

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

**VINCENT J. FUMO,
Defendant.**

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No. 06-319-03

Hon. Ronald L. Buckwalter

**DEFENDANT FUMO’S REPLY TO GOVERNMENT’S
MEMORANDUM REGARDING RESENTENCING**

The remand from the Third Circuit, while requiring adherence to the *Gunter* three-step sentencing procedure and inclusion of several Guideline specific determinations, reserved to the Court broad discretion to formulate an appropriate sentence. That discretion is bounded only by the “overarching provision instructing district courts to ‘impose a sentence sufficient, but not greater than necessary’ to accomplish the goals of sentencing.” *Kimbrough v. United States*, 552 U.S. 85, 101 (2007) (quoting in part 18 U.S.C. § 3553(a)). Nowhere in the government’s 84-page Memorandum Regarding Sentencing does it acknowledge this fundamental principle of federal sentencing law.

The memorandum instead advocates rigid adherence to the Guidelines and disregards the Court’s obligation to carefully weigh *both* the nature of Fumo’s offense *and* his unique offender characteristics. It ultimately concludes that any term of imprisonment of 15 years or less will place Fumo “above the law.” *See* Gov’t Resent. Mem. 3, 81. Lost in this overheated rhetoric is that, post-*Booker*, the Sentencing Guidelines are but one of an “array of factors warranting consideration” under § 3553(a). *Kimbrough*, 552 U.S. at 91. And it is meaningful consideration of these other factors that supports a 55-month sentence.

I. Gunter Step One: Starting Guideline Calculation

The parties agree that applying the Third Circuit's holdings produces a starting Total Offense Level of 37. *See* Def.'s Resent. Mem. 5; Gov't Resent. Mem. 22. The only open Guideline issue on remand had been whether Mitchell Rubin's contract occasioned any loss to the Senate under USSG § 2B1.1, but the government now concedes that the issue is "immaterial." *Id.* at 18. Accordingly, excluding the Rubin contract from the fraud loss estimate along with the tool loss adjustment and *Gazela* credit that were upheld on appeal, *United States v. Fumo*, 655 F.3d 288, 312-14 (3d Cir. 2011), results in fraud loss of \$3,988,661.37.¹ The advisory sentencing range at this level is 210 to 262 months' imprisonment. No additional fact finding is required at Step One.

II. Gunter Step Two: Guideline Departures

The government argues at length that *United States v. Serafini*, 223 F.3d 758 (3d Cir. 2000), bars a downward departure for good works under § 5H1.11 (p.s.) but *Fumo* no longer seeks a departure on this ground.² *See* Def.'s Resent. Mem. 7.³ He does, however, request a downward departure on account of age, ill health, and the totality of circumstances under USSG §§ 5H1.1 (p.s.), 5H1.4 (p.s.), and 5K2.0(c) (p.s.).

For reasons outlined *infra* at Point III.2.ii, *Fumo*'s advanced age and chronic health problems pose a very real threat that a prolonged period of incarceration is effectively a life sentence, *see* Letter from Dr. Nicholas DePace, and Policy Statements to the Guidelines

¹ This equals the Probation Office's original \$4,339,041.72 fraud loss estimate in the PSR less the value of the Rubin contract (\$150,000), *Gazela* painting (\$150,000), and the reduction to tool loss (\$50,380.35).

² Abandonment of a good works departure in now way reflects a belief that *Fumo*'s lifetime of public and private service to others was not "extraordinary."

³ In our opening memorandum, the defense mistakenly stated that USSG § 5H1.11 had been amended effective Nov. 1, 2010, as have §§ 5H1.1 and 5H1.4. That is incorrect; the amendment to 5H1.11 is not pertinent to this case.

amended since the first sentencing now concede that such factors “may be relevant” when determining whether to depart from the Guidelines. *See* USSG §§ 5H1.1 (p.s.), 5H1.4 (p.s.); *id.* appx. C, amend. 739 (Nov. 1, 2010). Consideration of these factors, and the totality of the circumstances unique to this case under USSG § 5K2.0(c) (p.s.), supports a five-level downward departure to a Total Offense Level of 32.

III. Gunter Step Three: § 3553(a)

Contrary to the government’s narrow focus on the Sentencing Guidelines, this Court must “consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.” *Pepper v. United States*, 562 U.S. —, 131 S.Ct. 1229, 1240 (2011) (particularly discussing resentencing proceeding) (quoting *Koon v. United States*, 518 U.S. 81, 113 (1996)). Sentencing courts may neither “presume that the advisory Guidelines range is reasonable” nor require “extraordinary” circumstances for a non-Guideline sentence and must consider all of the 3553(a) factors. *Gall v. United States*, 552 U.S. 38, 47, 50 (2007).

What the law requires is that the Court identify a “chain of reasoning...explaining how the mitigating factors warrant the sentence imposed,” *United States v. Negroni*, 638 F.3d 434, 446 (3d Cir. 2011), and that the record reveal this Court’s “meaningful consideration” of the § 3553(a) factors, *United States v. Grier*, 475 F.3d 556, 571 (3d Cir. 2007) (en banc).

1. Statutory Sentencing Factors

Fumo’s history and characteristics and the nature and circumstances of his offense have been thoroughly trod and will be discussed orally at the resentencing hearing. By contrast, the government’s discussion of deterrence under § 3553(a)(2)(B) merits an immediate response.

It is true that the Congress and then the Sentencing Commission set out to increase white collar sentences from those which had prevailed between 1970 and 1983. But nothing in the related reports lends any support for a sentence of 15 years' imprisonment, rather than one of 55 months (nearly five years). On the same Senate Report cited by the government, on the very next page, the Judiciary Committee suggested that for "major...white collar offenders," in order to "reflect the seriousness of their offenses," courts should no longer routinely impose probation and "a low fine that amount[s] only to a cost of doing business," but instead should consider "a sentence that requires a high fine and weekends in prison for several months instead of a longer period of incarceration." Sen. Rep. 98-225, 98th Cong., 1st Sess., at 77 (1983). Only in "the case of a serious violent offense" did Congress suggest "a higher prison term than is served today in order to punish and incapacitate the criminal." *Id.*; *accord id.* at 177.

The government implies that a sentence of 15 or more years would deter better than a term of 55 months. Gov't Resent. Mem. 61. There is no empirical basis for that fallacious notion. Study after study shows that it is the probability of getting *caught* coupled with the *certainty* and *definiteness* of punishment that improves deterrence, not the severity of the punishment. The Commission itself recognized this well-established penological fact when, in the introduction to the first edition of the Guidelines Manual, it wrote, concerning white collar crimes, "The Commission concluded that the definite prospect of prison, even though the term may be short, will serve as a significant deterrent..." USSG Chap. 1.A.1 (1987). Here, a period of 55 months' imprisonment cannot even be described as "short." There is no evidence, and the government marshals none, to support its claim that reimposition of the 55-month term would not be "sufficient" to establish whatever level of deterrence of similar conduct by others can be achieved through awareness of Fumo's sentencing. Any suggestion that increased

punishment can cause crime (of whatever type) to “cease,” Gov’t Resent. Mem. 61, is naïve and refuted by years of experience.

