UNITED STATES SENTENCING COMMISSION
ONE COLUMBUS CIRCLE, NE
SUITE 2-500, SOUTH LOBBY
WASHINGTON, DC 20002-8002
(202) 273-4500
FAX (202) 273-4529

MEMORANDUM

TO: Commissioners
Senior Staff
Phyllis Newton

FROM: Rich Murphy, Coordinator
Firearms and Explosive Materials Working Group

DATE: December 11, 1990

SUBJECT: Firearms and Explosive Materials Working Group Report

Attached is the report of the Firearms and Explosive Materials Working Group.

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FIREARMS AND EXPLOSIVES WORKING GROUP

PROPOSAL AND DISCUSSION

CONCERNING REVISION OF FIREARMS AND EXPLOSIVES GUIDELINES

U.S.S.G. §2K1.1 - 2K2.5

I. INTRODUCTION AND GENERAL PRINCIPLES

The Commission has requested that the Firearms and Explosives Working Group thoroughly examine the firearms guidelines (§§2K2.1 - 2K2.5) and explosives guidelines (§§2K1.1 - 2K1.7), and make appropriate revisions. This report analyzes the working group's two proposed guidelines.

Firearms and explosives legislation is notoriously burdened with the complexity and confusion bred by political compromise. As a consequence, the fashioning of a comprehensive, yet workable, guideline is handicapped from the start.

In an effort to be as informed as possible, the working group reviewed firearms and explosives monitoring data, case files, and appellate decisions, and received comments from the field and from the Bureau of Alcohol, Tobacco, and Firearms (ATF).[1] Based on this input, the working group has drafted initial proposed firearms and explosives guidelines that would combine four of the firearms guidelines, §§2K2.1, 2K2.2, 2K2.3, and 2K2.5, into a single firearms guideline for publication at U.S.S.G. §2K2.1; and would combine four explosives guidelines, §§2K1.1, 2K1.2, 2K1.3, and 2K1.6, into a single explosives guideline for publication at U.S.S.G. §2K1.1.

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[1] Comments and critiques from the field calling for changes to the firearms guidelines are numerous (e.g., letter to Commission from federal district judge who states that the § 2K2 guidelines are "manifestly low in relation to other offenses ... increase significantly"), and are referred to briefly throughout the report.

The working group intends this consolidation of guidelines into a single guideline to achieve the following objectives:

(1) eliminate duplication and confusion in the application of the current guidelines, particularly with respect to multiple cross references, and the apparent application of more than one guideline to the same statute;

(2) reflect the concerns and sentencing practice discerned from monitoring data, appellate decisions, and hotline logs; and

(3) reduce the number of departures and consequent disparity by relying more heavily on specific offense characteristics.

II. SUMMARY OF FIREARMS STATUTES

Until the 1920's and early 1930's, firearms restrictions were largely the province of State and local authorities. However, criminals, particularly those in organized crime, increasingly used more dangerous firearms such as machineguns, automatic weapons, guns equipped with silencers, and sawed-off firearms.[2] Local governments were perceived as unable to stem the national use of these dangerous firearms, and pressure soon developed to enact federal firearms restrictions.

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[2] These firearms are known as National Firearms Act (N.F.A.) firearms. They can be distinguished from less destructive and volatile firearms, such as handguns, unaltered, regulation-length longarms (rifles and shotguns), and various semi-automatic weapons. Destructive devices, such as pipebombs and grenades were later added to the list of N.F.A. firearms.

In 1934, the National Firearms Act (N.F.A.), 26 U.S.C. § 5801, et seq., was enacted. The Act restricts the use of various serious firearms (N.F.A. firearms) by requiring manufacturers, importers and dealers to register annually with the federal government, to pay occupational, manufacture, and transfer taxes, to identify firearms with serial numbers or other methods of identification, and to maintain such records and returns as prescribed by the Secretary.[3] All "makings"[4] and transfers are required to be approved by the Secretary.[5] Every firearm is to be registered, and the information compiled in a central registry maintained by the Secretary.[6] The importing of N.F.A. firearms, except for certain lawful purposes (research, government use, etc.), is prohibited.[7] The receipt or possession of any unlawfully transferred, manufactured, transported, or imported firearm, or the possession of any unregistered or unidentified firearm, is punishable by a term of imprisonment not to exceed ten years.[8]

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[3] 26 U.S.C. §§ 5801, 5802, 5811, 5821, 5842, 5843.

[4] Under the Act, "making" a firearm involved the manufacture of a weapon by one not qualified to engage in the business of manufacturing firearms; "manufacturing" involved the manufacture by one engaged in the business. See 26 U.S.C. § 5845(i).

[5] 26 U.S.C. §§ 5812, 5822.

[6] 26 U.S.C. § 5841.

[7] 26 U.S.C. § 5844.

[8] 26 U.S.C. § 5871.

Additional federal firearms legislation was enacted in 1968, as part of the Gun Control Act of 1968, 18 U.S.C. § 921, et seq.[9] This Act extends considerable additional restrictions over N.F.A. firearms, and introduces some of the first federal firearms restrictions to non-N.F.A. firearms, such as shotguns, rifles, handguns, and other semi-automatic and manual firearms, and ammunition.

The Gun Control Act requires all importers, manufacturers, and dealers, including pawn brokers, to procure a license from the federal government before engaging in the business of importing, manufacturing, dealing, shipping, transporting, receiving firearms or ammunition.[10] Dealers are restricted from selling or delivering to underage persons or non-State residents, from violating State law, and from selling N.F.A. firearms or armor-piercing ammunition.[11] The manufacture and domestic sale of certain types of ammunition, particularly armor-piercing ammunition, is prohibited.[12]

Unlicensed persons are prohibited from delivering, or selling firearms in many cases.[13] Any person acquiring a firearm is

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[9] The Act underwent a subsequent, substantial revision in 1986 as part of the Firearms Owners' Protection Act (FOPA).

[10] 18 U.S.C. § 922(a)(1).

[11] 18 U.S.C. § 922(b).

[12] 18 U.S.C. § 922(a)(7), (a)(8).

[13] 18 U.S.C. § 922(a)(3)-(5).

required to provide certain information to the dealer.[14] No person can transport stolen firearms, firearms not properly identified with serial numbers, or, in most cases, machineguns.[15] The possession of firearms and other weapons in federal facilities or school zones is generally prohibited.[16] Certain unauthorized persons (felons, fugitives, illegal aliens, indicted persons, drug users, incompetents, and dishonorably discharged military personnel) are prohibited from possessing or dealing in weapons.[17] Most of the offenses under the Act are subject to five-year statutory maximums,[18] but certain relatively serious offenses might receive ten-year terms of imprisonment.[19]

Two predominant threads underlie the approach and penalty structure of the firearms statutes. First, law-abiding citizens generally have the right to own firearms, and this ownership should be subject to minimal federal regulation. Amendments to the Gun Control Act, made under the Firearms Owner Protection Act,

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[14] 18 U.S.C. § 922(a)(6).

[15] 18 U.S.C. § 922(i)-(k).

[16] 18 U.S.C. §§ 922(q), 930.

[17] 18 U.S.C. § 922(g).

[18] But cf., 18 U.S.C. § 922(m) (one year statutory maximum where dealer makes false entries or records, or fails to make required records).

[19] See e.g., 18 U.S.C. § 922(g) (prohibiting felons, and others, from possessing firearms); 18 U.S.C. § 922(h) (prohibiting employees of felons, and others, from purchasing firearms in the course of their employment); 18 U.S.C. § 922(i) (prohibiting shipping of stolen firearms); 18 U.S.C. § 922(j) (prohibiting receipt or sale of stolen firearms); 18 U.S.C. § 922(o) (prohibiting transfer or possession of machinegun).

underscore this theme.[20] A second consideration is the intent of Congress that the statutes and their penalty provisions provide for harsh punishment where the offender is not a law-abiding citizen,[21] or where particularly serious weapons are involved, such as those regulated by the National Firearms Act.[22]

Numerous additional proposals for restricting certain handguns and military-style, semi-automatic assault rifles have been proposed since the early 1970's, but none have passed into law.[23]

III. BACKGROUND DATA ON FIREARMS AND EXPLOSIVES

Firearms have had considerable negative impact on society when put to unlawful uses. Vital Statistics data show that in 1987 handguns were used in almost 3,300 suicides, and other firearms or

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[20] See Hardy, The Firearms Owners' Protection Act: A Historical and Legal Perspective, 17 Cumberland L. Rev. 585-682 (1987) for a detailed summary of the Act and the negotiations on which the Act was predicated. See also discussion in Research Project, Federal Firearms Legislation, 6 Hamline Law Review 409, 412-415. The author cites as the predominant provisions furthering this philosophy the restrictive definition of "engaged in the business of selling firearms," the tightened scienter requirements, and liberalized record keeping requirements for dealers.

[21] See 18 U.S.C. § 924(a)(2), providing for ten year statutory maximums for offenses involving prohibited persons under 18 U.S.C. § 922(d), (g) and (h), and providing for a lower standard of scienter ("knowing") in contrast with the higher "willing" standard provided for violations of other provisions under the statute.

[22] See 18 U.S.C. § 924(a)(2) which provides a ten year statutory maximum for "knowing" as opposed to "willing" violations of 18 U.S.C. § 922(o); see also 26 U.S.C. § 5871 (penalties for violations of the National Firearms Act).

[23] See summary of legislation pending in the 101st Congress, printed in Hogan, Gun Control, Congressional Research Service Issue Brief (September 4, 1990).

unspecified firearms used in an additional 14,800 suicides -- well over half of all such deaths. Firearms were similarly used in over half of the homicide deaths in 1987, with at least 1,000 involving a handgun, and 11,600 involving other or unspecified firearms.[24]

The FBI reports through its Uniform Crime Reporting Program (UCR) that almost 12,000 of the nearly 19,000 1989 murders were accomplished with a firearm, usually a handgun, but frequently a long gun. The FBI also reports that firearms were used in over a third of all robberies, and a fifth of all aggravated assaults.[25]

IV. REVIEW OF APPELLATE CASES

See Appendix F for a review of decisional law concerning application of the firearms guidelines.

V. PAST PRACTICE -- HISTORICAL SENTENCING PATTERNS

Historical sentencing patterns for 18 U.S.C. § 922 have varied considerably. Section 922 cases not sentenced under the guidelines have received average sentences ranging from 32 months to 62 months, with an approximate average annual total of 42 months. Sentencing patterns for 26 U.S.C. § 5861 were considerably higher, with the average sentence over a period of July 1982 to June 1986 reaching 61 months.

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[24] Vital Statistics of the United States, 1987, Volume II-Mortality, Part A, Division of Vital Statistics of the National Center for Health Statistics.

[25] Crime in the United States: 1989, U.S. Department of Justice, Federal Bureau of Investigation.

VI. REVIEW OF MONITORING DATA AND CASE FILES

Monitoring's 1989 data file, Mon1289, shows that 945 firearms cases averaged sentences of 43 months.[26] This Monitoring data shows 1,153 firearms cases, 6.0% of all cases.[27] The 1990 data file, Mon690, shows similar numbers of cases, with 1,351 firearms cases (5.7% of all cases), and 71 explosive materials cases (.3% of all cases).

The 1989 data file also shows upward departures occurred in 8.4% of the cases (compared with an overall guideline average of 3.5%), and downward departures occurred in 6.0% (compared with an overall guideline figure of 8.9%).[28]

The race of defendants was 56% white, 31% black, and 11% Hispanic, compared with an overall guideline figure of 47% white, 28% black, and 25% hispanic. The gender of defendants was 97% male, 3% female, compared with an overall guideline figure of 84% male and 15% female. Two-thirds of defendants received level 10 or less (compared with overall guideline figures of 40%).

