



## NATIONAL CENTER ON INSTITUTIONS AND ALTERNATIVES

### SENTENCING DISPARITY: SAMPLE ANALYSIS

Pursuant to *United States v. Booker*, courts have been instructed that the sentencing guidelines are now advisory and that the factors enumerated in Title 18 U.S.C. §3553(a) are to be given full consideration. One of those factors is “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” The United States Sentencing Commission (USSC) maintains a comprehensive, computerized data collection system of federal sentencing information. Data from these documents are extracted and coded for input into the USSC databases. The Commission’s computerized datasets, without individual identifiers, are available via tape and the Internet through the Inter-University Consortium for Political and Social Research at the University of Michigan (ICPSR) and the Federal Justice Statistics Resource Center. This collection contains information on federal criminal cases sentenced under the Sentencing Guidelines and Policy Statements of the Sentencing Reform Act of 1984. The data files included in this study contain all cases received by the USSC that had sentencing dates between October 1, 1998 and September 30, 2006. The USSC estimates that 99% of all cases are included in this dataset.

To assist in the argument that unwarranted sentencing disparities among similarly situated defendants should be avoided, NCIA has downloaded the entire sentencing database for all sentences imposed in federal courts for the fiscal years 1999-2006. We have the ability to sort this data by any factors delineated under the sentencing guidelines, including criminal background, trial vs. plea, statute(s) of conviction, specific offense characteristics, the guidelines’ Chapter 3 adjustments, etc. In addition, we can provide analysis of offense data by District, Circuit and/or by all sentences imposed nationally. For example:

**Example 1:** *Defendant A was found guilty after trial of Securities Fraud (Insider Trading). His guideline range was calculated according to the 2000 Manual and he was scored under USSG 2F1.2. The defense’s position was that the gain for this offense was \$1,800,000. In his PSR, Mr. A’s total offense level was calculated to be 22, which yielded a guideline range of 41-51 months imprisonment. Mr. A’s attorney hired NCIA to determine whether a sentence within this guideline range was disparate to other similarly situated defendants who had already been sentenced under the insider trading guideline. NCIA provided the following analysis (along with the supporting documentation) to show that nationally similarly situated defendants received sentences far below the sentence proposed by Mr. A’s guideline range.*

Sentences Imposed - Analysis of Insider Trading Guideline (U.S.S.G. §2F1.2/§2B1.4) National FY 1999-2005				
Loss Amount	Total Cases	Probation/Fine Only	Prison	Average Prison Length
\$0 - \$200,000	n=47	22 (46.8%)	25 (53.2%)	9.9 MO
> \$200,000 - \$1.5 Million	n=41	15 (36.6%)	26 (63.4%)	19.8 MO
> \$1.5 Million - \$2.5 Million	n=4	1 (25.0%)	3 (75.0%)	28.0 MO
> \$2.5 Million- \$10 Million	n=5	0 (0.0%)	5 (100.0%)	50.8 MO
> \$10 Million - \$20 Million	n=0	N/A	N/A	N/A
> \$20 Million - \$40 Million	n=0	N/A	N/A	N/A
> \$40 Million - \$80 Million	n=0	N/A	N/A	N/A
Over \$80 Million	n=0	N/A	N/A	N/A
All Cases	n=97	38 (39.2%)	59 (60.8%)	18.6 MO

**Example 2:** *Defendant B was not given any credit for acceptance of responsibility under USSG 3E1.1 in his PSR even though he entered a timely plea. Mr. B's attorney hired NCIA to determine how often acceptance of responsibility credit was denied in situations similar to Mr. B's in the 4<sup>th</sup> Circuit (the circuit in which Mr. B was to be sentenced). NCIA provided the following analysis (along with the supporting documentation) to show how rarely acceptance of responsibility credit has been denied in similar situations.*

- *Out of 16,955 guilty pleading Criminal History Category I defendants in the 4<sup>th</sup> Circuit, 16,030 (94.5%) received credit for acceptance of responsibility (U.S.S.G. §3E1.1).*
- *237 defendants (1.4%) received an upward adjustment for obstruction of justice (U.S.S.G. §3C1.1) and received no credit for acceptance of responsibility.*
- *688 defendants (4%) did not receive either an upward adjustment for obstruction of justice (U.S.S.G. §3C1.1) or credit for acceptance of responsibility (U.S.S.G. §3E1.1).*

**Example 3:** In the 11<sup>th</sup> Circuit, Defendant C was found guilty after trial of three counts of violating 26 USC §7203 and the tax loss (both actual and intended) was \$41,000,000. NCIA was hired by Defendant C's attorney to determine the average sentences imposed for 26 USC §7203 offenders. NCIA provided the following analysis (along with the supporting documentation) to show the sentences imposed nationally on similarly situated defendants.