Overall, the government’s principal § 3553(a) argument is that “the advisory guidelines are the sole means available for assuring some measure of uniformity in sentencing,” which the prosecutors note was “a key Congressional goal.” *Id.* at 65. The prosecutors’ related suggestion that “whatever justification...previously existed” for a 55-month sentence, “that rationale is no longer sufficient in light of the...significantly higher” advisory Guidelines range, *id.* at 66, flies in the face of the Supreme Court’s flat rejection of proportionality requirements between the sentence selected and the advisory Guidelines range. *Gall*, 552 U.S. at 46; *see also United States v. Levinson*, 543 F.3d 190, 197 (3d Cir. 2008).

While increased “uniformity” is indeed referenced in the legislative history, what the statute calls for is “consider[ation]” of the advisory Guidelines range and avoidance of “*unwarranted* sentencing disparities.” 18 U.S.C. § 3553(a)(4), (a)(6) (emphasis added). The principal cause of disparity in federal sentencing is not judges’ failure to adhere sufficiently often to the Guidelines; it is prosecutorial practices, such as charge bargaining and cooperation deals.⁴ Against this backdrop, “uniformity” cannot be achieved by simply increasing the rate of within-guidelines sentencing (in non-5K cases) from the present 83 percent to some slightly higher number. U.S. Sent. Comm’n Preliminary Quarterly Data Report at 1 (Sept. 6, 2011).

This Court explained at the original sentencing, and no doubt will explain again, why its intimate familiarity with the nature and circumstances of Fumo’s offenses, along with the information it has received and studied concerning his history and characteristics, justify a sentence far outside the Guidelines range. Imposition of such a sentence would not promote

⁴ The government concedes as much when it attacks Fumo’s sentence on the ground that a variance of that degree has not been seen “in the absence of cooperation by the defendant.” Gov’t Resent. Mem. 66.

“unwarranted” disparity, as the government attempts to argue. Gov’t Resent. Mem. 67-77. The government admits that the concern under § 3553(a)(6) is fairness “among similarly situated defendants across the entire nation.” Gov’t Resent. Mem. 68, citing *United States v. Parker*, 462 F.3d 273, 276-78 (3d Cir. 2006). But it then proceeds to focus on related defendants, such as Leonard Luchko, and a cherry-picked list of exceptionally high sentences imposed in this district, mainly in cases of public officials who accepted bribes and violated their duty to render honest services. *See* Gov’t Resent. Mem. 69-75.⁵ As the Guidelines themselves recognize, bribery and honest services fraud are categorically different (and more serious) offenses than anything Fumo was charged with and for which is now to be sentenced. *See* Def.’s Resent. Mem. 26-27.

The prosecutors say, on their own authority, that “We can attest that, of the thousands of sentences imposed in this district since *Booker* was decided, we know of no comparable variance from the Sentencing Guidelines as that suggested by the defense here in the absence of cooperation by the defendant.” Gov’t Resent. Mem. 66. Even if true, the claim is irrelevant. First, it is limited to “this district.” Second, it is based on what the prosecutors happen to “know of,” rather than any empirical review. Third, and most important, it is devoid of reference to what subsection (a)(6) makes legally important. Accordingly, to assist the Court in making the disparity analysis required by statute, the defense commissioned a trained criminal justice professional to analyze national Sentencing Commission data. The report is appended.

The researchers examined, at our request, the Sentencing Commission’s data on more than 10,000 cases, from 1998 through 2010, where: (a) the minimum of the calculated guidelines

⁵ Apparently desperate to find a case of upward variance to throw into the hopper, the government also includes a case of a former Philadelphia police official convicted of extortion involving a threat of violence, not committed in relation to his official duties. Gov’t Resent. Mem. 76. The lack of similarity is so extreme as to call for no further comment.

range was at least 210 months; and (b) the defendant did not receive credit for acceptance of responsibility⁶ or a downward departure under USSG § 5K1.1 (p.s.) for cooperation. The question posed was: Have there been other cases where, for whatever reason appropriate to the particular case, the court found that a sentence of 55 months or less was appropriate? (That is, essentially the category that the government claims does not exist.) It turned out that in every year there have been some such cases, and since *Booker*, not surprisingly, the number each year has increased. The annual number is small (never more than a dozen), but the total number is 34. And the important point is that on a national basis, when they look at cases one at a time, judges do consistently find a few defendants, facing the same guidelines range or worse, who warrant the same kind of sentence that this Court previously determined to be “sufficient, but not greater than necessary” for Fumo, notwithstanding a lack of contrition.

Because many of those in the group of cases chosen for study received sentences much less than 55 months, we also asked the researchers to round up a bit, and to look at sentences of 60 months or less but otherwise meeting the same criteria. (In doing that run, we chose to exclude those where the statutory maximum for the sole count of conviction was 60 months, because these would mainly represent plea agreements designed to ensure a sentencing result, and thus would not reflect judicial discretion.) Expanding the database by a few months in this way almost doubled the number of cases found to meet the criteria deemed to be comparable to this case. Many of them, as it turns out, were in fraud cases where the loss exceeded hundreds of millions, and some had involved advisory guidelines of life imprisonment.⁷ There is no gainsaying that even on a national basis 55-month terms in cases comparable to Fumo’s are not

⁶ The defense position for sentencing in this case has never been that Fumo accepts responsibility in the way made pertinent (to the extent of a 2-3 level swing) in Guidelines calculations. Accordingly, the defense has not sought any leniency on that basis, and our comparative study was so limited.

⁷ Details for the individual cases in fiscal years 2009 and 2010 are attached to the report.

routine. But neither are they unheard of, as the government seeks to imply. When, as here, in an individual case, for individual and case-specific reasons, that sort of sentence seems warranted, federal judges throughout the country, year after year, do impose such sentences. This court should not hesitate to do so again here. The fact that a few cases, for good and sufficient reason, call for sentences well outside the Guidelines range does not mean that the judges have failed to consider the importance of avoiding unwarranted disparity when choosing those sentences.

Finally, the government's memorandum seeks an increase in the restitution award over that imposed at the initial sentencing on the sole basis that the Court of Appeals reversed and remanded the Guidelines "loss" calculation. "The new order of restitution should reflect the correct loss amounts." Gov't Resent. Mem. 77. This non sequitur should be dismissed. As noted in Fumo's principal memorandum, the defendant appealed the addition of prejudgment interest to the restitution, while the government sought a remand to adjust the principal amount of restitution upward. The parties disputed these points in the Court of Appeals, and that Court expressly "affirmed" the restitution; it did not remand on that issue. The government memorandum totally ignores the mandate rule, and thus ignores the terms on which the Third Circuit returned this case for further proceedings. This Court has no jurisdiction to adjust the principal amount of restitution.

In any event, loss for Guidelines purposes under USSG § 2B1.1(b)(1) cannot be automatically equated with victim loss under the VWPA, 18 U.S.C. § 3663A. Nevertheless, the government offers no defense of its insistence on doing so. Moreover, the government's memorandum neglects to mention that Fumo already paid in full the amount of restitution he had been ordered to pay in the original judgment—an amount equal to more than \$2.75 million. *See* Doc. 820 (filed 1/14/10).