The working group undertook extensive review of case files in order to ascertain the aspects of the firearms and explosives guidelines that worked well, and to determine the issues that appeared to raise the greatest concerns in the field. The working

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[26] Annual Report 1989, U.S. Sentencing Commission (Table VI).

[27] Id. Appendix B, Table B-4.

[28] Id., Table XII. See Appendices D, G, I, K. L, M, N, O, and P

group reviewed and summarized all case files in which the court applied the current version of the firearms and explosives guidelines.[29] In reviewing this set of files, the working group sought to identify issues arising from the current firearms and explosives guidelines that might need to be addressed in the current amendment cycle.

In addition, the working group separately reviewed and summarized case files in which the court applied the 1987/1988 version of the guidelines.[30] The working group reviewed these cases primarily to determine issues that endured throughout the application of the guidelines, regardless of the version of guidelines applied.[31]

The working group has carefully relied on these case files to justify various aspects of the proposed guideline. For example, the review of case files alerted the working group to offense characteristics that correlated with higher average sentences or

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[29] Twenty-two cases applied §2K1.3 (1987); seven applied §2K1.6 (1987); sixty-four applied §2K2.1 (1989); seventeen applied §2K2.2 (1989); three applied §2K2.3 (1989); and fifteen applied §2K2.5 (1989).

[30] The working group reviewed thirty-four cases which applied §2K2.2 (1987); and seventeen cases which applied §2K2.3 (1987). No 1987 version of §2K2.5 existed, so no cases could be reviewed. The large number of §2K2.1 (1987) cases (up to 1500) has prevented the working group from conducting any meaningful and complete review of §2K2.1 (1987) cases at this point.

[31] Case file summaries are attached in the appendix to this report (Appendices D, G, and H), as are in depth reviews of the findings (Appendices E, I, K and L). In addition, sets of tables summarize the findings for §2K2.1 (1989) (see Appendix D, Tables I-A through I-D), and for §2K2.2 (1989) (see Appendix G, Tables I-A through I-B).

sentences at the upper end of the guideline range, including actual or intended unlawful or criminal use of the firearm,[32] possession of the firearm for personal protection, sporting or collection purposes,[33] drug-related conduct,[34] N.F.A. firearms,[35] destructive devices.[36]

The review also shows that 33% of all §2K2.1(a)(1) (1989) cases (applying to the most serious offenses) were sentenced at or above the upper end of the guideline range, and that 34% of §2K2.1(a)(2) (1989) cases (typically felon in possession) were so sentenced.[37] This suggests a general insufficiency of these guidelines -- in contrast with the sentencing practices for §2K2.1(a)(3) (1989) (typically less serious possession and record

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[32] Of §2K2.1 (1989) cases with this factor, 39% appeared at or above the guideline range; the average sentence was seventeen months, compared with an average sentence of fifteen months for all §2K2.1 (1989) cases.

[33] 72% of §2K2.1 (1989) cases with this factor were sentenced at or below the lower end of the guideline range; the average sentence was 11 months.

[34] 44% of §2K2.1 (1989) cases with this factor were sentenced at or above the upper end of the range; the average sentence was eighteen months.

[35] 35% of the §2K2.1 (1989) cases with this factor were sentenced at or above the upper end of the guideline range; the average sentence was nineteen months.

[36] All §2K2.1 (1989) cases with this factor were sentenced at or above the upper end of the guideline range; the average sentence was thirty months.

[37] A rough estimate of the number of all guidelines cases sentenced to the upper end of the guideline range is 15-20%, including upward departures.

keeping offenses) where only 11% were sentenced at the upper end of the range.

VII. DISCUSSION OF PROPOSED FIREARMS GUIDELINE

PART I. BASE OFFENSE LEVELS

1. Proposed Section 2K2.1(a)(1):

> **(1) [18-20], if the offense conduct involved one or more firearms defined in 26 U.S.C. § 5845(a); [but if the offense conduct involved one or more destructive devices, as defined in 26 U.S.C. § 5845(f), then level [20-22]]**

Present Guideline

§2K2.1(a)(1) provides a base offense level of 18 for unlawful receipt, possession, or transportation of National Firearms Act (N.F.A.) firearms (firearms defined in 26 U.S.C. § 5845(a)). **§2K2.2(a)(1)** applies to unlawful trafficking of N.F.A. firearms. Application of the present guideline requires a conviction under 26 U.S.C. § 5861.

Proposed Guideline

Proposes level 18-20 if the offense conduct involved one or more National Firearms Act (N.F.A.) firearms defined in 26 U.S.C. § 5845(a), whether or not the statute of conviction was 26 U.S.C. § 5861. Proposes a bracketed option that where the offense conduct involved "destructive devices," defined in 26 U.S.C. § 5845(f), the conduct receives level 20-22. Application Note 1 defines the term "firearms" by referencing 18 U.S.C. § 921(a)(3)-(8). An application note defines the term "defined in 26 U.S.C. § 5845(a)" by referencing that statute.

Statutory Provisions

26 U.S.C. § 5861(a)-(l) (prohibiting various conduct, including failure to properly register or secure a license, and possession of unregistered firearms, and firearms without serial numbers). Statutory maximum is ten years.

18 U.S.C. § 922(a)(4) (prohibits any unlicensed person from transporting any N.F.A. firearm). Statutory maximum is five years.

18 U.S.C. § 922(b)(4) (prohibits any dealer from selling or delivering N.F.A. firearm). Statutory maximum is five years.

18 U.S.C. § 922(o) (prohibition on any person transferring or possessing a machinegun). Statutory maximum is ten years.

Issues

a. Should the current offense level (18) for conduct involving National Firearms Act firearms be raised to a level 19 or 20?

b. Should the offense level for conduct involving destructive devices be raised from the same level as conduct involving other National Firearms Act firearms (a level 18) to a separate, higher level (20-22)?

Discussion

Offense conduct involving National Firearms Act (N.F.A.) firearms (including machineguns, destructive devices, such as pipebombs and grenades, silencers, and sawed off or short-barrel rifles and shotguns)[38] is generally considered more serious because such weapons are viewed as more dangerous than other firearms.[39] In recognition of this fact, Congress imposed relatively high statutory maximums where such firearms are involved. See 26 U.S.C. § 5871. ATF has recommended a base offense level of 20 for these offenses.[40]

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[38] Firearms not considered "N.F.A. firearms" include regulation or legal length long guns (rifles and shotguns), handguns, starter guns, and the frame or receiver of any such weapon. See 18 U.S.C. § 922(a)(3) and 26 U.S.C. § 5845(a).

[39] Certain Members of Congress and advocacy groups have proposed in the last two decades that offenses involving additional firearms, such as handguns and assault rifles, be considered deserving additional regulation and penalties. The working group has not chosen to separate these firearms for special treatment under the guidelines in light of the failure of Congress to separate these firearms for special regulatory or punitive treatment. Further, ATF notes that military-style assault weapons can not be distinguished from other semi-automatic firearms, and so should not be treated differently. Meeting with ATF officials, October 12, 1990.

[40] See Appendix C, ATF letter to the Commission (December 14, 1989). See Attachment for text of this letter.

Past sentencing practice confirms the heightened concern with these weapons. Monitoring data for guidelines cases applying the 1989 version of §2K2.1 reveals that courts impose sentences in cases involving N.F.A. firearms at the upper end of the range more frequently than the norm for all non-firearms guidelines (35% of cases sentenced at upper end or above the range, compared with a norm of approximately 15%)[41]. Monitoring data also reveal that courts in these cases impose higher average sentences when N.F.A. firearms are involved (average 19 months compared with a norm in §2K2.1 cases of 15 months).

The proposed guideline would apply not only to charged conduct, as is the case with the present guideline, but to the offense conduct, itself. The intended result is that the felon, or other offender, in possession of an N.F.A. firearm should receive a base offense level that adequately reflects the danger of these firearms, notwithstanding the particular count of conviction, thereby eliminating or restricting plea bargaining designed to circumvent the guidelines. (Note: three of fifteen §2K2.1 (1989) cases involved offenders who unlawfully possessed an N.F.A. firearm, but were not charged under the N.F.A. statute).

The working group also proposes for the Commission's consideration and for public comment the making of a distinction between destructive devices and other N.F.A. firearms, on the ground that destructive devices are inherently more volatile and

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[41] Monitoring data provided throughout this report has been culled from a review of cases applying 1987 and 1989 firearms guidelines.

more prone to unlawful uses than other N.F.A. firearms that can be better controlled and arguably have more limited ability to damage.[42] Past sentencing data is sparse: the two §2K2.1 (1989) cases involving destructive devices received average sentences of 30 months (compared with an overall §2K2.1 average of 15 months, and an N.F.A. firearms average of 19 months), and both were sentenced at the top or above the guideline range. But the single §2K2.2 (1989) case was a downward departure for substantial assistance to a four-month sentence. Of four §2K2.2 (1987) cases, the average sentence was also nineteen months.

Possible Concerns [43]

1. Making N.F.A. Violations Subject to A Real Offense Approach

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[42] The case files are replete with egregious examples of the unlawful use to which destructive devices are put. [Note: Case file numbers are available.] Bomb intended to be used as diversion during bank robbery; defendant threw pipebomb at his wife's car, and later threw molotov cocktail through the window of her house, after beating the wife and kidnapping their child; defendant sold grenades for cocaine and crack; defendant gave pipebomb to codefendant who exploded the bomb in the faces of police officers; defendant built pipebombs and hired friends to use the devices against his enemies who owed him money; similar conduct; defendant placed pipebomb under co-worker's car--it exploded, killing one child; defendant arrested before he was able to use two pipebombs on certain public officials. U.S. v. Foster, 898 F.2d 25 (4th Cir. 1990) (jilted defendant placed bomb in new boyfriend's car, but it failed to explode).

[43] The "Possible Concerns" sections throughout this report note concerns not necessarily raised in the "Discussion" sections. An occasional absence of a "Possible Concerns" section at a particular point in the report may occur as a result of considerations of brevity and space, or where the "Discussion" section referred to relevant concerns.

The present guidelines provide for an enhanced level for N.F.A. violations only when convictions occur pursuant to statutory provisions that specifically address such firearms. Thus, if a defendant in possession of an N.F.A. weapon, such as a machine gun, a silencer, or a sawed off shotgun is convicted under one of the "N.F.A. statutes" that specifically prohibit possession of such weapons, he presently receives an offense level of 18. If, however, his offense conduct is the same, but he instead is convicted under a different statute not directly addressing N.F.A. weapons, he presently receives an offense level of 6 or 12, depending on the statute used.

Such a system poses an obvious potential for sentencing disparity. Such disparity might be justified if N.F.A. prosecutions included both serious and minor record-keeping violations, such that the exercise of prosecutorial discretion to distinguish between the two would be appropriate. ATF informs us, however, that with regard to possession of N.F.A. firearms--to wit, machineguns, silencers, sawed off shotguns, and destructive devices, such as pipebombs -- there are virtually no minor violations.

2. Raising the Offense Level for N.F.A. Weapons and Carving Out An Additional Enhancement for Destructive Devices

The working group has recommended for the Commission's consideration bracketed language setting N.F.A. offenses at an offense level of 18-20. The present level is 18; 20 would represent a two level increase.

There has obviously been little experience with N.F.A. offenses since the 1990 amendment raising such offense from a level 16 to a level 18. If the Commission examined this guideline by itself, that absence of experience might disfavor changing the guideline one year later. Because the Commission is considering a reworking of the entire firearm guideline scheme, however, it makes sense for the Commission to decide, with some finality, what it believes to be the appropriate offense level for N.F.A. offenses. Given the consistent dissatisfaction with the firearms guidelines, as reflected by the frequency with which these guidelines have been amended, the working group feels that it is important that the appropriate levels be settled in one amendment process in order to avoid the need to revisit the area in future amendment cycles.

