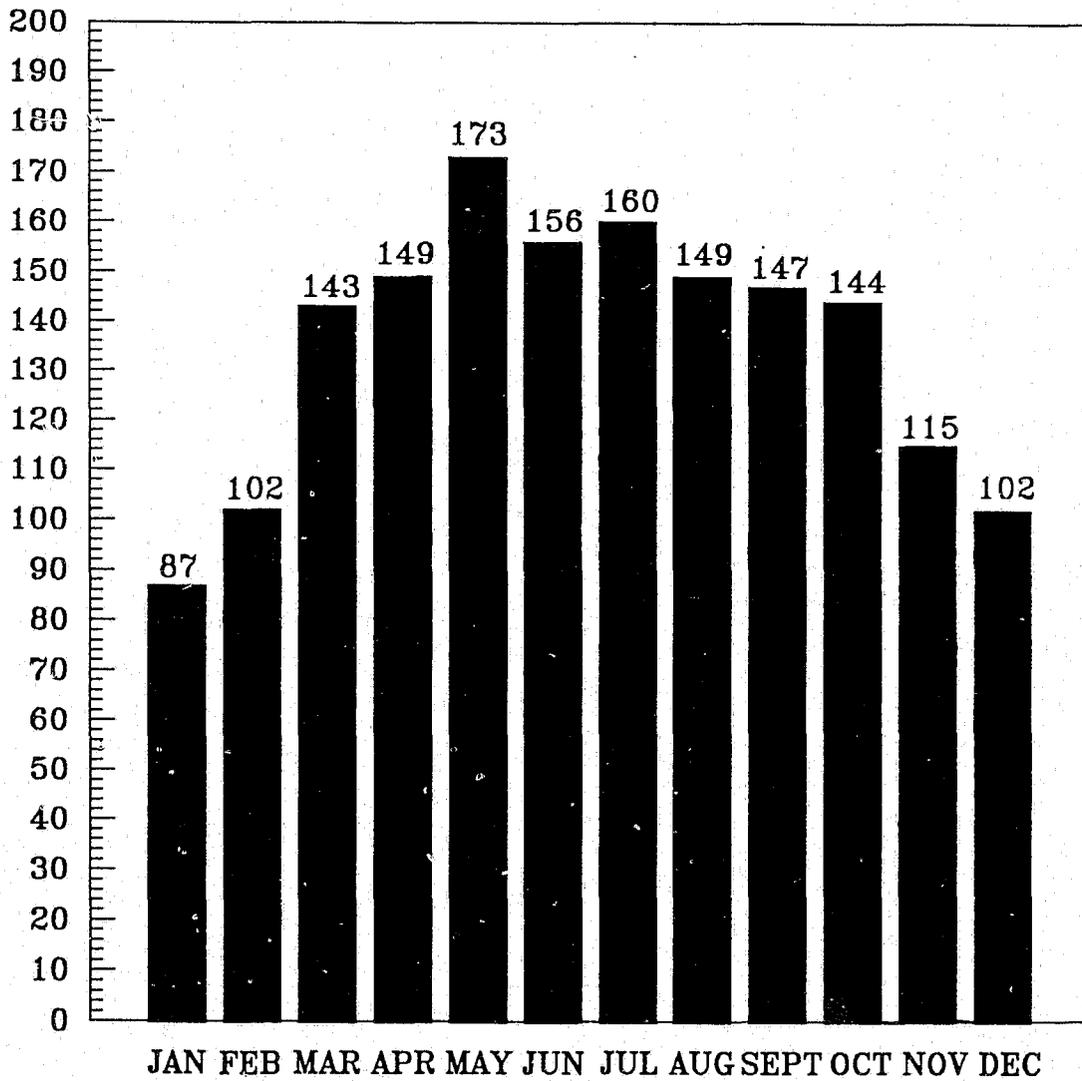
By year's end many judicial districts were not sentencing under the guidelines, thus reducing the volume of calls to the hotline. However, the affirmative decision of the Supreme Court in *Mistretta* announced on January 18, 1989, provoked a resurgence of calls. During the first month post-*Mistretta* (February 1989), 222 questions were answered by the TAS staff.

Table I shows the number of questions received by section of the guidelines. The greatest number of questions (241) related to the criminal history section of the guidelines. Relevant conduct questions ranked second (148). Drug and old law/new law<sup>1</sup> issues followed with 102 and 101 questions, respectively.