2. Downward Variance Considerations

Numerous factors point to a below-Guideline sentence in this case. Whether standing alone or taken together, they all support the 55-month sentence already imposed.

i. *Traits of good character*

In a footnote, the government suggests that Third Circuit cases addressing good works Guideline *departures* limit this Court's discretion to grant a *variance* under § 3553(a). *See* Gov't Resent. Mem. 23 n.9. There is no basis for this assertion, and the government knows it. At the hearing on objections to the PSR, the government admitted that "grounds for a variance are more lenient. Whereas the departure requires exceptional activity outside the heartland, that is not true for a variance." PSR Hr'g 243 (July 8, 2009). At oral argument on appeal, the government admitted that "public service" can support a downward variance. *See* Oral Arg. Tr. 11 (May 25, 2011). And, in its opening brief to the Third Circuit, the government wrote that "a court conceivably could grant some variance based on Fumo's public service" based on the record in this case. Gov't First-Step Br. 153. These concessions were legally correct, and the doctrine of judicial estoppel, if not simple honesty, should require adherence to them now.

The Government later dismisses the more than 250 letters in support of Fumo, claiming that they focus exclusively on his legislative success, *see* Gov't Resent. Mem. 27, 31, 35 n.15, and it repeatedly asserts that Fumo *never* gave of his personal time or money to help others, *id.* at 2, 23 n.9, 26. These claims are false. Apart from praise for his political acumen, letters address topics as varied as risking life to stop a robbery, mentoring children after the loss of a parent, anonymously providing gifts or a mortgage payment to a struggling family, feeding the homeless and constant willingness to spare his time and energy to help a worthy cause. *See generally* Appendix to Def.'s Resent. Mem.

The live testimony is similarly mischaracterized in the government’s memorandum. Malcolm Lazin’s account of Fumo’s unrivaled service to Philadelphia over three decades is dismissed because Lazin is not a “social friend” and thus cannot *really* know how hard Fumo worked over those many years. Gov’t Resent. Mem. 33. Meanwhile, Sonny DiCrecchio’s account of Fumo’s seven-year crusade to save the Philadelphia Regional Produce Center cannot be trusted because DiCrecchio is a “friend.”⁸ *Id.* Finally, State Sen. Christine Tartaglione’s account of how Fumo’s former peers compared in terms of work ethic—“couldn’t touch Vince in a second, because he worked so hard”—is discredited because she did not personally accompany Fumo at all times so as to comprehensively monitor his work habits. *Id.* Accepting these arguments as true demonstrates their absurdity; under this rubric, only an ever-present and disinterested fly on the wall is competent to speak on Fumo’s behalf.⁹

The government is true in one regard: no *one* letter or *one* witness can succeed in giving a full picture of Fumo. Family, friends, political peers, and the various others with whom he came into contact saw but a part of Fumo at any given time. Nevertheless, their stories are persuasive. Taken together, these varied accounts speak with one voice in painting the picture of a man who, despite his faults, was preoccupied to an extraordinary degree with helping others at any scale and never turned a deaf ear or a blind eye to a worthy cause or a person in distress. To this, the government can only fall back on a red herring: vacation. But the Court itself saw the fault in this claim. Given overwhelming evidence that, even when on “vacation,” Fumo always answered his phone and spent multiple hours every morning and night working remotely by

⁸ The description of DiCrecchio is itself misleading. At the close of his testimony, this Court asked DiCrecchio whether he knew Fumo “[a]s a social friend” to which DiCrecchio responded “No,” adding that he only got to know and befriend Fumo after the trial was over. Sent. Hr’g Tr. 173.

⁹ By contrast, the appendix of letters submitted by the government contains not a single opinion grounded in personal knowledge.

computer, the Court observed that there was no real “debate” that Fumo “was always working” and, in this regard, “did more than the average legislator.” Sent. Hr’g Tr. 108-09, 111 (July 14, 2009). Despite that finding—which the government did not and could not challenge on appeal as clearly erroneous, and which therefore is final and binding—the prosecutors continue to assert the opposite and to build their arguments on that faulty foundation.

Examples of helping others throughout Fumo’s public and private life demand consideration at sentencing in the form of a downward variance. The government retorts that this would produce a categorical rule that an “elected official has greater leeway in committing criminal acts.” Gov’t Resent. Mem. 3. Not only does this miss the point, it betrays a fundamental misunderstanding of sentencing post-*Booker*. Fumo should not receive a variance *because* he was a state legislator; a variance is proper because he devoted his life (public and private) to help others in a way that most people do not. That some good works can be connected to his job is of no import; such acts are cognizable even under the more stringent standard for Guideline departures the government would have this Court employ. *See United States v. Wright*, 363 F.3d 237, 249 (3d Cir. 2004) (*Serafini* does not bar downward departure where “occupation involves charitable or civic work” provided that one goes “beyond the call of duty” in sacrificing for others).

ii. *Advanced age and serious health conditions*

Without disputing the veracity or seriousness of Fumo’s health concerns, the government simply dismisses them on the belief that they “are ordinary for a man of his age[.]” Gov’t Resent. Mem. 63-64. For this sweeping assertion the government offers no support.

The reality is that, even for his age, Fumo’s condition is far from “ordinary.” Prominent cardiologists have concluded that his heart disease dramatically shortens his life expectancy, *see*

Def.'s Resent. Mem. 18, with one equating Fumo's condition to that of a man 10 years' his senior and another likening his prognosis to that of a patient newly diagnosed with colon cancer or lymphoma. Now, more than two years later, Fumo's prognosis is at best the same and his advanced age can only exacerbate these serious health problems.

Even if Fumo's condition *were* "ordinary" for a man of his age, that a man of his age is markedly older than the average offender can and should factor into selection of an appropriate sentence. A 15-year sentence affects an 18- and a 68-year-old in disproportionate ways because, generally, only the latter faces a significant risk of dying of natural causes during confinement. This fact cannot be ignored when making an "individualized assessment" at sentencing. *Gall*, 552 U.S. at 50.

A sentence that Fumo cannot outlive is surely greater than necessary to achieve the goals of sentencing. Because the Guidelines propose a sentence that exceeds this term, a just sentence requires a downward variance under *Booker*.

iii. *Disproportionate impact of fraud loss adjustment*

Fumo's earlier filing documents the disproportionate impact of the fraud loss adjustment, which by itself increases his advisory Guidelines sentence from 2.5 to 17.5 years' imprisonment. Def.'s Resent. Mem. 24-26. Almost one-in-five district courts now exercises its discretion under *Booker* to impose a below-Guideline sentence when facing the fraud Guideline. *See* U.S. Sent. Comm'n Preliminary Quarterly Data Report at 8-9. This Court should follow suit. Adherence to a fraud loss adjustment unrelated to empirical study or substantive analysis by the Sentencing Commission yields a sentence that is greater than necessary to achieve the goals of sentencing.