Accordingly, the Group has proposed for the Commission's consideration an amendment that would raise by two levels the offense level for N.F.A. violators. The justification for the increase, if the Commission chooses to make such an increase is that in the past, the Commission, through its guidelines, has indicated its belief that N.F.A. violations are among the most serious firearms offenses. If the Commission decides to raise the offense levels for other firearms' violations, as suggested infra by the working group, it also may wish to increase the N.F.A. offense levels to retain the proportionally higher levels traditionally given to those offenses.

Second, the Group has offered for the Commission's consideration the question whether destructive devices, which are

included as N.F.A. firearms, should themselves receive an enhanced offense level over other N.F.A. weapons. The statute's failure to distinguish such devices from other N.F.A. weapons arguably disfavor a distinction made by the guidelines. Favoring an enhancement, however, is the inherent dangerousness,the unlikelihood of any legitimate use, and the risk posed to greater numbers of people by devices such as pipebombs or hand grenades. Alternatively, the possession of a destructive device could be the basis for an upward departure. The Commission may wish to seek public comment on this question.

2. Proposed Sections 2K2.1(a)(2) and (3):

(2) [24], if the defendant is a prohibited person and had at least two prior [convictions for a violent felony or serious drug offense] [felony convictions for a crime of violence or controlled substance offense] [, or firearms offense]; but if the offense conduct involved one or more firearms defined in 26 U.S.C. § 5845(a), then level [26];

(3) [20], if the defendant is a prohibited person and had one prior [conviction for a violent felony or serious drug offense] [felony conviction for a crime of violence or controlled substance offense] [, or firearms offense]; but if the offense conduct involved one or more firearms defined in 26 U.S.C. § 5845(a), then level [22]

Present Guideline

§2K2.1(a)(2) provides a base offense level 12 for a prohibited person, regardless of the number or nature of prior convictions.

Proposed Guideline

Proposes level 24 if the defendant is a prohibited person and had two prior felony convictions for a crime of violence, controlled substance offense, or, optionally, a firearms offense.

Proposes level 20 if the defendant is a prohibited person and had one prior felony conviction for a crime of violence, controlled substance offense, or, under the option, a firearms offense.

Proposes a two-level increase in the base offense level where the offense conduct involved N.F.A. firearms.[44]

An application note defines "prohibited person" by referencing 18 U.S.C. § 922(g) and (n), and a second application note defines "firearms offense" following language used in § 4B1.2(2) (defining "controlled substance offense"). A final application note defines the terms "crime of violence," "controlled substance offense," and "prior felony conviction" by referring to § 4B1.2(1), (2), and Application Note 3, respectively.

Statutory Provisions

18 U.S.C. § 922(g) (prohibits certain persons, including felons, fugitives, aliens, drug users, incompetents, dishonorably discharged members of the armed services, and persons renouncing their citizenship, from possessing, receiving, or shipping firearm or ammunition). Ten year statutory maximum.

See also **18 U.S.C. § 924(e)** (person convicted under §922(g) who has three violent or drug-related prior convictions subject to 180-month statutory mandatory minimum).

Issues

a. In light of the Congressional sanction of a minimum 15 years for a prohibited person with three prior felonies of violence or controlled substance offenses, should the base offense level for prohibited persons (currently a level 12) be raised if the prohibited person has one (to a level 20) or two (to a level 24) prior felonies involving violence or controlled substance offenses, so that the defendant will receive a proportionally higher base offense level compared to a prohibited person with no prior felonies?

b. Should a prohibited person receive a 2-level enhancement if the offense conduct involved a National Firearms Act firearm, such as a machine gun, silencer, short-barrel rifle or shotgun?

Discussion

The proposed guideline would ensure that felons with a demonstrated propensity for engaging in violent or particularly

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[44] This 2-level enhancement could also be addressed with departure language in an application.

harmful offenses are punished more severely.[45] Congress has established this objective by increasing the relative statutory maximum penalties to be applied not only to prohibited persons, e.g. felons convicted under 18 U.S.C. § 922(g)(1) (ten-year statutory maximum), but also to felons with violent and drug-related prior convictions, see 18 U.S.C. § 924(e) (mandatory minimum of fifteen years for person convicted of 18 U.S.C. § 922(g) who has three previous convictions for violent felonies or serious drug offenses).[46]

Further, the "Armed Career Criminal" provision under 18 U.S.C. §924(e) suggests the need for improved proportionality in sentencing of these offenders. Specifically, a person with three qualifying prior felonies who is sentenced under 18 U.S.C. § 924(e), receives a real time sentence of at least 180 months. Under the guideline covering this offense, U.S.S.G. §4B1.4., such a defendant receiving an acceptance of responsibility reduction would receive at least Criminal History Category IV and offense level 31, for a sentencing range of 151-188 months.

At the same time, however, the present guideline §2K2.1. would provide for only 10-16 months imprisonment (after acceptance of responsibility reduction, and assuming at least Criminal History

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[45] ATF supports similar, although greater, increases in the base offense levels under these circumstances. See Appendix C, ATF letter to the Commission (December 14, 1989).

[46] The applicable guideline is found at U.S.S.G. § 4B1.4.

Category III)[47] for a felon with two qualifying prior felonies. The proposed guideline would take a step toward eliminating this lack of proportionality in sentencing by providing this second felon with a 51 to 63 month sentence.

In the case of a felon with one qualifying prior felony, the present guideline would provide for 8-14 months imprisonment (after acceptance of responsibility reduction, and assuming at least Criminal History Category II).[48] Again, the proposed guideline would take a step toward eliminating this lack of proportionality by providing a 30-37 month sentence to the felon with one qualifying prior conviction.

In addition to considerations of proportionality, an arguable need to reduce the potential sentencing disparity that could result from the potentially inconsistent exercise of prosecutorial discretion in pursuing §924(e) charges favors the proposed enhancement in the firearms guideline. Specifically, the mandatory penalty of fifteen years for possession of a firearm by a person with three qualifying prior convictions is considered in every circuit to be a sentence enhancer, not an element of the crime,

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[47] This estimated category assumes that the offender received three criminal history points for each of the qualifying priors. Of course, the criminal history point total will vary, depending on the actual sentence imposed for the qualifying prior, as well as the age of the offense, and the number of other priors receiving points. Where criminal history points are not sufficient to place the defendant in Category III, the guideline range will be reduced, and the proportionality with a §924(e) sentence concomitantly limited. For example, a level 22 (24 minus 2 levels for acceptance of responsibility), Category II range is 46-57 months; a level 22, Category I range is 41-51 months.

[48] See note 47, *supra*.

such that the indictment does not have to allege those three prior crimes nor must a jury determine their existence. Most courts nevertheless feel that due process considerations require the prosecutor to give notice to the defendant whenever the prosecutor intends to seek the fifteen year sentence enhancement. In short, no notice, no fifteen year sentence, with the result that, as with most mandatory minimum sentencing statutes in which the prosecutor can largely determine whether the enhancement will be given, the potential for sentencing disparity is great.

The proposed amendment narrows somewhat that potential disparity. For example, assume a defendant with three prior bank robberies is found in possession of a firearm. If prosecuted by a prosecutor who pursues the §924(e) sentence enhancement, that defendant will receive at least a fifteen year sentence. If prosecuted by a prosecutor who does not seek the enhancement, however, this same defendant, under the present guideline, would have an offense level of 10, after acceptance of responsibility. Assuming a Criminal History Category of IV, this defendant now receives, instead of a fifteen year sentence, a sentence of 15-21 months. With the proposed guideline, this defendant would approach somewhat closer the 15 year sentence by receiving a sentence of 63-78 months (assuming Offense level 22, Criminal Category IV).

In addition to concerns about proportionality and disparity, past sentencing practice also shows that felons with prior convictions for related firearms offenses, or violent or drug-related offenses, are sentenced at or above the upper end of the

guideline range in 36% of §2K2.1 (1989) cases, and 42% of §2K2.2 (1987) cases, compared with all guidelines (approximately 15%).

Possible Concerns

1. Definition of Prior Qualifying Violent or Drug Trafficking Offense

The proposed guideline would enhance the sentence of a prohibited person who has one or more prior convictions for crimes of violence or serious drug offenses. The working group has bracketed two definitions for these prior qualifying offenses. The first bracketed definition, which uses the term **"violent felony and serious drug offense,"** tracks the definition for qualifying offenses found in 18 U.S.C. § 924(e). The second bracketed definition uses the term **"crime of violence and controlled substance offense,"** which is taken from language in the guidelines used to define a career offender.[49]

Substantive and technical considerations should guide the Commission in its consideration of which definition to use. Each definition is both broader in some respects and narrower in other respects than the other definition. For example, with regard to crimes of violence, the guideline definition is narrower in that it excludes burglaries of structures other than dwellings. Such burglaries would be included under the definition of violent crime in §924(e). United States v. Taylor, 110 S.Ct. 2143 (1990). With regard to drug offenses, however, the statutory definition is narrower in that it requires that the drug offense provide for a

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[49] See §4B1.1.

maximum term of imprisonment of at least ten years in order to qualify, whereas the guideline makes no such restriction.

Technical considerations may also be relevant. The field's presumed familiarity with the definitions for a crime of violence and drug trafficking offense that are found in the guidelines arguably favors their use in this proposed guideline. On the other hand, if it is the aim of this amended guideline to provide for sentences that are more proportional to the sentence mandated by §924(e) for those defendants with less than three prior qualifying offenses or those defendants who have not been charged with §924(e), a definition that tracks the statute might be considered more appropriate.

Moreover, other ramifications arguably flow from the Commission's decision on the particular definition to use. If the Commission uses definitions found in the career offender provision of the guidelines, it arguably should use other rules in that section applicable to the determination whether a particular prior offense constitutes a qualifying offense. Consistent with that approach then, the Commission's rules on the time period for counting prior convictions and on the method by which multiple convictions will be counted--i.e., "related cases" are not counted--arguably would be used to determine whether a defendant's one or more qualifying offenses should be counted to arrive at a higher base offense level for the firearms offense.

For example, if the guidelines' rules of construction were used, a prior robbery for which the defendant received a sentence

of less than one year and one month and that was committed more than ten years before could not be used to increase the defendant's offense level for possession of a firearm by a felon under the amended guideline. Because Congress prescribed no time restriction on qualifying prior offenses in §924(e), however, that same conviction would count for purposes of determining whether the enhancement in §924(e) applied.

Similarly, if a defendant committed ten armed robberies, but his sentences for these offenses were consolidated, use of the present guidelines' rules of construction would mean that this defendant would be considered to be a prohibited person who had only one prior qualifying offense. §924(e), however, provides only that the multiple prior offenses must have been "committed on occasions different from one another." Indeed, Congress' purposefulness in using this term can be discerned from the fact that the quoted phrase results from a 1988 amendment to the original statute made at a time when the question of the meaning of the term "three previous convictions" was before Congress.

As to the merits of each definition, the same justifications that support use of these guidelines' rules for calculating criminal history arguably support their use in this amended guideline. Thus, a conviction for a crime of violence over ten/fifteen years before the possession of the firearm that is the subject of the instant conviction might suggest that the defendant poses a lesser danger to society than a defendant whose violent

offense occurred more recently.[50] Moreover, the field hopefully is comfortable with the guidelines' application rules.

Several arguments also support use of the §924(e) definitions, however. First, if it is a goal of the proposed guideline enhancement to make more proportional the sentencing of all defendants with prior violent or drug trafficking crimes, a guideline that is more limiting in its scope than is §924(e) will tend to perpetuate problems of disproportionality and disparity.