Analysis of Sentences Imposed Title 26 USC §7203 National FY 1999 – FY 2006				
Loss Amount	Total Cases	Probation/ Fine Only	Prison	Average Prison Length
\$0 - \$200,000	n=437	281 (64.3%)	156 (35.7%)	8.3 MO
> \$200,000 - \$400,000	n=31	9 (29.0%)	22 (71.0%)	15.8 MO
> \$400,000 - \$1 Million	n=16	8 (50.0%)	8 (50.0%)	18.6 MO
> \$1 Million - \$2.5 Million	n=4	0 (0.0%)	4 (100.0%)	8.0 MO
Over \$2.5 Million	n=2	1 (50.0%)	1 (50.0%)	12.0 MO
All Cases	n=490	299 (61.0%)	191 (39.0%)	9.6 MO

- In order to determine what impact the number of counts of conviction had on the sentence imposed, this data was analyzed by number of counts of conviction.

Analysis of Sentences Imposed Title 26 USC §7203 National FY 1999 – FY 2006				
Number of Counts	Total Cases	Probation/ Fine Only	Prison	Average Prison Length
1	n=332	237 (71.4%)	95 (28.6%)	6.2 MO
2	n=79	29 (36.7%)	50 (63.3%)	12.2 MO
3	n=46	18 (39.1%)	28 (60.9%)	15.0 MO
4	n=21	8 (38.1%)	13 (61.9%)	11.0 MO
5 or more	n=12	7 (58.3%)	5 (41.7%)	14.6 MO
All Cases	n=490	299 (61.0%)	191 (39.0%)	9.6 MO

- *Out of 490 defendants, 43 defendants were sentenced in the 11<sup>th</sup> Circuit. Twenty-three (23) defendants (53.5%) received a probationary/fine only sentence and 20 defendants (46.5%) received a term of incarceration. The average sentence length for these 20 defendants was 7.9 months.*
- *Of these 43 defendants sentenced in the 11<sup>th</sup> Circuit, two (2) defendants were found guilty after trial. Both of these defendants were sentenced to a term of incarceration and the average sentence length was 18 months.*
- *In an effort to analyze those defendants most similar to Defendant C, those defendants who provided substantial assistance to the government and received a downward departure pursuant to USSG 5K1.1 were then excluded from the analysis.*

<b>Analysis of Sentences Imposed</b> <b>Title 26 USC §7203</b> <b>National (excluding 5K1.1 defendants)</b> <b>FY 1999 – FY 2006</b>				
<b>Loss Amount</b>	<b>Total Cases</b>	<b>Probation/ Fine Only</b>	<b>Prison</b>	<b>Average Prison Length</b>
<b>\$0 - \$200,000</b>	<b>n=398</b>	<b>249 (62.6%)</b>	<b>149 (37.4%)</b>	<b>8.4 MO</b>
<b>&gt; \$200,000 - \$400,000</b>	<b>n=31</b>	<b>9 (29.0%)</b>	<b>22 (71.0%)</b>	<b>15.8 MO</b>
<b>&gt; \$400,000 - \$1 Million</b>	<b>n=14</b>	<b>6 (42.9%)</b>	<b>8 (57.1%)</b>	<b>18.6 MO</b>
<b>&gt; \$1 Million - \$2.5 Million</b>	<b>n=1</b>	<b>0 (0.0%)</b>	<b>1 (100.0%)</b>	<b>12.0 MO</b>
<b>Over \$2.5 Million</b>	<b>n=1</b>	<b>0 (0.0%)</b>	<b>1 (100.0%)</b>	<b>12.0 MO</b>
<b>All Cases</b>	<b>n=445</b>	<b>264 (59.3%)</b>	<b>181 (40.7%)</b>	<b>9.8 MO</b>