3. Upward Variance Considerations

The government argues that any mitigating grounds for a downward variance are offset by various grounds for the imposition of an upward variance. Gov't Resent. Mem. 40. While this Court certainly should give full and fair consideration to the government's arguments in this regard, *see, Fumo*, 655 F.3d at 319, the arguments are ultimately unpersuasive and should be rejected.

The government first argues for an upward, offsetting variance for causing a loss of confidence in public officials and institutions. Gov't Resent. Mem. 42-43. As the cases cited by the government itself show, *id.* at 71-75, Philadelphia has never lacked for examples of crime in office. The assumption that the instant case in particular would have caused anyone to change from a higher opinion of Pennsylvania public officials to a lower one is unsupported. Moreover, any loss of goodwill that did occur is already accounted for by the Guidelines adjustment for abuse of a public trust that was applied under USSG § 3B1.3.

Two levels have also already been added to the Guidelines scoring for the misuse of Fumo's association with charities, USSG § 2B1.1(b)(8). This fairly punishes him for any harm to ISM's reputation, and, in any event, any intangible damage done to the Independence Seaport Museum by Fumo pales in comparison with that perpetrated by John Carter. Accordingly, the second reason given by the prosecutors for negating an upward variance is not persuasive.

As to the third and fourth reasons (multiple instances of perjury, and egregious obstruction of justice), again the government does not seek upward variance in the sentence, but rather only an offset to mitigate any downward adjustment. Viewed in that light, these arguments by the government simply rehash the prosecutors' view of the seriousness of the offenses of conviction. The Court has already properly noted that it fully accepts and agrees that

the convictions are serious, including the obstruction offenses, but has refused to pretend that the case as a whole is more serious than its own sober and experienced assessment shows it to be.

That Judge Yohn observed that an upward variance *could* be warranted for Leonard Luchko (only to decide against it) does not mean that the same is true for Fumo, who faces a 210 to 262 month range.

IV. Conclusion

Meaningful consideration of the unique personal and physical characteristics of Fumo along with his offense conduct demonstrates that the 55-month term of imprisonment that was originally imposed remains “sufficient, but not greater than necessary” to achieve the ends of sentencing under § 3553(a).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 28, 2011, I served a copy of the foregoing Memorandum on all counsel of record, who are Registered Users of this Court's ECF system, via electronic filing.

/s/ Sam Buffone



MEMORANDUM

TO: Peter Goldberger, Esquire

FROM : Herbert J. Hoelter, CEO, NCIA
Mary Cate Rush, Chief Statistician
Meredith Patti, Esquire

DATE: October 25, 2011

SUBJECT: DATA ANALYSIS FOR VINCENT J. FUMO

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Rush Consulting¹, in partnership with the National Center on Institutions and Alternatives (NCIA)², prepared this report in response to your request for an analysis of Federal sentences imposed on defendants who faced a minimum of 210 months of imprisonment according to the Federal Sentencing Guidelines. Your specific request was to determine how many of these defendants: (1) received a sentence of 60 months or less of imprisonment; and (2) received a sentence of 55 months or less of imprisonment.

To this end, we utilized a data collection maintained by the United States Sentencing Commission (USSC). The USSC maintains a comprehensive, computerized data collection system of federal sentencing information. Pursuant to 28 U.S.C. § 994(w) each chief judge of a district is required to ensure that within 30 days after entry of judgment in a criminal case, the sentencing court submits a report of sentence to the

¹ Mary Cate Rush has a background in criminal justice analysis which spans more than 28 years. After graduating with a B.A. in Sociology and a minor in Statistics, she worked for the National Center on Institutions and Alternatives (NCIA) for 23 years, directing numerous criminal justice research projects. From 1994-1996, she was the Chief Statistician on the project of the National Criminal Justice Commission, whose report, *The Real War on Crime*, was published by Harper Collins in 1996. In 2005 she founded Rush Consulting, specializing in criminal justice research and analysis.

² NCIA has operated since 1977 as a nonprofit organization. Its Criminal Justice Services (CJS) provides services to defense attorneys, clients and courts throughout the country. CJS provides individualized sentencing evaluations, research and recommendations for persons who are facing incarceration. CJS services include sentencing reports, sentencing guideline assistance, capital case assistance, parole plans, disparity analysis, research, and institutional designation/transfer. NCIA has provided services to over 20,000 clients in all 50 states and in over 75 federal jurisdictions. NCIA has prepared disparity analyses for over 125 individuals being sentenced in federal court.

Commission that includes: (1) the judgment and commitment order; (2) the statement of reasons (including the reasons for any departure or variance); (3) any plea agreement; (4) the indictment or other charging document; (5) the presentence report; and (6) any other information the Commission needs.

This data 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 were sentenced between October 1, 1998 and September 30, 2010. United States Federal Courts handled over 839,000 criminal cases between the fiscal years 1999 and 2010. The USSC estimates that 99% of all cases are included in this dataset.

ANALYSIS - OFFENDERS RECEIVING A SENTENCE OF 60 MONTHS OR LESS OF IMPRISONMENT

First, we combined all years of data contained in this data collection and selected only those cases where the information related to a defendant's guideline calculation(s) represented known court findings. That is, only those cases where the Court either agreed with the probation officer's calculations of the sentencing guidelines, or where the Court clearly documented any changes it made to a defendant's guideline calculation. This resulted in a total of 720,079 cases. Next, we selected only those cases where the defendant's minimum sentence according to the Guidelines was at least 210 months. This resulted in a total of 33,270 cases. We then excluded from this pool of 33,270 cases those cases where the defendant received any credit for acceptance of responsibility under U.S.S.G. §3E1.1. This resulted in a total of 10,781 cases. Next, we excluded from this pool of 10,781 cases any defendant who received a downward departure pursuant to U.S.S.G. §5K1.1. This resulted in a total of 10,261 cases.

From this pool of 10,261 cases we focused on how many of these defendants received a sentence of 60 months or less of imprisonment. Of these 10,261 cases, 118 defendants received such a sentence. A closer look at these 118 cases revealed that 53 of these cases received such a sentence because the defendant's sentence was capped by a statutory maximum of 60 months or less of imprisonment based on the defendant's statute of conviction. These 53 cases were excluded because the sentence imposed of 60 months or less of imprisonment was not the result of a departure or variance but because of the defendant's statute of conviction. This resulted in 65 cases remaining. We then examined these 65 cases to determine if in any of these cases the sentence imposed of 60 months or less of imprisonment was due to an agreement contained in a defendant's plea agreement. In 11 cases the sentence imposed was the result of an agreement contained in a defendant's plea agreement and thus these 11 cases were also excluded. Therefore, 54

cases remained. These 54 defendants (who span all criminal history categories and offense types) all had a minimum guideline range of at least 210 months of imprisonment and received a sentence of 60 months or less of imprisonment.³ The following table summarizes the above analysis by the fiscal year in which the defendant was sentenced.