Table II shows the number of calls received by individual districts. While the distribution provides a national breakdown of TAS use, it is in no way indicative of districts experiencing difficulty in guideline application. Because of the constitutional litigation during 1988, the distribution of calls by district is undoubtedly skewed.

1. Old law/new law questions involve the applicability of guidelines and provisions of the Sentencing Reform Act to individual defendants. In general, questions of this nature involve behavior that occurs both before and after the November 1, 1987, effective date of the guidelines.

FIGURE 1:  
TAS TELEPHONE CALLS IN 1988



**TABLE I:  
NUMBER OF QUESTIONS RECEIVED  
BY GUIDELINE SECTION IN 1988**

<b>CHAPTER 1: INTRODUCTION AND APPLICATION PRINCIPLES</b>	
Application	63
Relevant Conduct	148
Petty Offenses	11
<b>CHAPTER 2: OFFENSE CONDUCT</b>	
Offenses Against the Person	26
Offenses Involving Property	46
Offenses involving Public Officials	3
Offenses involving Drugs	102
Offenses involving Criminal Enterprise and Racketeering	6
Offenses involving Fraud or Deceit	12
Offenses involving Individual Rights	2
Offenses involving Administration of Justice	17
Offenses involving Public Safety	51
Offenses involving Immigration, Naturalization, and Passports	7
Offenses involving National Defense	2
Offenses involving Prisons and Correctional Facilities	5
Offenses involving the Environment	—
Money Laundering and Monetary Transaction Reporting	4
Offenses involving Taxation	9
Other Offenses	62
<b>CHAPTER 3: ADJUSTMENTS</b>	
Victim Related Adjustments	19
Role in the Offense	59
Obstruction	51
Multiple Counts	83
Acceptance of Responsibility	28
<b>CHAPTER 4: CRIMINAL HISTORY AND CRIMINAL LIVELIHOOD</b>	
Criminal History	241
Career Offenders and Criminal Livelihood	91
<b>CHAPTER 5: DETERMINING THE SENTENCE</b>	
Sentencing Table	7
Probation	19
Imprisonment	22
Supervised Release	49
Restitution	11
Fines	65
Sentencing Options	3
Implementing Total Sentence	39
Specific Offender Characteristics	4
Departures	41
<b>CHAPTER 6: SENTENCING PROCEDURES AND PLEA AGREEMENTS</b>	
Sentencing Procedures	8
Plea Agreements	14
<b>CHAPTER 7: VIOLATIONS OF PROBATION AND SUPERVISED RELEASE</b>	15
<b>APPENDIX A (STATUTORY INDEX)</b>	9
<b>OTHER QUESTIONS</b>	
Amendments	34
ASSYST	12
Old Law/New Law	101
Presentence Report	15
Statutory/Legal	75
Statement of Reasons	16
Miscellaneous	107
Questions Referred Elsewhere	78

**TABLE II:  
HOTLINE CALLS RECEIVED  
BY DISTRICT IN 1988**

District	Number	District	Number
Alabama		Missouri	
Northern	14	Eastern	35
Middle	11	Western	37
Southern	13	Montana	18
Alaska	10	Nebraska	8
Arizona	20	Nevada	3
Arkansas		New Hampshire	0
Eastern	34	New Jersey	13
Western	9	New Mexico	22
California		New York	
Northern	29	Northern	6
Eastern	29	Eastern	3
Central	40	Southern	16
Southern	11	Western	6
Colorado	18	North Carolina	
Connecticut	8	Eastern	23
Delaware	26	Middle	40
District of Columbia	61	Western	13
Florida		North Dakota	10
Northern	8	Ohio	
Middle	30	Northern	6
Southern	13	Southern	25
Georgia		Oklahoma	
Northern	39	Northern	2
Middle	4	Eastern	3
Southern	5	Western	2
Guam	2	Oregon	14
Hawaii	22	Pennsylvania	
Idaho	16	Eastern	34
Illinois		Middle	17
Northern	23	Western	15
Central	23	Puerto Rico	14
Southern	19	Rhode Island	4
Indiana		South Carolina	26
Northern	22	South Dakota	40
Southern	6	Tennessee	
Iowa		Eastern	14
Northern	4	Middle	27
Southern	32	Western	14
Kansas	55	Texas	
Kentucky		Northern	12
Eastern	7	Eastern	11
Western	7	Southern	17
Louisiana		Western	39
Western	17	Utah	13
Eastern	23	Vermont	2
Middle	1	Virgin Islands	4
Maine	5	Virginia	
Maryland	49	Eastern	38
Massachusetts	17	Western	26
Michigan		Washington	
Eastern	48	Eastern	1
Western	8	Western	7
Minnesota	13	West Virginia	
Mississippi		Northern	8
Northern	15	Southern	8
Southern	38	Wisconsin	
		Eastern	14
		Western	12
		Wyoming	1