Second, a restriction on the counting of prior qualifying crimes based on the recency of the conviction could produce anomalous results; for example, a defendant convicted of possessing a firearm, with three prior robberies that were committed outside the time range that would permit them to be counted for purposes of

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[50] As to multiple crimes of violence, however, use of the guidelines' rules on the counting of multiple convictions arguably make less sense in the context of gauging the seriousness of the possession of a weapon by a prohibited person. First, the Armed Career Criminal Act suggests that it is the number of separate "violent" incidents, not the number of separate sentencing proceedings that is important. Second, the presumed rationale behind the "related cases" definition in the guidelines is that the number of encounters with the criminal justice system that are separated by arrests/convictions, not the number of criminal incidents leading to a single such encounter, is the greatest predictor of recidivism. The goal of the Armed Career Criminal Act and of a guideline addressing the appropriate sentence for a felon in possession of a gun is the particular danger posed to society by that felon's possession of a firearm. Common sense might suggest that an individual who has been involved in multiple "violent" incidents, and who has thus already demonstrated a real propensity for violent conduct, presents a greater danger to society when he later obtains a gun than is an individual who has had only one such prior incident.

The Commission would have to determine an appropriate way to determine when multiple drug offenses should be considered to have been "committed on occasions different from one another."

criminal history under §4A1.2.[51] If the defendant is prosecuted under §924(e), he receives at least a 15 year sentence. If he is not "prosecuted" under §924(e), he now receives a 6-12 months sentence (after acceptance credit, offense level 10, Category I). With an amended guideline that applies the time period restriction now contained in §4A1.1, this second defendant receives the same 6-12 month sentence that he would have received without the amended guideline and the same sentence that a defendant with no prior crime of violence would receive. With an amended guideline that does not apply these "age" restrictions, however, the second defendant receives a 41-51 month sentence, (after the acceptance of responsibility, offense level 22, Category I),[52] which narrows somewhat the disparity.

Moreover, an approach using the method of calculation provided by the Armed Career Criminal Act is not necessarily inconsistent with the present guidelines' approach. That is, presently §4B1.4 (Armed Career Criminal) explicitly recognizes that the time period for counting convictions for purposes of determining criminal

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[51] If over a one year and one month sentence was imposed, the robberies would be excluded if committed, or if the sentence was served, more than fifteen years prior to the instant offense. If these robberies received a lesser sentence, they would not be counted if imposed more than ten years before.

[52] This defendant would still receive a lesser sentence than a defendant with three prior qualifying offenses that are not "old," since the former is a Category I and the latter is a Category III.

history points (§4A1.2) does not apply in the context of §924(e) convictions. §4B1.4, Application Note 1.

2. Inclusion of Prior Firearms Offenses as Qualifying Offenses

The bracketed language in the proposed guideline is intended to raise consideration of the question of whether a prior firearm conviction should be included in the list of qualifying prior offenses, even though it is not listed in the statutes with crimes of violence and controlled substance offenses. As a policy matter, related prior offenses can have a high degree of relevance to sentencing decisions, particularly where the offense is as serious as some firearms offenses.

Nevertheless, given the marked absence of a statutory reference to an enhancement for involvement in prior firearms offenses, the substantial coincidence between firearms and crimes of violence offenses, the possibility of non-serious, regulatory prior firearms offenses, the consequent need to define a qualifying firearms offense, and potential problems in counting prior multiple firearms convictions, the Commission may prefer not to include the bracketed language in the final guideline.

Indeed, if the Commission decides in another amendment cycle to amend the criminal history guidelines to provide for the assignment of additional points when prior crimes are similar to the instant offense, such an adjustment would account for the firearm offender with prior firearms violations.

3. 2 Level Increase for Involvement With N.F.A. Firearms

Finally, some concern may arise over the magnitude of the two-level increase for offense conduct involving N.F.A. firearms, particularly in light of the one-level § 4B1.4 enhancement for conduct involving N.F.A. firearms. The objection might be met by noting the difference in relevant base offense levels (level 20-24) under the proposed guideline for prohibited persons with one or two prior convictions versus level 33 for armed career criminals).

3. Proposed Section 2K2.1(a)(4):

(4) [14-16], if the defendant is a prohibited person

Present Guideline

§2K2.1(a)(2) provides a base offense level 12 for a prohibited person, including those convicted under 18 U.S.C. § 922(g) and (n).

Proposed Guideline

Proposes level 14-16 if the defendant is a prohibited person without prior felony convictions for a crime of violence, controlled substance offense, or, optionally, a firearms offense. An application note defines a "prohibited person" as defined in 18 U.S.C. § 922(g) and (n).

Statutory Provisions

18 U.S.C. § 922(g) (prohibits certain persons, including felons, fugitives, aliens, drug users, incompetents, dishonorably discharged members of the armed services, and persons renouncing their citizenship, from possessing, receiving, or shipping firearm or ammunition). Ten year statutory maximum.

18 U.S.C. § 922(n) (person under indictment for a felony, not permitted to possess firearms). Ten year statutory maximum.

Issue

Should the base offense level for offense conduct involving a prohibited person be raised from a level 12 to a level 14-16?

Discussion

The proposed guideline would ensure that prohibited persons are punished more severely than under the current guideline, consistent with congressional intent. Congress has established this objective by increasing the relative statutory maximum penalties to be applied to prohibited persons, e.g. felons convicted under 18 U.S.C. § 922(g)(1), and persons under indictment for a felony, see 18 U.S.C. § 922(n).

Past sentencing practice, and comments from the field, manifest a dissatisfaction with the current base offense level for offenders with a felony record that typically leads to sentences of only 10 to 12 months. These average sentences appear particularly low in light of the heightened threat a felon with a firearm presents to society and in light of the fact that felons receive adequate notice of their disability to own firearms. The proposed guidelines would require, at a minimum, acceptance of responsibility by the felon in order for the felon to receive a split sentence. The present guidelines permit the split sentence regardless of acceptance of responsibility.

Over thirty appellate decisions have considered the validity of upward departures for felons in possession of firearms.[53] Some sentencing courts are nothing short of caustic as they depart

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[53] See Appendix F.

upward from what they consider woefully inadequate guidelines for 18 U.S.C. § 922(g) offenses.[54]

Further, recent legislation limits the class of felons unable to possess firearms to a narrower group of more serious offenders unable to have their prior convictions expunged, commuted, and the like, and unable under State law to enjoy certain civil rights following completion of their sentence.[55] These offenders may deserve a more substantial sentence than did the previous more expansive class of offenders.

Sentencing practice before the guidelines demonstrated a tendency to sentence prohibited persons to an average 40-60 months imprisonment, while under the guidelines, sentences have averaged 14 months imprisonment.[56] Monitoring cases show that persons charged with §922(g) are almost always felons or aliens -- no cases involved less serious offenders, such as persons dishonorably discharged from the military.

Particularly in light of this latter reason, ATF strongly supports an increase in the base offense level for a felon in possession to a level 18, which is above the range of levels

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[54] The sentencing court in United States v. Lopez, 875 F.2d 1124 (5th Cir. 1989), indicated that the guideline sentence was "weak and ineffectual," "absolutely gives away this offense," is "wrong," and places "total offense level and criminal history points on the head of a pin."

[55] See Appendix B, discussion in ATF letter to the Commission (March 23, 1990).

[56] See case file summaries at Appendix H.

proposed for review by the working group.[57] A number of additional considerations support consideration of an increase in the base offense level. For example, the 1988 doubling of the statutory maximum from five to ten years may have been inadequately accounted for by a three-level increase in the base offense level for §922(g) offenses, particularly if the original level 9 itself is considered inadequate for these serious offenses.[58] Others note the frustration of crime control objectives as many United States Attorneys are reluctant to prosecute even serious felon offenders in light of the relatively low penalties under the guidelines.[59]

Possible Concerns

The proposed guideline makes the enhanced offense level for a prohibited person applicable whether or not there is a conviction under 18 U.S.C. § 922(g), if the definition applies. The real offense language of this guideline requires court officers to expend resources and time investigating the circumstances of each defendant, in order to determine the applicability of this section, even if §922(g) was not charged. For instance, the officer might be required to determine whether a defendant has been committed to

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[57] ATF letter to the Commission (November 16, 1990).

[58] An increase of 6 levels is required in order to double a sentence under the guidelines.

[59] Because of the insufficient sentences provided for by the guidelines, ATF has experienced difficulty in having individuals prosecuted who possess firearms and who have committed a prior crime of violence or a controlled substance offense. Some United States attorneys are reluctant to expend time and resources to prosecute these cases. See Appendix A, ATF letter to the Commission (November 16, 1990).

an institution, the nature of that commitment (voluntary or otherwise), and the like[60]. In addition, the proposed guideline would subject non-felon violators of §922(g) (e.g. aliens) to as much as a ten-level increase in base offense level (from level 6 to a potential level 16) where the §922(g) offense was not charged.

4. Proposed Section 2K2.1(a)(5)(A):

(5) [12], if the defendant

a. is convicted of 18 U.S.C. § 922(a)(1) (engaging in the business of importing, manufacturing, or dealing in ammunition or firearms), unless the offense conduct involved one or more firearms defined in 26 U.S.C. § 5845(a)

Present Guideline

§2K2.2(a)(2) provides a base offense level 6 for all other offenses, including this offense not covered by existing §2K2.1.

Proposed Guideline

Proposes level 12 for defendants convicted under 18 U.S.C. § 922(a)(1) of engaging in the business of importing, manufacturing, or dealing in ammunition, or in one or more firearms not defined in 26 U.S.C. § 5845(a). Where one or more of the firearms was a National Firearms Act firearm, the guideline for that offense would apply. An application note refers to 18 U.S.C. § 921(a)(21) for a definition of "engaged in the business," and to 18 U.S.C. § 921(a)(17)(A) for a definition of "ammunition."

Statutory Provisions

18 U.S.C. § 922(a)(1) (prohibits any unlicensed person from engaging in the business of importing, manufacturing, dealing, shipping, transporting, receiving firearms or ammunition). Statutory maximum is five years.

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[60] As noted above, however, a review of the files showed no such cases to have been prosecuted.

Issue

Should the base offense level for offense conduct involving unlicensed persons convicted of engaging in the business of firearms dealing (currently a level 6) be raised to a level 12?

Discussion

The working group has recommended an increase to level 12 to more appropriately reflect the seriousness of the offender covered by the statutory provision. The standard for a conviction under 18 U.S.C. § 922(a)(1) is difficult to meet in light of the stringent definition of "engaged in the business" provided by the statute. "Engaged in the business" is defined by statute as "a person who devotes time, attention, and labor to" manufacturing, dealing, or importing firearms or ammunition "as a regular course of trade or business with the principal objective of livelihood and profit" through "the repetitive purchase and resale of firearms." The person who has simply sold all or part of a personal collection of firearms does not meet the definition. See 18 U.S.C. § 921(a)(21). As a consequence of this restrictive definition, the class of offenders captured by a conviction under the firearms law is inherently restricted to offenders.[61]

In short, such dealers, importers, and manufacturers can be considered to have introduced substantial numbers of unlawful weapons into society, and to have distributed the weapons to persons with intended unlawful uses for the firearms. These

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[61] See Hardy, The Firearms Owners' Protection: A Historical and Legal Perspective, 17 Cumberland L. Rev. 585, 628-633 (1987).

considerations have led ATF to recommend a substantial increase in the base offense level for this offense.[62]

The working group has decided not to recommend a change under this guideline to real offense conduct, and has determined to retain the requirement of conviction, because of difficulties that would be posed to probation officers by a real offense guideline. In addition, the requirement of conviction will ensure that the guideline applies only to the more serious offender.

Possible Concerns

Concerns may be raised that the statutory maximum for this penalty remains five years -- the same as that for other "technical" violations of the statute, all of which are subject to a level 6 under the current guidelines.

5. Proposed Section 2K2.1(a)(5)(B):

(5) [12] if the defendant ...