| Fiscal Year | No. of Cases | Received a Sentence of 60 Months or Less of Imprisonment |
|-------------|--------------|--|
| 1999 | 48,236 | 2 |
| 2000 | 51,325 | 0 |
| 2001 | 51,045 | 2 |
| 2002 | 52,340 | 1 |
| 2003 | 58,463 | 4 |
| 2004 | 57,419 | 3 |
| 2005 | 61,464 | 4 |
| 2006 | 64,055 | 6 |
| 2007 | 63,906 | 6 |
| 2008 | 67,894 | 6 |
| 2009 | 71,054 | 9 |
| 2010 | 72,878 | 11 |
| Total | 720,079 | 54 |

- Of these 54 cases, 42 defendants were sentenced after the United States Supreme Court decided *U.S. v. Booker*.
- Of these 54 cases, 1 defendant was sentenced in the Third Circuit. This defendant was sentenced in Fiscal Year 2010, scored according to U.S.S.G. 2K2.1, Criminal History Category VI, faced a guideline range of 210-262 months of imprisonment, a statutory range of 0-360 months and was sentenced to 60 months

³ A list that details these 54 cases is attached.

of imprisonment. The Court listed the following reasons for imposing this 60 month sentence: 18 USC 3553(a)(1); 18 USC 3553(a)(2)(B); 18 USC 3553(a)(2)(C); and Avoid Unwarranted Sentencing Disparities Among Defendants.

- These 54 cases span all criminal history categories. Specifically, 34 defendants were Criminal History Category I; 3 defendants were Criminal History Category II; 1 defendant was Criminal History Category III; 2 defendants were Criminal History Category IV; 1 defendant was Criminal History Category V; and 13 defendants were Criminal History Category VI.
- These 54 cases include a wide range of offense guidelines. Specifically:

| Guideline Applied | No. of Cases |
|--------------------------|---------------------|
| U.S.S.G. §2A1.1 | 2 |
| U.S.S.G. §2A1.5 | 2 |
| U.S.S.G. §2A2.1 | 1 |
| U.S.S.G. §2A4.1 | 1 |
| U.S.S.G. §2B1.1 | 12 |
| U.S.S.G. §2B3.1 | 2 |
| U.S.S.G. §2C1.1 | 2 |
| U.S.S.G. §2D1.1 | 14 |
| U.S.S.G. §2D1.11 | 1 |
| U.S.S.G. §2G2.2 | 1 |
| U.S.S.G. §2K1.4 | 1 |
| U.S.S.G. §2K2.1 | 3 |
| U.S.S.G. §2S1.1 | 6 |
| U.S.S.G. §2S1.3 | 1 |
| U.S.S.G. §2T1.1 | 1 |
| U.S.S.G. §2T1.4 | 3 |
| U.S.S.G. §2X3.1 | 1 |
| Total | 54 |

- When imposing a sentence of 60 months or less of imprisonment on these 54 defendants, the Court utilized a wide range of reasons for imposing such a sentence. A table that summarizes the Court’s reasoning is below. More than one reason can be cited for each case.

| USSC Code | Description | Total |
|-----------|---|-------|
| 1 | 18 USC §3553(a)(1) | 28 |
| 2 | 18 USC §3553(a)(2)(A) | 22 |
| 6 | Avoid Unwarranted Sentencing Disparities Among Defendants | 15 |
| 4 | 18 USC §3553(a)(2)(C) | 11 |
| 3 | 18 USC §3553(a)(2)(B) | 8 |
| 1202 | General Guideline Adequacy Issues | 8 |
| 11 | USSG §5H1.1 – Age | 7 |
| 14 | USSG §5H1.4 - Physical Condition | 7 |
| 761 | 18 USC §3553(a) | 7 |
| 17 | USSG §5H1.6 - Family Ties & Responsibilities | 6 |
| 777 | Other - Judge Specified Unique Reason | 6 |
| 1200 | Criminal History Issues | 6 |
| 1205 | Insufficient Documentation Provided on SOR to Determine Reason | 6 |
| 5 | 18 USC §3553(a)(2)(D) | 5 |
| 703 | USSG §5K2.0 - General Aggravating or Mitigating Circumstance | 5 |
| 1206 | Reduce Disparity | 4 |
| 13 | USSG §5H1.3 - Mental & Emotional Conditions | 3 |
| 650 | Mule/Role in the Offense | 3 |
| 697 | Defendant's Positive Background/Good Character | 3 |
| 18 | USSG §5H1.6 - Community Ties | 2 |
| 7 | Provide Restitution to any Victims of the Offense | 1 |
| 12 | USSG §5H1.2 - Educational & Vocational Skills | 1 |
| 16 | USSG §5H1.5 - Previous Employment Record | 1 |
| 32 | USSG §5K2.10 - Victim's Conduct | 1 |
| 35 | USSG §5K2.13 - Diminished Capacity | 1 |
| 39 | Circumstances Not Considered by the Guidelines | 1 |
| 309 | Criminal History Category Over-Represents Defendant's Involvement | 1 |
| 649 | Cultural Assimilation | 1 |
| 654 | Adequate Punishment to Meet the Purposes of Sentencing | 1 |
| 655 | Deterrence | 1 |
| 667 | Other - Not Specified in USSC Codebook | 1 |
| 673 | Acceptance of Responsibility | 1 |

| USSC Code | Description | Total |
|------------------|--|--------------|
| 700 | Not Representative of the Heartland | 1 |
| 712 | Advisory Nature of Guidelines | 1 |
| 747 | Party Motion/Agreement/Consent (reason unspecified) | 1 |
| 750 | Reasonableness | 1 |
| 762 | Language from 18 USC §3553(a) Statute Text | 1 |
| 836 | <i>Kimbrough/Gall</i> Supreme Court Decision | 1 |
| 999 | Other - Not Specified in USSC Codebook | 1 |
| 1203 | Loss Issues | 1 |
| 1207 | USSG §5H1.11 - Military Record/Charitable Works/Good Deeds | 1 |

ANALYSIS - OFFENDERS RECEIVING A SENTENCE OF 55 MONTHS OR LESS OF IMPRISONMENT

Given that Mr. Fumo received a sentence of 55 months of imprisonment at his initial sentencing hearing, we then focused on how many of the 54 defendants described above received a sentence of 55 months or less of imprisonment. Of these 54 defendants, 34 defendants received a sentence of 55 months or less of imprisonment.⁴ The following table summarizes by the fiscal year how many defendants received a sentence of 55 months or less of imprisonment.

| Fiscal Year | No. of Cases | Received a Sentence of 55 Months or Less of Imprisonment |
|--------------------|---------------------|---|
| 1999 | 48,236 | 1 |
| 2000 | 51,325 | 0 |
| 2001 | 51,045 | 0 |
| 2002 | 52,340 | 1 |
| 2003 | 58,463 | 3 |
| 2004 | 57,419 | 3 |
| 2005 | 61,464 | 1 |
| 2006 | 64,055 | 5 |
| 2007 | 63,906 | 3 |
| 2008 | 67,894 | 3 |
| 2009 | 71,054 | 8 |
| 2010 | 72,878 | 6 |
| Total | 720,079 | 34 |

- Of these 34 cases, 26 defendants were sentenced after the United States Supreme Court decided *U.S. v. Booker*.

⁴ A list that details these 34 cases is attached.