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### *Hotline Quality Control*

In responding to questions from the field, TAS staff consults with the legal and guideline production staffs to ensure that questions are fully researched and accurately answered. Every effort is made to ensure that the guidance provided by the TAS staff is accurate and consistent with official Commission publications and other materials that have been approved by the Commission. To assist with quality control, the TAS staff maintains a log of each call received and the response provided. These logs are reviewed by training, legal, and guideline production staffs on a monthly basis to verify answers and develop a set of consistent responses to complex and frequently asked questions.

In July 1988 TAS began maintaining these logs through a computer program specifically developed to document the hotline calls. This program provides an easily accessible database that allows staff to check whether the same question has been asked previously, thereby speeding research efforts and enabling more consistent and accurate responses.

### *Most Frequently Asked Questions*

In May 1988 the TAS and training staffs distributed Volume I of a publication titled "Questions Most Frequently Asked About the Sentencing Guidelines." Consisting of 25 questions, this document was designed to address substantive areas of concern in guideline application. Response to the first volume was so positive that Volume II was

published and distributed in November 1988. The Commission plans to publish additional volumes of "Most Frequently Asked Questions" on a regular basis.

### *Assistance in the Amendment Process*

Calls to the hotline provide feedback to the Commission on practical implementation aspects of the guidelines. For example, probation officers will frequently bring problems in guideline clarity and application to the attention of TAS staff members. TAS apprises the Commission of such problems, thus assisting in the drafting of more consistent and clear guidelines.

### *Case Review Project*

The case review project, implemented in October 1988, responds to one of the Commission's statutorily mandated monitoring functions.<sup>2</sup> Case review also provides a means of responding to probation officers' requests for feedback regarding application of the guidelines.

The primary purpose of case review is to monitor the application of the guidelines through a thorough analysis of the presentence report and other relevant documentation, e.g., the addendum, plea agreement, and report on sentencing (Statement of Reasons). Preliminary findings have been helpful to regional administrators of the Administrative Office of the U.S. Courts for purposes of their on-site reviews.

2. Congress has asked the Commission to "monitor the performance of probation officers with regard to sentencing recommendations, including application of the Sentencing Commission guidelines and policy statements;" and to "issue instructions to probation officers concerning the application of Commission guidelines and policy statements" (28 USC § 995(a)(9), (10)).

*Probation Officers on Temporary Assignment*

In August 1988 the Commission initiated a temporary assignment program to promote guidelines education with field probation officers. Volunteers are generally detailed to the Commission for 30 days, with the cost of the officer's travel, per diem, and living expenses borne by the Commission.

During the five months the program operated in 1988, seven probation officers completed temporary assignments at the Commission. The participant's home districts represent a diverse geographical constituency, thus providing the Commission with broad insight into sentencing practices in varying regions. Officers on temporary duty to the Commission in 1988 represented Massachusetts, Eastern and Western Louisiana, Minnesota, Eastern Michigan, Western Wisconsin, and Washington, D.C.

The primary responsibility of visiting probation officers is to help staff the hotline. Officers have also assisted in case review, monitoring, and evaluation projects.

Both probation officers and the Commission benefit from the temporary assignment program. Officers quickly become expert in guideline application and are valuable resource persons when they return to their home districts. And the Commission, through interaction with field officers who daily apply the guidelines, acquires a better understanding of the practical concerns confronting field officers interpreting the guidelines.



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## VIII: SENTENCING GUIDELINES FOR ORGANIZATIONS

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The Commission turned to the complex issue of drafting sentencing guidelines for organizations convicted of federal offenses after promulgating its initial set of sentencing guidelines for individuals. Although organizational sentences constitute a small percentage of all criminal sentences imposed in the federal courts (slightly more than 1% of all terminations; about 4% with associated individual defendants), the Commission has determined that it is important to provide guidance to the courts because of the importance and complexity of such cases.