(B) is convicted of 18 U.S.C. § 922(h) (receiving, possessing, or transporting ammunition or firearms while employed by a prohibited person), unless the offense conduct involved one or more firearms defined in 26 U.S.C. § 5845(a)

Present Guideline

§2K2.1(a)(2) provides a base offense level 12 for a person convicted under 18 U.S.C. § 922(h).

Proposed Guideline

No change. An application note refers to 18 U.S.C. § 922(g) and (n) for a definition of "prohibited person."

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[62] See Appendix A, ATF letter to the Commission (November 16, 1990).

Statutory Provisions

18 U.S.C. § 922(h) (person employed by prohibited person not permitted to receive firearm in course of employment). Ten year statutory maximum.

6. Proposed Section 2K2.1(a)(5)(C):

(5) [12] if the defendant

(C) unlawfully manufactured, sold, imported, or delivered any armor piercing ammunition

Present Guideline

§2K2.1(a)(3) provides a base offense level 6 for possession of armor piercing ammunition; and §2K2.2(a)(2) provides a base offense level 6 for distribution of armor piercing ammunition.

Proposed Guideline

Proposes base offense level 12 for unlawful manufacture, sale, import, or delivery of any armor piercing ammunition. No requirement for conviction under the armor piercing ammunition provisions (18 U.S.C. § 922(a)(7), (a)(8), and (b)(5)) would be required (other than by requiring "unlawful"). An application note refers to 18 U.S.C. § 921(a)(17)(B) for a definition of "armor piercing ammunition."

Statutory Provisions

18 U.S.C. § 922(a)(7) (prohibits any person from manufacturing or importing armor piercing ammunition). Five year statutory maximum.

18 U.S.C. § 922(a)(8) (prohibits any dealer from selling or delivering armor piercing ammunition). Five year statutory maximum.

18 U.S.C. § 922(b)(5) (prohibits any dealer from selling or delivering armor piercing ammunition without recording certain buyer information). Five year statutory maximum.

Issue

Should the base offense level for unlawful manufacture, sale, import, or delivery of any armor piercing ammunition be raised from a level 6 to a level 12?

Discussion

The decision to increase the base offense level for this offense is a policy decision driven primarily by the perceived and actual harm resulting from the manufacture, import, sale, and delivery of armor piercing ammunition. The legislative history of this provision demonstrates strong congressional concern over the almost exclusive use for this ammunition by gangsters and drug dealers intent on killing policeman wearing soft body armor.[63]The provision does not limit the use or manufacture of ammunition with legitimate sporting purposes.[64]

Possible Concerns

Under the proposed change to this guideline, a conviction under 18 U.S.C. § 922(a)(7), (a)(8), or (b)(5), would not be required. This offense, like that in §2K2.1(a)(5)(D), but unlike (5)(A) and (5)(B), would not require a conviction under a particular statute before the amended guideline is applied.

The different treatments of the various provisions under §2K2.1(a)(5) (with respect to whether they are real offense, or conviction-based), however, rest on distinctions in the nature of the offense and the standard for conviction. For example, offenses described in (5)(C) and (5)(D) are characterized by involvement with a particular type of firearm or ammunition which is likely to have been ascertained by the probation officer as a matter of

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[63] Cong. Rec. S226 (daily ed. January 3, 1985) (remarks of Sen. Denton & Sen. Moynihan); Cong. Rec. H12221 (daily ed. December 17, 1985) remarks of Rep. Hughes.

[64] Id.

course. As a consequence, no increased resources or time should be required of the officer by making these latter offenses real offense based. In addition, the offenses described in these two sections are characterized by underlying statutes that forbid virtually all conduct related to the firearm or ammunition. Again, no extraordinary effort on the part of the probation officer is likely to be required to ascertain the existence of real offense conduct even in the absence of a conviction under 18 U.S.C. §§ 922(a)(7) and (8), 922(b)(5), and 922(p).

7. Proposed Section 2K2.1(a)(5)(D):

(5) [12] if the defendant

(D) unlawfully engaged in offense conduct which involved one or more "non-detectable" firearms described in 18 U.S.C. § 922(p)

Present Guideline

§2K2.1(a)(3) provides a base offense level 6 for offense conduct involving possession of these firearms. §2K2.2(a)(2) provides a base offense level 6 for offense conduct involving distribution of these firearms.

Proposed Guideline

Proposes base offense level 12 for unlawful offense conduct involving "plastic guns" -- guns not detectable by the Security Exemplar metal detector. No requirement for conviction under 18 U.S.C. § 922(p) would be required.

Statutory Provisions

18 U.S.C. § 922(p) (prohibiting any person from manufacturing, importing, selling, shipping, delivering, possessing, transferring, or receiving any non-detectable gun).

Issue

Should the base offense level for offense conduct involving firearms not detectable by metal detectors, be raised from a level 6 to a level 12?

Discussion

The decision to increase the base offense level for this offense level is a policy decision driven primarily by the perceived and actual harm resulting from the presence of firearms that can not be detected by metal detectors. The legislative history of this provision reveals a strong concern that such firearms are rarely used for legitimate purposes and typically are intended for use by terrorists to breach airport security.[65]

Possible Concerns

See the discussion for the preceding guideline (§2K2.1 (a)(5)(C)) relevant to armor piercing ammunition.

8. Proposed Section 2K2.1(a)(6):

(6) [6-8], otherwise

Present Guideline

§2K2.1(a)(3) provides a base offense level 6 for miscellaneous firearms possession offenses. **§2K2.2(a)(2)** provides a base offense level 6 for miscellaneous firearms distribution offenses.

Proposed Guideline

Proposes base offense level 6-8 for all other firearms offenses.

Statutory Provisions

18 U.S.C. § 922(a)(2) (prohibits any dealer from shipping or transporting to any unlicensed person, except in certain circumstances). Five year statutory maximum.

18 U.S.C. § 922(a)(3) (prohibits any unlicensed person from transporting or receiving firearms obtained outside the State of residence). Five year statutory maximum.

18 U.S.C. § 922(a)(5) (prohibits any unlicensed person from transferring, selling, trading, giving, transporting, delivering

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[65] H. Rep. No. 612, 100th Cong., 2nd Sess. 2 (1988)

any firearm to any unlicensed, non-State resident). Five year statutory maximum.

18 U.S.C. § 922(a)(6) (prohibits any person from making false statement to dealer during acquisition of a firearm or ammunition). Five year statutory maximum.

18 U.S.C. § 922(b)(3) (prohibits any dealer from selling or delivering firearm to non-State resident). Five year statutory maximum.

18 U.S.C. § 922(c) (prohibits any dealer from selling firearm to any person not appearing in person, except in certain conditions). Five year penalty.

18 U.S.C. § 922(e) (prohibits any person from delivering firearm or ammunition to common carrier). Five year penalty.

18 U.S.C. § 922(f) (prohibits common carrier from transporting firearm or ammunition). Five year penalty.

18 U.S.C. § 922(l) (prohibits any person from importing or receiving imported firearm or ammunition). Five year penalty.

18 U.S.C. § 922(m) (prohibits any dealer from making false entries or records or failing to make required records). One year penalty.

18 U.S.C. § 922(q) (prohibits any person from assembling parts of non-importable semi-automatic rifles). Five year penalty.

Other statutes that would receive a base offense level 6-8 but would automatically be subject to an additional offense characteristic, include:

18 U.S.C. § 922(b)(1) (prohibits any dealer from selling or delivering firearm or ammunition to any underage person). Five year statutory maximum.

18 U.S.C. § 922(b)(2) (prohibits any dealer from selling or delivering firearm in violation of State law). Five year statutory maximum.

18 U.S.C. § 922(d) (prohibits any person from selling firearm or ammunition to a prohibited person under § 922(g)). Ten year penalty.

18 U.S.C. § 922(i) (prohibits any person from transporting or shipping stolen firearm or ammunition). Ten year penalty.

18 U.S.C. § 922(j) (prohibits any person from receiving, concealing, selling, storing stolen firearm or ammunition). Ten year penalty.

18 U.S.C. § 922(k) (prohibits any person from transporting, shipping, or receiving, firearm with obliterated, removed, or altered serial number). Five year penalty.

18 U.S.C. § 922(q) (prohibits possession or discharge of firearm in school zone). Five year penalty.

18 U.S.C. § 930 (prohibiting possession of firearms and dangerous weapons in Federal facilities). Statutory maximum of one year for knowing possession; two years for knowing possession in a federal court facility; five years for knowing possession and intended or attempted use of firearm or weapon in commission of a crime.

Issue

Should the base offense level for some or all of these offenses be increased beyond the current level 6?

Discussion

The working group presents the option of increasing the base offense level for any or all of the remaining offenses under the firearms statutes. However, the decision to increase the base offense level for some or all of these offenses is largely a policy decision to be left to the discretion of the Commission.

The predominant characteristic among the offenses subject to this guideline is the relatively technical, record keeping, or regulatory nature of the offense conduct (e.g. making a false statement to a firearms dealer in the acquisition of a firearm, 18 U.S.C. § 922(a)(6); prohibits any dealer from selling a firearm to any person not appearing in person, except in certain conditions, 18 U.S.C. § 922(c)), or the relative harmlessness of these offenses (e.g., prohibition on any person delivering firearm or ammunition to common carrier, 18 U.S.C. § 922(e)). Where the offense conduct involved more serious firearms (N.F.A. firearms) or more serious

offenders (felons), the real offense language of the guideline provides for a more serious base offense level.

Monitoring data show a strong correlation between the sentence imposed and the apparent reason for the possession of the firearm. In §2K2.1 (1989) cases where defendants sold or intended to sell the firearms, defendants were sentenced to an average of fifteen months, with ten cases (47%) at the lower end of the guideline range, five (24%) in the middle, and six (29%) at the upper end of the range. However, where the firearm was possessed for personal protection, sporting purposes, or as part of a collection, defendants averaged sentences of only eleven months, with nine cases (72%) sentenced at the lower end of the guideline range, three (24%) at the middle end of the range, and one (8%) at the upper end of the range.

In §2K2.2 (1989) cases, defendants involved in firearms sales received an average nine-month sentence, and 80% of defendants were sentenced at or below the lower end of the range; while defendants simply possessing the firearms for apparently otherwise lawful personal reasons averaged three-month sentences, with all defendants sentenced at or below the lower end of the range.

PART II. SPECIFIC OFFENSE CHARACTERISTICS

9. Proposed Section 2K2.1(b)(1):

> **(2) If the defendant, other than a defendant subject to §2K2.1(a)(2) or (a)(3), used or possessed all ammunition, or all firearms, other than a firearm defined in 26 U.S.C. § 5845(a), solely for otherwise lawful sporting purposes or collection, decrease the offense level determined above to level [6-8].**

Present Guideline

§2K2.1(b)(1) provides for a reduction to level 6 where the firearm was acquired for lawful purposes.

Proposed Guideline

Proposes no change in the magnitude of the reduction or the general scope of the guideline.[66] Proposes clarifying language to ensure that the firearm was not only acquired for lawful purposes, but was used or possessed solely for lawful sporting or collection purposes. Proposes that all firearms possessed had to have been used for lawful purposes. Precludes any defendant subject to (a)(2) or (a)(3) of this guideline from receiving the reduction under this subsection. An application note incorporates the existing application note, clarifies certain inaccuracies,[67] and clarifies that felons in possession, though not lawfully permitted to possess firearms, may receive the reduction where their use of the firearm is otherwise lawful. The application note further specifies, consistent with the current guideline, instances where an upward departure may be warranted.

Statutory Provisions

See **18 U.S.C. § 922(g)** (prohibited persons not permitted to possess firearms). Ten year statutory maximum.

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[66] The working group would recommend that the offense level for this offense not be increased above 6, its present level, unless the Commission elects to make a similar increase in the base offense level for all "simple possession" offenses.