- Of these 34 cases, no defendant was sentenced in the Third Circuit.
- These 34 cases span almost all criminal history categories. Specifically, 21 defendants were Criminal History Category I; 2 defendants were Criminal History Category II; 1 defendant was Criminal History Category III; 2 defendants were Criminal History Category IV; and 8 defendants were Criminal History Category VI.
- These 34 cases include a wide range of offense guidelines. Specifically:

| Guideline Applied | No. of Cases |
|-------------------|--------------|
| U.S.S.G. §2A1.1 | 1 |
| U.S.S.G. §2A1.5 | 2 |
| U.S.S.G. §2A2.1 | 1 |
| U.S.S.G. §2B1.1 | 8 |
| U.S.S.G. §2B3.1 | 2 |
| U.S.S.G. §2C1.1 | 1 |
| U.S.S.G. §2D1.1 | 8 |
| U.S.S.G. §2D1.11 | 1 |
| U.S.S.G. §2K1.4 | 1 |
| U.S.S.G. §2K2.1 | 2 |
| U.S.S.G. §2S1.1 | 3 |
| U.S.S.G. §2T1.1 | 1 |
| U.S.S.G. §2T1.4 | 3 |
| Total | 34 |

- When imposing a sentence of 55 months or less of imprisonment on these 34 defendants, the Court utilized a wide range of reasons for imposing such a

sentence. A table that summarizes the Court’s reasoning is below. More than one reason can be cited for each case.

| USSC Code | Description | Total |
|-----------|---|-------|
| 1 | 18 USC 3553(a)(1) | 19 |
| 2 | 18 USC 3553(a)(2)(A) | 15 |
| 6 | Avoid Unwarranted Sentencing Disparities Among Defendants | 9 |
| 4 | 18 USC 3553(a)(2)(C) | 8 |
| 777 | Other - Judge Specified Unique Reason | 6 |
| 11 | USSG 5H1.1 - Age | 5 |
| 14 | USSG 5H1.4 - Physical Condition | 5 |
| 17 | USSG 5H1.6 - Family Ties & Responsibilities | 5 |
| 703 | USSG 5K2.0 - General Aggravating or Mitigating Circumstance | 5 |
| 3 | 18 USC 3553(a)(2)(B) | 4 |
| 1200 | Criminal History Issues | 4 |
| 5 | 18 USC 3553(a)(2)(D) | 3 |
| 13 | USSG 5H1.3 - Mental & Emotional Conditions | 3 |
| 697 | Defendant's Positive Background/Good Character | 3 |
| 1202 | General Guideline Adequacy Issues | 3 |
| 1205 | Insufficient Documentation Provided on SOR to Determine Reason | 3 |
| 18 | USSG 5H1.6 - Community Ties | 2 |
| 761 | 18 USC 3553(a) | 2 |
| 32 | USSG 5K2.10 - Victim's Conduct | 1 |
| 35 | USSG 5K2.13 - Diminished Capacity | 1 |
| 39 | Circumstances Not Considered by the Guidelines | 1 |
| 309 | Criminal History Category Over-Represents Defendant's Involvement | 1 |
| 649 | Cultural Assimilation | 1 |
| 650 | Mule/Role in the Offense | 1 |
| 654 | Adequate Punishment to Meet the Purposes of Sentencing | 1 |
| 667 | Other - Not Specified in USSC Codebook | 1 |
| 673 | Acceptance of Responsibility | 1 |
| 700 | Not Representative of the Heartland | 1 |
| 747 | Party Motion/Agreement/Consent (reason unspecified) | 1 |
| 750 | Reasonableness | 1 |
| 1203 | Loss Issues | 1 |
| 1206 | Reduce Disparity | 1 |

Fumo Data Analysis
Sentence Imposed of 55 Months or Less
FY 2009 – FY 2010

| No. | USSC ID No. | Circuit | District | Mode of Conviction | Sentenced Pre/Post Booker | Guideline Manual Year | Guideline Applied | Loss Amount (if applicable) | Statutory Range | Criminal History Category | Total Offense Level | Guideline Range | Sentence Imposed | Reason(s) for Departure/Variance | Data Year |
|-----|-------------|---------|----------|--------------------|---------------------------|-----------------------|-------------------|-----------------------------|-----------------|---------------------------|---------------------|-----------------|---------------------------|--|-----------|
| 1 | 1237484 | 1 | ME | Plea | Post | 2008 | 2D1.1 | \$0 | 0-240 | VI | 32 | 210-262 | 36 mo. Imprisonment | Criminal History Issues; General Guideline Adequacy Issues; 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); 18 USC 3553(a)(2)(B); 18 USC 3553(a)(2)(C); 18 USC 3553(a)(2)(D); Avoid Unwarranted Sentencing Disparities Among Defendants | FY 2009 |
| 2 | 1228094 | 2 | CT | Trial | Post | 2008 | 2B1.1 | >400 Million | 0-1,800 | I | 43 | Life | 12 mo. 1 day Imprisonment | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); 18 USC 3553(a)(2)(B); Loss Issues | FY 2009 |
| 3 | 1289359 | 2 | CT | Trial | Post | 2007 | 2B1.1 | >400 Million | 0-2,640 | I | 43 | Life | 12 mo. 1 day Imprisonment | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); 18 USC 3553(a)(2)(B); 18 USC 3553(a)(2)(C); 18 USC 3553(a)(2)(D); Avoid Unwarranted Sentencing Disparities Among Defendants | FY 2009 |
| 4 | 1291228 | 2 | CT | Trial | Post | 2008 | 2B1.1 | \$500,000,000 | 0-2,520 | I | 43 | Life | 18 mo. Imprisonment | Party Motion/Agreement/Consent (reason unspecified) | FY 2009 |

| No. | USSC ID No. | Circuit | District | Mode of Conviction | Sentenced Pre/Post Booker | Guideline Manual Year | Guideline Applied | Loss Amount (if applicable) | Statutory Range | Criminal History Category | Total Offense Level | Guideline Range | Sentence Imposed | Reason(s) for Departure/Variance | Data Year |
|-----|-------------|---------|----------|--------------------|---------------------------|-----------------------|-------------------|------------------------------|-----------------|---------------------------|---------------------|-----------------|--|---|-----------|
| 5 | 1208308 | 2 | CT | Trial | Post | 2007 | 2B1.1 | >400 Million | 0-2,640 | I | 43 | Life | 24 mo. Imprisonment | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); 18 USC 3553(a)(2)(B); 18 USC 3553(a)(2)(C); 18 USC 3553(a)(2)(D); Avoid Unwarranted Sentencing Disparities Among Defendants | FY 2009 |
| 6 | 1266487 | 4 | WDNC | Trial | Post | 2004 | 2B1.1 | >100 Million - \$200 Million | 0-660 | I | 38 | 235-293 | 42 mo. Imprisonment | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); Avoid Unwarranted Sentencing Disparities Among Defendants; USSG 5H1.6 - Family Ties & Responsibilities; USSG 5H1.6 - Community Ties; Mule/Role in the Offense | FY 2009 |
| 7 | 1223408 | 5 | SDTX | Plea | Post | 2007 | 2A1.5 | \$0 | 0-120 | I | 37 | 210-262 | 30 mo. Imprisonment | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); USSG 5H1.3 - Mental & Emotional Conditions; Cultural Assimilation | FY 2009 |
| 8 | 1235018 | 11 | MDFL | Trial | Post | 2008 | 2B3.1 | \$1,650 | 0-240 | VI | 32 | 210-262 | 24 mo. Imprisonment | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); 18 USC 3553(a)(2)(B); 18 USC 3553(a)(2)(C) | FY 2009 |
| 9 | 1388727 | 2 | SDNY | Trial | Post | 2008 | 2T1.4 | >\$400 Million | 0-240 | I | 43 | Life | 20 mo. Imprisonment; 160 hours Community Service | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); 18 USC 3553(a)(2)(B); Avoid Unwarranted Sentencing Disparities Among Defendants; Defendant's Positive Background/Good Character; Other - Employer knew and approved central facts of crime | FY 2010 |