In 1988 the Commission began the process of developing sentencing standards for organizational criminal violations by concentrating on four main areas:

- empirical analysis of past sentencing practices;
- theoretical analysis of sanctions for organizations;
- consultation with outside experts; and
- solicitation of public comment.

### *Empirical Analysis*

The staff completed a study of the sentencing of organizations in the federal courts from 1984 to 1987. This study, facilitated by material gathered by U.S. probation offices across the country, provided information regarding the types of offense committed and the distribution of offenses among those types. Also, for each type of offense, the staff derived information regarding the frequency of cases involving multiple organizations, the frequency of cases involving individual co-defendants,

the frequency with which various types of sanctions were imposed, the mean and median fine imposed, and the mean and median ratio of fine plus restitution to loss.

Although the 1984-1987 study provided considerable insight regarding the nature of organizational crime and punishment, it left many questions unanswered. From the study it appeared that fines are related to loss, both pecuniary and non-pecuniary. However, when nonpecuniary loss was considered, there remained a wide spread in fine/loss ratios in the cases examined. In part because of data limitations, the study provided limited insight regarding major factors other than loss that affected fine levels. In addition, the value of the 1984-1987 data was somewhat limited as an indicator of past practice because of low maximum statutory fine levels applicable in many cases.

Due to data limitations, the study excluded analysis of individual co-defendants sentenced along with corporate defendants. Thus, it did not reveal the relationship between sanctions against organizations and sanctions against the agents of organizations.

In order to overcome these data deficiencies and to obtain information regarding the effect of higher statutory fine maxima, the Commission staff has compiled a database containing information regarding sentences imposed on the approximately 475 organizational defendants for which criminal proceedings were terminated in 1988, together with the 1,000 to 1,200 associated individual defendants. Analysis of that data is ongoing.

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### *Theoretical Analysis*

Early in 1988, Commission staff surveyed the literature relating to sanctions for organizations and prepared a working paper on criminal sentencing policy for organizations. Based in part on that theoretical analysis and in part on the empirical research regarding loss/fine multiples, staff prepared a discussion draft of sentencing guidelines. Both of these documents were published for public comment in order to focus attention on the major issues the Commission needed to resolve before promulgating guidelines for organizations.

Commission staff has continued its theoretical analysis in this area, including a survey of the literature discussing the relationship between enterprise liability and agent liability. This analysis has helped guide the direction of the latest empirical research, thereby facilitating the construction of a solid foundation for guidelines or policy statements governing organizational sanctions.

### *Consultation with Outside Experts*

Throughout the process of developing guidelines for organizations, the Commission has consulted with academicians and experts from various government agencies. The advice received helped shape the discussion draft of guidelines for Organizations circulated in July 1988 for public comment. In order to increase its understanding of the circumstances under which organizational probation may be appropriate, the Commission solicited the views of three law school professors well versed in the topic. Their proposals were also included in the discussion materials published by the Commission.

Late in 1988, the Commission's Chairman appointed a working group of private defense attorneys to advise the Commission regarding practical principles for sentencing organizations. The Attorney Working Group began regular bi-weekly meetings in December 1988.

### *Public Comment*

In accordance with its established procedures, the Commission has solicited public comment during every phase of the development of sentencing standards for organizations. In July 1988, the Commission published and circulated a booklet entitled *Discussion Materials on Organizational Sanctions*. Testimony was received in public hearings held on October 11, 1988, in New York City and on December 2, 1988, in Pasadena, California. A total of 22 individuals testified at the public hearings. See Table I.

With the benefit of staff work, aid from outside experts, and extensive public comment, the Commission expects to promulgate guidelines or policy statements for the sentencing of organizational defendants in 1989.