[67] E.g., the reduction is categorically unavailable where the firearm possessed is a sawed-off shotgun, contrary to the suggestion in Application Note 2 to §2K2.1; further, the standard "intended lawful use" would no longer be viable under the proposed guideline.

Issues

a. Should the sporting reduction be clarified so as to be available only where the firearm was acquired and used for lawful purposes, instead of where it was simply acquired for lawful purposes, though later used unlawfully?

b. Should the sporting reduction be clarified so as to be available only where all firearms acquired were used for lawful purposes?

Discussion

The sporting reduction under the proposed guideline makes modest changes in the current guideline, as noted above. In other respects the guidelines are identical: no reduction is available where N.F.A. firearms were involved in the offense conduct; the reduction is available most frequently to prohibited persons who otherwise possessed or acquired the firearms unlawfully; and the magnitude of the reduction remains unaltered.

The changes that are made are limited in scope. The sporting reduction under the current guideline has seen litigation over the availability of the decrease to persons who may have acquired a firearm for lawful sporting purposes, but ultimately used the firearm unlawfully. See United States v. Smeathers, 884 F.2d 363 (8th Cir. 1989). A more appropriate application of the guideline would seem to permit the reduction only where the actual use of the firearm comported with the lawful sporting purposes surrounding the acquisition. Since the language of the guideline "the defendant obtained ... the firearm or ammunition ... solely for lawful sporting purposes or collection ..." does not necessarily lead to this result, a revision in the language of the guideline seems compelled.

Further litigation may theoretically challenge whether the unlawful use of one firearm of a collection of several firearms otherwise lawfully obtained might jeopardize the sporting reduction. The guideline resolves this issue with direct language requiring all firearms and ammunition to have been lawfully used.

In addition, the term "otherwise" attempts to resolve the theoretical problem of an unlawful possessor (the prohibited person) possessing a weapon "lawfully" in order to secure a sporting or collection reduction. See United States v. Pope, 871 F.2d 506 (5th Cir. 1989).

Finally, the proposed guideline precludes any defendant subject to (a)(2) or (a)(3) of this guideline from receiving the reduction under this subsection.

Possible Concerns

The field has expressed its concern that these cases are sufficiently rare to be left to a departure instead of an offense characteristic.[68] Further, ATF indicates its support for the elimination of the reduction, particularly for felons.[69] Additional concerns might be raised with respect to the applicability of this reduction to felons with prior convictions for controlled substance offenses or crimes of violence.[70]

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[68] See, e.g., letter to Commission from United States Attorney.

[69] ATF letter to the Commission (March 23, 1990).

[70] Further, monitoring data doesn't reveal "good guys" being presented.

10. Proposed Section 2K2.1(b)(2):

(1) If the offense involved the use, possession, distribution, or other disposition of three or more firearms, increase as follows for the number of unlawful firearms:

	Number of Firearms	Increase in Level
a.	**3-4**	**add 1**
b.	**5-7**	**add 2**
c.	**8-12**	**add 3**
d.	**13-24**	**add 4**
e.	**25-49**	**add 5**
f.	**50 or more**	**add 6.**

Present Guideline

§2K2.2(b)(1) provides a Firearms Table with incremental increases in levels depending on the number of firearms involved in firearms distribution offenses.

Proposed Guideline

Proposes no change in the incremental increase in levels. Proposes the use of the Firearms Table for the use, possession, or distribution of firearms. Clarifies that only those firearms possessed unlawfully are intended to be counted for purposes of the Firearms Table. An application note provides that each N.F.A. firearm is to count as the equivalent of two firearms. The application note incorporates existing application note language suggesting situations where an upward departure might be appropriate.

Issue

a. How should a Firearms Table be structured?

b. Should the current firearms table for firearms distribution cases be expanded and used for the use, possession, or distribution of firearms?

Discussion

The working group faces an almost impossible task of fully justifying any changes to the particular figures used in the current Firearms Table. Accordingly, and in light of an ATF commitment that it had no basis for altering the current table, the

working group has chosen not to recommend altering the Firearms Table.[71]

Monitoring data support the sense that sentencing correlates only loosely with the number of weapons involved. Section 2K2.1 (1989) data on the 59 §2K2.1 (1989) cases shows defendants involved with six or more firearms receiving lower average sentences (13 months) than those with only one or two firearms (14 months), but receiving sentences more frequently at or above the top of the guideline range (39% compared with 27%). However, §2K2.2 (1989) data show a more rational progression with an average 2.7 months for defendants possessing one or two firearms, and 12 months for defendants with over eight firearms.

It may be useful to note that §2K2.1 (1989) defendants possessed or dealt an average 4.5 firearms. Over a third of these cases involved only one firearm. The number of firearms ranged from one to twenty-six. §2K2.2 (1989) defendants possessed or dealt an average 3.9 firearms, excluding one defendant who dealt over 400 firearms. §2K2.2 (1987) defendants possessed or dealt an average 4.5 firearms, in cases where conduct involved from one to thirty firearms.

For similar practical reasons the working group declined to develop a second Firearms Table for offenses involving possession, and instead extended the existing table to cover those offenses.

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[71] Meeting with ATF (October 12, 1990).

The necessity for a chart applying to possession offenses became apparent through contacts with ATF[72] and contacts with the field. ATF also noted that a presumption of distribution might be considered to exist even where the defendant had been convicted of a possession offense, since, as the number of firearms "possessed" increases, it is more likely that some dealing or sales are taking place.[73]

An additional consideration of a Firearms Table is that it allows the aggregation of multiple guns and offenses without changing grouping rules, reflecting a real concern that there be some allowance for more severe treatment if multiple offenses (as in drug table).

Other considerations involved in Firearms Tables include whether the offender arrested with a large number of firearms on a single occasion should be treated similarly with an offender who is known to have dealt the same aggregate number of firearms, but in smaller numbers on several occasions. In addition, what should be the threshold number of firearms permitted before the Table is triggered? Should this number differ for firearms possessed and firearms sold?

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[72] Meeting with ATF (October 12, 1990).

[73] See also letter to Commission from federal district judge requesting a substantial increase in the offense levels for defendants handling greater than 50 firearms.

11. Proposed Section 2K2.1(b)(3):

> **(3) If any firearm was stolen, or had an altered or obliterated serial number, or was not identified by a serial number, increase by 2 levels.**

Present Guideline

§2K2.1(b)(2) provides for a two-level enhancement for defendants possessing firearms that are stolen, or had altered or obliterated serial numbers. **§2K2.2(b)(2)** provides for a two-level enhancement for defendants distributing such firearms.

Proposed Guideline

Proposes no change in the magnitude of the enhancement. Proposes that defendants possessing or disposing of firearms lacking a serial number be subject to the same two-level enhancement. An application note refers to 26 U.S.C. § 5842 for a definition of "identified by a serial number."

Statutory Provisions

18 U.S.C. § 922(i) (prohibits any person from transporting or shipping stolen firearm or ammunition). Ten year penalty.

18 U.S.C. § 922(j) (prohibits any person from receiving, concealing, selling, storing stolen firearm or ammunition). Ten year penalty.

18 U.S.C. § 922(k) (prohibits any person from transporting, shipping, or receiving, firearm with obliterated, removed, or altered serial number). Five year penalty.

26 U.S.C. § 5861(g) (prohibits alteration of serial number of N.F.A. firearm). Statutory maximum is ten years.

26 U.S.C. § 5861(h) (prohibits receipt or possession of firearm with altered serial number). Statutory maximum is ten years.

26 U.S.C. § 5861(i) (prohibits receipt or possession of firearm without a serial number (usually a pipebomb or other homemade firearm)). Statutory maximum is ten years.

Issue

Should the offense characteristic be expanded to apply where the serial number or other approved form of identification is not present, as well as if it has been altered or obliterated?

Discussion

This amendment proposes a minor change to the current guideline to eliminate a potential loophole in the current guideline. The proposed guideline recommends that firearms lacking a serial number (not just those with obliterated or altered serial numbers) also receive the enhancement. Such firearms likely would include many unlawfully made or manufactured guns, as well as virtually all unlawfully made or manufactured destructive devices (the latter are not required to have serial numbers, but must be identified pursuant to regulations prescribed by the Secretary of the Treasury).

The present guideline is based on real offense conduct, and the proposed amendment makes no change in this area.

Possible Concerns

A technical issue of double-counting may be raised with respect to a conviction under 26 U.S.C. § 5861(g) (prohibits alteration of serial number of N.F.A. firearm); 26 U.S.C. § 5861(h) (prohibits receipt or possession of firearm with altered serial number); and 26 U.S.C. § 5861(i) (prohibits receipt or possession of firearm without a serial number). In the event of a conviction under one of these statutes, the offender not only receives a base offense level for the lack of a serial number, but also receives the enhancement for the missing or altered serial number.

In response, the working group notes that these offenses generally are charged in multiple-count indictments, along with other possession offenses, such as 26 U.S.C. § 5861(d) (possession

of N.F.A. firearm not registered to the defendant). Typically, all but one of the counts are dropped, and sentencing proceeds on the improper serial number count. An inequity would arise if the offense characteristic did not apply. Were the 5861(d) count the count of conviction,[74] the offender would receive a base offense level 18, plus the two-level offense characteristic for a missing or altered serial number, for a total offense level 20. If 5861(g), (h), or (i), remained as the count of conviction, the offender would receive the same base offense level 18, but not the two-level offense characteristic, for a total offense level 18. While the offense conduct is identical, disparate sentences could be handed down.

12. Proposed Section 2K2.1(b)(4):

> **(4) If the defendant is convicted of 18 U.S.C. § 922(d) (selling, or otherwise disposing of ammunition or any firearm to a prohibited person), increase by 6 levels.**

Present Guideline

§2K2.2(a)(3)(A) provides for a six-level increase for a person convicted of selling firearms to a prohibited person.

Proposed Guideline

No change.

Statutory Provisions

18 U.S.C. § 922(d) (prohibiting any person from selling firearm or ammunition to a prohibited person under 18 U.S.C. § 922(g)). Statutory maximum of ten years.

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[74] A review of case files shows that in almost every case 26 U.S.C. § 5861(d) was the count of conviction.

13. Proposed Section 2K2.1(b)(5):

> **(5) If the defendant unlawfully sold or delivered ammunition, or any firearm, to an underage person, increase by [1-3] level(s).**

Present Guideline

§2K2.2(b)(3)(B) provides for a one-level enhancement when defendant is convicted under 18 U.S.C. § 922(b)(1) (prohibits licensed dealer from selling or delivering certain firearms and ammunition to certain minors).

Proposed Guideline

Proposes increase by one to three levels for unlawful sale to an underage person. Proposes that no conviction under the specific statute (18 U.S.C. § 922(b)(1)) be required -- requires only sale or delivery by any person (not only a licensed dealer). An application note refers to 18 U.S.C. § 922(b)(1) for a definition of "underage person."

Statutory Provisions

See in part, **18 U.S.C. § 922(b)(1)** (prohibiting sale of firearms to persons under the age of eighteen years, and prohibiting the sale of firearms other than shotguns and rifles to persons under the age of twenty-one years). Five year statutory maximum.

Issues

a. Should the magnitude of the enhancement for sale to an underage person be increased from the current one-level enhancement to a two or three-level enhancement?

b. Should the offense characteristic be applied only in the event of a conviction under 18 U.S.C. § 922(b)(1)?

c. Should the offense characteristic be clarified to apply to any person selling unlawfully to a minor, instead of applying only to licensed dealers?

Discussion

The consideration of the ideal magnitude for this offense characteristic, whether to expand the offense characteristic to any defendant (whether or not a dealer), and whether or not to require a count of conviction before applying the enhancement, rests

largely on policy grounds informed by related guidelines, primarily §2K1.3(b)(3).