| No. | USSC ID No. | Circuit | District | Mode of Conviction | Sentenced Pre/Post Booker | Guideline Manual Year | Guideline Applied | Loss Amount (if applicable) | Statutory Range | Criminal History Category | Total Offense Level | Guideline Range | Sentence Imposed | Reason(s) for Departure/Variance | Data Year |
|-----|-------------|---------|----------|--------------------|---------------------------|-----------------------|-------------------|-----------------------------|-----------------|---------------------------|---------------------|-----------------|--|---|-----------|
| 10 | 1313669 | 2 | SDNY | Trial | Post | 2008 | 2T1.4 | >\$400 Million | 0-180 | I | 43 | Life | 28 mo. Imprisonment; 320 hours Community Service | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); 18 USC 3553(a)(2)(B); Avoid Unwarranted Sentencing Disparities Among Defendants; Defendant's Positive Background/Good Character; Other - The fact that the defendants employer knew and approved the central facts of the crimes | FY 2010 |
| 11 | 1307745 | 2 | SDNY | Trial | Post | 2008 | 2T1.1 | >\$400 Million | 0-216 | I | 43 | Life | 30 mo. Imprisonment; 360 hours Community Service | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); 18 USC 3553(a)(2)(B); 18 USC 3553(a)(2)(C); Criminal History Issues; Other | FY 2010 |
| 12 | 1382688 | 2 | SDNY | Trial | Post | 2009 | 2B1.1 | >\$20 - \$50 Million | 0-1,020 | I | 43 | Life | 36 mo. Imprisonment | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); 18 USC 3553(a)(2)(B); 18 USC 3553(a)(2)(C); USSG 5H1.4 - Physical Condition | FY 2010 |
| 13 | 1307754 | 2 | SDNY | Trial | Post | 2008 | 2T1.4 | >\$400 Million | 0-276 | I | 43 | Life | 36 mo. Imprisonment; 360 hours Community Service | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); 18 USC 3553(a)(2)(B); Avoid Unwarranted Sentencing Disparities Among Defendants; Defendant's Positive Background/Good Character; Other - His employer knew and approved the central facts of the crime | FY 2010 |

| No. | USSC ID No. | Circuit | District | Mode of Conviction | Sentenced Pre/Post Booker | Guideline Manual Year | Guideline Applied | Loss Amount (if applicable) | Statutory Range | Criminal History Category | Total Offense Level | Guideline Range | Sentence Imposed | Reason(s) for Departure/Variance | Data Year |
|-----|-------------|---------|----------|--------------------|---------------------------|-----------------------|-------------------|-----------------------------|-----------------|---------------------------|---------------------|-----------------|---------------------|---|-----------|
| 14 | 1310009 | 9 | SDCA | Trial | Post | 2008 | 2B1.1 | \$8,000,000 | 0-960 | I | 39 | 262-327 | 51 mo. Imprisonment | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); 18 USC 3553(a)(2)(B); USSG 5H1.1 - Age; Reduce Disparity; Other - Inability to determine whether or what part of loss occurred before and after def knew his actions were unlawful | FY 2010 |

Fumo Data Analysis
Sentence Imposed of 60 Months or Less
FY 2009 – FY 2010

| No. | USSC ID No. | Circuit | District | Mode of Conviction | Sentenced Pre/Post Booker | Guideline Manual Year | Guideline Applied | Loss Amount (if applicable) | Statutory Range | Criminal History Category | Total Offense Level | Guideline Range | Sentence Imposed | Reason(s) for Departure/Variance | Data Year |
|-----|-------------|---------|----------|--------------------|---------------------------|-----------------------|-------------------|-----------------------------|-----------------|---------------------------|---------------------|-----------------|---------------------------|--|-----------|
| 1 | 1237484 | 1 | ME | Plea | Post | 2008 | 2D1.1 | \$0 | 0-240 | VI | 32 | 210-262 | 36 mo. Imprisonment | Criminal History Issues; General Guideline Adequacy Issues; 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); 18 USC 3553(a)(2)(B); 18 USC 3553(a)(2)(C); 18 USC 3553(a)(2)(D); Avoid Unwarranted Sentencing Disparities Among Defendants | FY 2009 |
| 2 | 1228094 | 2 | CT | Trial | Post | 2008 | 2B1.1 | >400 Million | 0-1,800 | I | 43 | Life | 12 mo. 1 day Imprisonment | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); 18 USC 3553(a)(2)(B); Loss Issues | FY 2009 |
| 3 | 1289359 | 2 | CT | Trial | Post | 2007 | 2B1.1 | >400 Million | 0-2,640 | I | 43 | Life | 12 mo. 1 day Imprisonment | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); 18 USC 3553(a)(2)(B); 18 USC 3553(a)(2)(C); 18 USC 3553(a)(2)(D); Avoid Unwarranted Sentencing Disparities Among Defendants | FY 2009 |
| 4 | 1291228 | 2 | CT | Trial | Post | 2008 | 2B1.1 | \$500,000,000 | 0-2,520 | I | 43 | Life | 18 mo. Imprisonment | Party Motion/Agreement/Consent (reason unspecified) | FY 2009 |