**TABLE I:  
WITNESSES LIST: 1988 PUBLIC HEARINGS  
ON ORGANIZATIONAL SANCTIONS**

*New York, NY — October 11, 1988*

Dr. Thomas Moore	President's Council of Economic Advisers
Sam Buffone	American Bar Association
Gary Lynch	Director, Enforcement Division, Securities and Exchange Commission
Ronald Cass	Commissioner, U.S. International Trade Commission
Harry First	Professor, New York University School of Law
John C. Coffee, Jr.	Professor, Columbia University School of Law
Leonard Orland	Professor of Law, University of Connecticut Law School
Sheldon H. Elsen	Adjunct Professor of Law, Columbia University
Jonathan Baker	Professor of Economics, Dartmouth College

*Pasadena, CA — December 2, 1988*

Paul Thomson	Deputy Assistant Administrator for Criminal Enforcement, Environmental Protection Agency
Arthur N. Levine	Deputy Chief Counsel for Litigation, Food and Drug Administration
Jan Chatten-Brown	Special Assistant to the District Attorney, Los Angeles County
Robert M. Latta	Chief U.S. Probation Officer, Central District of California
Robert A.G. Monks	President, Institutional Shareholders Services
Christopher Stone	Professor, University of Southern California Law Center
Richard Gruner	Associate Professor, Whittier College School of Law
Charles B. Renfrew	Vice President, Chevron
Jerome Wilkenfeld	Health, Environment & Safety Department, Occidental Petroleum
Bruce Hochman, Esq.	Hochman, Salkin & De Roy, Beverly Hills, California
Ivan P'Ng	Assistant Professor, University of California School of Management
Eric Zolt	Acting Professor of Law, UCLA School of Law
Maygene Giari	Citizens United for the Reform of Errants (CURE)



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## IX: INTERAGENCY ACTIVITIES

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The Commission worked closely with a number of judicial and executive branch agencies and committees in 1988 to provide a smooth transition to guideline sentencing.

Working relations are especially close with several divisions of the Administrative Office of the U.S. Courts (AO), notably the Probation Division, Statistical Analysis and Reports Division, and General Counsel's Office.

The Probation Division has provided officers from the field and headquarters staff to serve as faculty in Commission sponsored guidelines training programs. In addition, the General Counsel's Office at the AO has worked closely with the Commission and the Judicial Conference committee formed to increase the submission rate of sentencing reports. Members of the AO's legal staff have also served as faculty at Commission training functions.

The Statistical Analysis and Reports Division (SARD) loaned an experienced staff member to the Commission in 1988 to assist in the development of the Commission's monitoring system.

The Commission regularly assists with new assistant U.S. attorney training at the Department of Justice and new probation officer orientation sponsored by the Federal Judicial Center. The Commission also continues to work with the Bureau of Prisons to update projections of the impact of the guidelines on prison population.

### *Committees*

The Commission was active in 1988 with several Judicial and Executive branch committees. One group, formed by Judge Edward R. Becker of the Committee on Criminal Law and Probation Administration of the Judicial Conference, includes the Sentencing Commission, Probation Division, General Counsel's Office of the AO, and the Federal Judicial Center. Representatives from Executive Branch agencies (e.g., Department of Justice, Bureau of Prisons, and Parole Commission) are present at appropriate meetings.

The committee was organized to ease implementation of guideline sentencing in the judiciary. Over the course of the past year the committee discussed a variety of issues, including training needs, availability and use of alternative to incarceration, and submission of sentencing reports on guidelines cases.

The Commission is also a member of an interagency task force that includes representatives from the AO, Bureau of Prisons, Parole Commission, and Federal Judicial Center. This group meets informally on a quarterly basis to discuss issues of mutual concern. Initially, this committee dealt with many of the nuts-and-bolts issues involved in implementing the new sentencing laws. In the past year the group has addressed the availability, use, and funding of home detention programs and the exchange of information on released prisoners.

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A short-term committee on which the Commission participated in an advisory capacity was the Interagency Task Force on Community Sanctions. This group, established at the request of Parole Commission Chairman Benjamin F. Baer, addressed the use of home detention with electronic monitoring in early parole release.

The Commission is regularly represented at the U.S. Attorney's Subcommittee on Sentencing chaired by Joe Brown, U.S. Attorney in Nashville, TN. The committee provided valuable assistance to the Commission as it planned the 1989 Train-the-Trainer seminars.

### *Computer Equipment*

To enable probation officers to use the Commission's ASSYST computer software and to aid in office automation, the Commission purchased 119 micro computers, printers, and modems for U.S. probation offices in fiscal year 1988. This equipment purchase came on the heels of a similar purchase by the Commission of 95 micro computers, printers, modems, and communications software for each probation office in fiscal year 1987. Total cost of the equipment purchases was \$457,000.