For example, application of the proposed firearms guideline would result in a minimum total offense level 7, where other aggravating factors did not apply. This result is considerably lower than might be expected under the current §2K1.3, which provides a base offense level 10 for providing explosives to an underage person. The disparity in offense levels may dictate a larger increase in the offense characteristic than the current one-level increase. However, it may be explained by the perceived greater degree of danger posed by the destruction explosive materials to minors.

Similarly, §2K1.3 provides for the policy-based expansion of the statute to apply the relevant offense characteristic to any person (not just a licensed dealer) unlawfully providing a firearm to an underage person. The justification for the breadth of application of the enhancement is relatively obvious -- society holds the concern that unskilled, immature, and impetuous youth not be provided dangerous weapons -- and appears to apply to both firearms and explosives.

Finally, current §2K1.3 does not require conviction under the statute before the offense characteristic applies. The proposed guideline would follow this approach.

14. Proposed Section 2K2.1(b)(6):

> **(6) If the defendant was a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, and unlawfully sold or delivered or**

otherwise disposed of any firearm to any person in violation of any State law or public ordinance, increase by 1 level.

Present Guideline

§2K2.2(b)(3)(B) provides for an increase by one level where the defendant is convicted under 18 U.S.C. § 922(b)(2) (prohibits any dealer from selling or delivering firearm in violation of State law).

Proposed Guideline

Proposes no change, except for the use of real offense language.

Statutory Provisions

18 U.S.C. § 922(b)(2) (prohibits any dealer from selling or delivering firearm in violation of State law). Five year statutory maximum.

Issue

Should the offense characteristic be based on real offense language?

Discussion

As noted above, this decision is primarily a policy decision that may be informed by current practice under explosives guideline §2K1.3(b)(3), which provides for a real offense determination of this characteristic, and not a conviction under the relevant statute.[75]

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[75] The proposed guideline would not expand the current firearms guideline to apply to any defendant, instead of simply licensed dealers. The current explosives guideline § 2K1.3, in contrast, has expanded almost identical statutory language so that all defendants, not just those licensed dealers convicted under the statute, are subject to the offense characteristic.

15. Proposed Section 2K2.1(b)(7):

> **(7) If the defendant used, possessed, or transferred any firearm, or knew, intended, or had reasonable cause to believe the firearm would be used, possessed, or transferred, during or in relation to any violent or drug-related conduct, or any felony offense, increase by [2-4] levels.**

Present Guideline

Provides no enhancement for this conduct, except by way of cross references provided in **§2K2.3(a)(1)** (Possession With Intent to Commit Another Offense) and **§2K2.1(c)(2)** (Unlawful Possession of Firearm).

Proposed Guideline

Proposes enhancement of two to four levels, consistent with 18 U.S.C. §§ 924(b), (c), (g), where defendant used, possessed, or transferred a firearm, or knew, intended, or had reasonable cause to believe the firearm would be used or possessed, during or in relation to any violent or drug-related conduct, or any felony offense. Application notes define "violent conduct" and "drug-related conduct." And define "any felony offense" by referring to the description in 18 U.S.C. § 924(b).

Statutory Provisions

18 U.S.C. § 924(b) (prohibits any person from committing felony with firearm or ammunition, or shipping firearm or ammunition knowing or having reasonable cause to believe that it will be used to commit felony). Ten year penalty.

18 U.S.C. § 924(c) (prohibits any person from using or carrying firearm during crime of violence or drug trafficking crime). Five year consecutive penalty; thirty years if firearm was a machinegun.

18 U.S.C. § 924(g) (prohibits any person from transferring firearm knowing that it will be used to commit crime of violence or drug trafficking crime). Ten-year penalty.

Issue

Should a two-level enhancement apply for persons using or possessing, or knowing or having cause to believe, a firearm would be used in commission of certain serious offenses, to more appropriately reflect congressional intent in raising the statutory maximum from 5 to 10 years?

Discussion

This amendment ensures an increase in offense level for offenses involved in related criminal conduct, where the cross reference provided at §2K2.1(c) does not take effect.

Strong statutory support exists for an enhancement of the sentence for an offender involved in violent, drug-related, or felony conduct. Sections 924(b) and (g) increase the maximum penalty available where the firearm was involved in a variety of serious criminal conduct, and § 924(c) provides a stringent mandatory consecutive sentence for similar conduct.

Past sentencing practice also indicates the tendency of courts to sentence more strictly for this conduct. For example, where criminal use of the firearm occurred, or, apparently, could reasonably have been foreseen by the defendant, courts sentencing under §2K2.1 (1989) imposed an average 17-month sentence, and sentenced at the upper end of, or above, the range, in 39% of the cases, even though the offense level imposed was equivalent to the overall average for §2K2.1 (1989) cases.[76] A similar pattern plays out for §2K2.2 (1987) cases (average 17-month sentence, 60% at or above the upper end of the guideline range), and the sole §2K2.2 (1987) case (36-month sentence). Further, it is the flip side of serious offense guidelines that provide enhancement for a weapon (in a way it serves as a cross-reference) to insure highest guideline called for by the facts).

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[76] [Citation to supporting documentation to be inserted here.]

16. Proposed Section 2K2.1(b)(8):

> **[(8) If the defendant was a prohibited person and sold, dealt, or otherwise disposed of any firearm to any person, [other than a licensed dealer,] increase by [1-2] level(s).]**

Present Guideline

Provides no enhancement for this conduct.

Proposed Guideline

Proposes 1-2 level increase where defendant not only possessed the firearms, but sold, dealt, or otherwise disposed of firearms, to a person other than a licensed person.

Issue

Should an enhancement be added to provide additional punishment for a prohibited person who did not merely possess firearms unlawfully, but sold or dealt those weapons?

Discussion

The objective of this enhancement is to increase the offense level for the prohibited person who not only possesses firearms unlawfully, but exacerbates that possession by distributing or selling firearms.

The critical assumption for this offense characteristic is that we consider the distribution of firearms by a felon more serious than the possession of those firearms. The rejoinder may be made that we should in fact encourage the felon to dispose of his firearms to other persons, presumably those who can lawfully possess the weapons.

The bracketed language providing for the increase only when the firearms are provided to a person other than a licensed dealer, attempts to address this concern, though it admittedly does so only

partially. For example, the enhancement would apply to the transfer of a firearm to a person who might lawfully possess a firearm, although possession by that person may be viewed as posing less of a risk to society than possession by the felon.

17. Proposed Section 2K2.1(b)(9):

> **(9) If the defendant unlawfully possessed or caused any firearm to be present in a federal court facility, increase by [2-4] levels.**

Present Guideline

§2K2.5 provides a base offense level 6 where the offense is committed at any federal facility.

Proposed Guideline

Proposes a base offense level 6-8, and, in response to recent congressional action, proposes an increase by two to four levels where the offense takes place in a federal court facility. An application note references the statutory definition of "federal court facility."

Statutory Provisions

18 U.S.C. § 930 (prohibiting possession of firearms and dangerous weapons in Federal facilities, including Federal court facilities). Statutory maximum of one year for knowing possession; two years for knowing possession in a federal court facility; five years for knowing possession and intended or attempted use of firearm or weapon in commission of a crime.

Issue

Should an increase in offense levels be provided if the defendant possessed the firearm in a federal court facility, in light of recent congressional action doubling the statutory maximum from one year to two years?

Discussion

Congress recently amended 18 U.S.C. § 930, as part of the Crime Control Act of 1990, to increase the statutory maximum applicable to possession of a firearm in a federal court facility.

The proposed offense characteristic responds to this statutory modification with a two to four level enhancement. The base offense level for the offense is level 6-8, under proposed §2K2.1(a)(6).

18. Proposed Section 2K2.1(b)(10):

> **(10) If the defendant unlawfully possessed or discharged any firearm in a school zone, increase by [2-4] levels.**

Present Guideline

This statutory provision was enacted as part of the Crime Control Act of 1990. In the absence of a specific guideline, **§2K2.1(a)(3)** provides a base offense level 6 for all unspecified firearms offenses.

Proposed Guideline

Proposes a base offense level 6-8, under proposed §2K2.1(a)(6), and, in response to recent congressional action, proposes an increase by two to four levels where the offense takes place in a school zone. An application note references the statutory definition of "school zone," and explains the correct application of the guideline to ensure the statutorily mandated consecutive sentence.

Statutory Provisions

18 U.S.C. § 922(q) (prohibits possession or discharge of firearm in school zone). Five year penalty.

Issue

a. Should the base offense level for possession or discharge of a firearm in a school zone be level 6-8, similar to other offenses of a record keeping, regulatory, or "simple possession" nature?

b. What increase in offense levels should be provided if the defendant possessed or discharged the firearm in a school zone, in light of recent congressional action requiring a consecutive term of imprisonment for this offense?

Discussion

Congress recently amended 18 U.S.C. § 922(q), as part of the Crime Control Act of 1990, to require a consecutive term of imprisonment for the offense of possessing or discharging a firearm in a school zone.

The proposed base offense level 6-8 would make this offense equivalent to an offense involving violations of record keeping, regulatory, or simple possession restrictions. Where the offense conduct involved a prohibited person, or N.F.A. firearms, the base offense level would reflect this more serious conduct.

The proposed offense characteristic responds to the statutory mandate of a consecutive sentence with a two to four level enhancement. This offense characteristic is equivalent to the proposed enhancement for a violation of other statutes restricting possession of firearms in places of particular concern to the federal government (see e.g. 18 U.S.C. § 930 (prohibiting possession of a firearm or dangerous weapon in a federal facility). The enhancement is also equivalent to the three-level enhancement provided in §2J1.7 (Commission of Offense While on Release) at the direction of 18 U.S.C. § 3147 (requiring consecutive sentence of no more than ten years where person is convicted of an offense committed while on release).

A two to four level enhancement would increase the total offense level from level 4 (0-6 months) to level 6 (0-6 months) or level 8 (2-8 months), in the case of a defendant with criminal history category I, who receives an acceptance of responsibility reduction, and has no additional aggravating factors.

Possible Concerns

No distinction is made in the offense characteristic between the discharge and the possession of a firearm in a school zone, although these offenses are quite distinct in nature and harm imposed.[77] However, the working group believes that the cross reference in the proposed guideline would apply where the defendant discharged the firearm, resulting in the offense level applicable to the underlying offense.

PART III. CROSS REFERENCES

19. Proposed Section 2K2.1(c):

> **(c) If the defendant used or possessed any firearm, or knew, intended, or had reasonable cause to believe the firearm would be used or possessed, during or in connection with the commission or attempted commission of another offense, apply the guideline for the underlying offense if the resulting offense level is greater than that determined above.**

Present Guideline

Cross references provided in **§2K2.1(c)(2)** (applies to unlawful use or possession of firearm in connection with commission or attempted commission of another offense), and in **§2K2.3(a)(1)** (applies to receipt, transport, shipping, transfer, with intent to commit another offense, or with knowledge that it will be used in committing another offense).

Proposed Guideline

Proposes addition of language to the cross reference to the effect that where defendant had reasonable cause to believe the firearm would be used or possessed in another offense, as provided by 18

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[77] Discharge of a firearm in connection with other offenses, for example, robbery or forcible extortion, result in a 5 level enhancement, in contrast with possession of a firearm, which results in a 3 level enhancement. See §§2B3.1 and 2B3.2.

U.S.C. § 924(b). An application note defines "underlying offense" to include a conspiracy or attempt to commit an offense.

Statutory Provisions

18 U.S.C. § 924(b) (prohibits any person from committing felony with firearm or ammunition, or shipping firearm or ammunition knowing or having reasonable cause to believe that it will be used to commit felony). Ten year penalty.

18 U.S.C. § 924(c) (prohibits any person from using or carrying firearm during crime of violence or drug trafficking crime). Five year consecutive penalty; thirty years if firearm was a machinegun.