| No. | USSC ID No. | Circuit | District | Mode of Conviction | Sentenced Pre/Post Booker | Guideline Manual Year | Guideline Applied | Loss Amount (if applicable) | Statutory Range | Criminal History Category | Total Offense Level | Guideline Range | Sentence Imposed | Reason(s) for Departure/Variance | Data Year |
|-----|-------------|---------|----------|--------------------|---------------------------|-----------------------|-------------------|------------------------------|-----------------|---------------------------|---------------------|-----------------|---------------------|--|-----------|
| 5 | 1208308 | 2 | CT | Trial | Post | 2007 | 2B1.1 | >400 Million | 0-2,640 | I | 43 | Life | 24 mo. Imprisonment | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); 18 USC 3553(a)(2)(B); 18 USC 3553(a)(2)(C); 18 USC 3553(a)(2)(D); Avoid Unwarranted Sentencing Disparities Among Defendants | FY 2009 |
| 6 | 1266487 | 4 | WDNC | Trial | Post | 2004 | 2B1.1 | >100 Million - \$200 Million | 0-660 | I | 38 | 235-293 | 42 mo. Imprisonment | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); Avoid Unwarranted Sentencing Disparities Among Defendants; USSG 5H1.6 - Family Ties & Responsibilities; USSG 5H1.6 - Community Ties; Mule/Role in the Offense | FY 2009 |
| 7 | 1266480 | 4 | WDNC | Trial | Post | 2004 | 2B1.1 | >100 Million - \$200 Million | 0-600 | I | 43 | Life | 60 mo. Imprisonment | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); Avoid Unwarranted Sentencing Disparities Among Defendants; Criminal History Issues; USSG 5H1.11 - Military Record/Charitable Works/Good Deeds | FY 2009 |
| 8 | 1223408 | 5 | SCTX | Plea | Post | 2007 | 2A1.5 | \$0 | 0-120 | I | 37 | 210-262 | 30 mo. Imprisonment | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); USSG 5H1.3 - Mental & Emotional Conditions; Cultural Assimilation | FY 2009 |
| 9 | 1235018 | 11 | MDFL | Trial | Post | 2008 | 2B3.1 | \$1,650 | 0-240 | VI | 32 | 210-262 | 24 mo. Imprisonment | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); 18 USC 3553(a)(2)(B); 18 USC 3553(a)(2)(C) | FY 2009 |

| No. | USSC ID No. | Circuit | District | Mode of Conviction | Sentenced Pre/Post Booker | Guideline Manual Year | Guideline Applied | Loss Amount (if applicable) | Statutory Range | Criminal History Category | Total Offense Level | Guideline Range | Sentence Imposed | Reason(s) for Departure/Variance | Data Year |
|-----|-------------|---------|----------|--------------------|---------------------------|-----------------------|-------------------|-----------------------------|-----------------|---------------------------|---------------------|-----------------|--|---|-----------|
| 10 | 1346886 | 1 | PR | Trial | Post | 2009 | 2G2.2 | N/A | 60-1,080 | I | 37 | 210-262 | 60 mo. Imprisonment | 18 USC 3553(a)(1); Avoid Unwarranted Sentencing Disparities Among Defendants; USSG 5H1.2 - Educational & Vocational Skills; USSG 5H1.5 - Previous Employment Record; USSG 5H1.6 - Family Ties & Responsibilities; Criminal History Issues | FY 2010 |
| 11 | 1388727 | 2 | SDNY | Trial | Post | 2008 | 2T1.4 | >\$400 Million | 0-240 | I | 43 | Life | 20 mo. Imprisonment; 160 hours Community Service | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); 18 USC 3553(a)(2)(B); Avoid Unwarranted Sentencing Disparities Among Defendants; Defendant's Positive Background/Good Character; Other - Employer knew and approved central facts of crime | FY 2010 |
| 12 | 1313669 | 2 | SDNY | Trial | Post | 2008 | 2T1.4 | >\$400 Million | 0-180 | I | 43 | Life | 28 mo. Imprisonment; 320 hours Community Service | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); 18 USC 3553(a)(2)(B); Avoid Unwarranted Sentencing Disparities Among Defendants; Defendant's Positive Background/Good Character; Other - The fact that the defendants employer knew and approved the central facts of the crimes | FY 2010 |

| No. | USSC ID No. | Circuit | District | Mode of Conviction | Sentenced Pre/Post Booker | Guideline Manual Year | Guideline Applied | Loss Amount (if applicable) | Statutory Range | Criminal History Category | Total Offense Level | Guideline Range | Sentence Imposed | Reason(s) for Departure/Variance | Data Year |
|-----|-------------|---------|----------|--------------------|---------------------------|-----------------------|-------------------|-----------------------------|-----------------|---------------------------|---------------------|-----------------|---|---|-----------|
| 13 | 1307745 | 2 | SDNY | Trial | Post | 2008 | 2T1.1 | >\$400 Million | 0-216 | I | 43 | Life | 30 mo. Imprisonment; 360 hours Community Service | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); 18 USC 3553(a)(2)(B); 18 USC 3553(a)(2)(C); Criminal History Issues; Other | FY 2010 |
| 14 | 1382688 | 2 | SDNY | Trial | Post | 2009 | 2B1.1 | >\$20 - \$50 Million | 0-1,020 | I | 43 | Life | 36 mo. Imprisonment | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); 18 USC 3553(a)(2)(B); 18 USC 3553(a)(2)(C); USSG 5H1.4 - Physical Condition | FY 2010 |
| 15 | 1307754 | 2 | SDNY | Trial | Post | 2008 | 2T1.4 | >\$400 Million | 0-276 | I | 43 | Life | 36 mo. Imprisonment; 360 hours Community Service | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); 18 USC 3553(a)(2)(B); Avoid Unwarranted Sentencing Disparities Among Defendants; Defendant's Positive Background/Good Character; Other - His employer knew and approved the central facts of the crime | FY 2010 |
| 16 | 1308229 | 2 | SDNY | Trial | Post | 2008 | 2B1.1 | \$40,000,000 | 0-360 | I | 37 | 210-262 | 60 mo. Imprisonment | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); 18 USC 3553(a)(2)(B); USSG 5H1.1 - Age; USSG 5H1.4 - Physical Condition; Mule/Role in the Offense | FY 2010 |
| 17 | 1317853 | 2 | WDNY | Trial | Post | 2008 | 2D1.1 | N/A | 0-360 | I | 42 | 360-Life | 60 mo. Imprisonment | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(B); Insufficient Documentation Provided on SOR to Determine Reason | FY 2010 |

| No. | USSC ID No. | Circuit | District | Mode of Conviction | Sentenced Pre/Post Booker | Guideline Manual Year | Guideline Applied | Loss Amount (if applicable) | Statutory Range | Criminal History Category | Total Offense Level | Guideline Range | Sentence Imposed | Reason(s) for Departure/Variance | Data Year |
|-----|-------------|---------|----------|--------------------|---------------------------|-----------------------|-------------------|-----------------------------|-----------------|---------------------------|---------------------|-----------------|---------------------|---|-----------|
| 18 | 1369806 | 3 | NJ | Trial | Post | 2008 | 2K2.1 | N/A | 0-360 | VI | 32 | 210-262 | 60 mo. Imprisonment | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(B); 18 USC 3553(a)(2)(C); Avoid Unwarranted Sentencing Disparities Among Defendants | FY 2010 |
| 19 | 1310009 | 9 | SDCA | Trial | Post | 2008 | 2B1.1 | \$8,000,000 | 0-960 | I | 39 | 262-327 | 51 mo. Imprisonment | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); 18 USC 3553(a)(2)(B); USSG 5H1.1 - Age; Reduce Disparity; Other - Inability to determine whether or what part of loss occurred before and after def knew his actions were unlawful | FY 2010 |
| 20 | 1304962 | 11 | SDFL | Plea | Post | 2009 | 2A4.1 | N/A | 0-Life | I | 37 | 210-262 | 60 mo. Imprisonment | 18 USC 3553(a)(1); 18 USC 3553(a)(2)(A); Avoid Unwarranted Sentencing Disparities Among Defendants | FY 2010 |