18 U.S.C. § 924(g) (prohibits any person from transferring firearm knowing that it will be used to commit crime of violence or drug trafficking crime). Ten-year penalty.

Issues

a. Should the cross reference be extended to situations where the defendant had reasonable cause to believe the firearm would be used or possessed in the commission of an offense, as provided for in the statute?

b. Should the cross reference include an exemplary, non-inclusive, list of guidelines to which a court office may cross-refer?

Discussion

An important justification for the combination of §§2K2.1, 2K2.2, and 2K2.3 into a single guideline was the duplication of cross references in more than one of these multiple guidelines, the cross references to the other firearms guidelines, and the confusion that resulted from this duplication without an apparent distinction.[78]

As a consequence, the proposed guideline presents a single cross reference to guidelines for underlying offenses associated

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[78] In addition, the working group recognizes that the field does not always consider cross references to be mandatory. The working group recommends that education on this critical aspect of the guidelines continue in order to ensure the efficacy of guideline cross references.

with the firearms offense, where the offense level for the underlying offense would be greater.[79] There are no cross references to other firearms guidelines. In addition, specific, exemplary guidelines are mentioned in the application note in an attempt to facilitate the cross-reference.

VIII. DISCUSSION OF PROPOSED EXPLOSIVE MATERIALS GUIDELINE

Explosive materials legislation is similar in complexity to the firearms legislation. Indeed the explosives materials criminal statutes 18 U.S.C. §§ 841 et. seq., enacted in 1970, are patterned after the firearms statutes. Similarly, the proposed explosives materials guideline is patterned after the proposed firearms guideline. Like the companion firearms guideline, proposed guideline §2K1.1 would combine several existing guidelines, §§2K1.1, 2K1.2, 2K1.3, 2K1.5 and 2K1.6 into one guideline.

PART I. BASE OFFENSE LEVELS

20. Proposed Sections 2K1.1(a)(1) and (2):

> **(1) [24], if the defendant is a prohibited person and had two prior felony convictions for a crime of violence, controlled substance offense[, or explosives offense];**
>
> **(2) [20], if the defendant is a prohibited person and had one prior felony conviction for a crime of**

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[79] The working group believes that the language of this cross reference, and the combination of guidelines into one guideline, adequately addresses the concerns raised in United States v. Kikumura, ___ F.2d ___, 1990 WL 166030 (3rd Cir. 1990), with respect to the application of the firearms guidelines to intended or foreseeable use of firearms against one or more persons.

violence, controlled substance offense[, or explosives offense];

Present Guideline

§2K1.3 provides a base offense level 6 for unlawful trafficking, receipt, or transportation of "explosives". **§2K1.3(b)(4)** imposes a ten level enhancement (resulting in a level 16) for a defendant who is a felon or otherwise prohibited from receiving "explosives", regardless of the number or nature of the defendant's prior felony convictions.

Proposed Guideline

Proposes level 24 if the defendant is a prohibited person and had two prior felony convictions for a crime of violence, controlled substance offense, or, optionally, explosives offense.

Proposes level 20 if the defendant is a prohibited person and had one prior felony conviction for a crime of violence, controlled substance offense, or, under the option, explosives offense.

Proposes to amend an apparent loophole in the existing guideline by sanctioning conduct involving "explosive materials," the term used in the statute, instead of "explosives" as used in the present guideline. The distinction is that the term "explosives" is more restrictive and does not include all prohibited "explosive materials" such as some "blasting agents".

Statutory Provisions

18 U.S.C. § 842(i) (prohibits felons, fugitives, drug users and addicts, and mental incompetents from shipping or transporting explosives in interstate or foreign commerce, or receiving explosives that had been shipped or transported in interstate or foreign commerce). Ten year statutory maximum.

Issues

Given the danger posed by criminals who possess explosive materials, should the offense level for prohibited persons (currently a level 16) be raised if the prohibited person has one (to a level 20) or two (to a level 24) prior felonies involving violence or controlled substance offenses, so that the defendant will receive a proportionally higher base offense level compared to a prohibited person with no prior violent or drug related felonies?

Discussion

The proposed guideline would ensure that felons with a demonstrated propensity for engaging in violent or particularly

harmful offenses are punished more severely. The proposed guideline would closely "track" the proposed firearms guideline which deals with similarly serious offenses. The justifications for enhanced punishment of violent offenders are essentially the same as in the firearms area. Further, by combining several guidelines and "tracking" or "mirroring" the proposed firearms guideline in most respects, the proposed explosives guideline should reduce disparity and confusion in the field.

The proposed guideline also provides a means for gradual incremental increases in punishment where a defendant has prior convictions for violent or drug related conduct, but does not qualify as a "Career Offender" for § 4B1.1 purposes. For example, if the instant offense is a "crime of violence"[82] and the defendant has two prior qualifying convictions, the offense level under §4B1.1 would be a level 22, Criminal History VI, with a sentencing range of 84 to 105 months (after acceptance of responsibility reductions).

Under the present guideline, if the instant offense is not a "crime of violence", a felon with two qualifying prior felonies could expect to receive no more than a 27 month sentence (after

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[82] §4B1.1. provides that the instant offense would be "a crime of violence" if it involved "the use of explosives." Theoretically excluded from this provision are those cases involving only the "possession of explosive materials." If the term "use" in §4B1.1. is intended to include "possession" offenses as well then proposed §2K1.1.(a)(1) would be rendered superfluous. However, if the Commission does intend "use" to include "possession" offenses, it may be appropriate to make a clarifying amendment to § 4B1.1. and the commentary. Further, § 4B1.1. should be amended to replace the term "explosives" with "explosive materials" to conform with the statute as noted above.

acceptance of responsibility reductions, and assuming at least Criminal History Category III).[83] This is less than one-third of the statutory maximum. The proposed guideline would provide this repeat felon with a 51 to 63 month sentence (after acceptance of responsibility or other adjustments, and assuming at least Criminal History Category III).

Under the present guideline, a person with one prior felony could expect to receive a 30 month sentence or less, (after acceptance of responsibility reductions, and assuming at least Criminal History Category II)[84] regardless of the nature of the prior felony conviction. The proposed guideline would provide the felon with one qualifying prior, a 30 to 37 month sentence (after acceptance of responsibility or other adjustments, and assuming at least Criminal History Category II).[85]

Past sentencing practice also shows that felons with prior related offenses, or prior violent or drug-related offenses, are more frequently sentenced to the upper end of the guideline range, or receive higher average sentences. For example, the 22 cases reviewed that were sentenced under §2K1.3 had average sentences of

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[83] This estimated category assumes that the offender received three criminal history points for each of the qualifying priors. Of course, the criminal history point total will vary, depending on the actual sentence imposed for the qualifying prior, as well as the age of the offense, and the number of other priors receiving points. Where criminal history points are not sufficient to place the defendant in Category III, the guideline range will be reduced.

[84] See note 47, supra.

[85] See note 47, supra.

9.8 months. However, 13 (59%) of those cases involved defendants with previous criminal records, most with one or more serious offenses. Those 13 received average sentences of 15.77 months.

ATF also supports increasing the offense level for defendants who have previous convictions for crimes of violence or controlled substance offenses.[86]

21. Proposed Section 2K1.1(a)(3):

(3) [16], if the defendant

a. is a prohibited person; or

b. knowingly distributed explosive materials to a prohibited person [or a person under twenty-one years of age].

Present Guideline

§2K1.3 provides a total offense level of 16 for a prohibited person or distributing explosive materials to a prohibited person (felons, fugitives, drug users and addicts, and mental incompetents).

Proposed Guideline

Proposes base offense level of 16 if the defendant is a prohibited person without prior felony convictions for a crime of violence, controlled substance offense, or explosives offense. The application note would define a "prohibited person" as defined in 18 U.S.C. § 842(i) and the present guideline commentary. It would, as a bracketed option, include persons under twenty-one years of age as provided by 18 U.S.C. § 842(d).

Statutory Provisions

18 U.S.C. § 842(d) (prohibits licensees from distributing explosive materials to certain persons, including felons, fugitives, drug users and addicts, mental incompetents, and persons under twenty-one years of age). Ten year statutory maximum.

18 U.S.C. § 842(i) (felons, fugitives, drug users and addicts, and mental incompetents, not permitted to receive, ship or transport explosives in interstate commerce). Ten year statutory maximum.

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[86] ATF letter to the Commission (November 16, 1990).

Issues

a. Should the base offense level for offense conduct involving a prohibited person be raised from a level 16?

b. Should distribution to a person under twenty-one years of age be treated as severely as distribution to other prohibited persons?

Discussion

The proposed guideline would not change the base offense level for prohibited persons or distribution to prohibited persons. However, if the bracketed language was adopted, the proposed guideline would treat defendants who sell explosive materials to under-age persons as severely as those who sell to other prohibited persons. All of these violations are proscribed by 18 U.S.C. §842(d). This would represent a change from the present guideline which punishes defendants who sell to under age persons less severely than other violations of §842(d).

If the base offense levels for possession or distribution of firearms to a prohibited person are changed, the Commission should consider whether a change would be warranted in the explosive materials guideline to maintain the existing proportionality between firearms and explosive offenses. It appears that explosive materials violations have been treated more seriously than similar firearms offenses under the guidelines. For example, under the existing guidelines the sale of stolen explosive materials would receive an offense level of 16 whereas the sale of a stolen firearm would only receive an offense level 8.

Finally, because of the specific offense characteristics proposed below, a more serious offense level could result under the

proposed guideline, than under the existing guidelines, if other aggravating factors were present in the offense.

The monitoring data shows that about one half of all explosives offenses for which there are records of being sentenced under §§2K1.1 or 2K1.6, are committed by felons.

22. Proposed Section 2K1.1(a)(4)(A):

(4) [10], if the defendant

a. engaged in the business of importing, manufacturing, or dealing in explosive materials without a license, in violation of 18 U.S.C. §842(a)(1);

Present Guideline

§2K1.3(a) provides a base offense level 6 for this offense.

Proposed Guideline

Proposes a base offense level of 10 for this offense.

Statutory Provisions

18 U.S.C. § 842(a)(1) (prohibits any unlicensed person from engaging in the business of importing, manufacturing, or dealing explosive materials). Ten year statutory maximum.

Issue

Should the base offense level for offense conduct involving engaging in the explosive materials business without a license (currently a level 6) be raised to a level 10?

Discussion

As with firearms offenses, the standard for a conviction under 18 U.S.C. § 842(a)(1) is difficult to meet in light of the stringent definition of "engaged in the business" which is used by the courts and ATF. Unlike the firearms statutes, the explosives statutes do not define the term "engaged in the business".

However, it appears that both ATF and the courts rely upon the definition contained in the firearms statute, 18 U.S.C. §921(a)(21). "Engaged in the business" is defined by §921 as "a person who devotes time, attention, and labor to" manufacturing, dealing, or importing firearms or ammunition "as a regular course of trade or business with the principal objective of livelihood and profit." As a consequence of this restrictive definition, the class of offenders captured by a conviction under the explosive materials laws is inherently a more serious offender.

A person, in order to be found to have engaged in the business of dealing, must have engaged in "the repetitive purchase and resale" of explosive materials. In short, such dealers, importers, and manufacturers can be considered to have unlawfully introduced a substantial amount of explosive materials into society. A specific offense characteristic in the proposed guideline would also allow for an increase in the offense level where large amounts of explosive materials were involved.

Further, a base offense level of 10 does not exceed the base offense level used elsewhere in the guidelines for offenses punishable by 10 years imprisonment or less.[87]

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[87] For Example:

Offense	Guideline	Base Offense	Maximum Statutory Penalty
Oper. Gambling Bus.	2E3.1	12	5 yrs
Transmitting Wagering Information	2E3.2	12	2 yrs
Transport. Purpose of Prostitution	2G1.1	14	5 yrs

(continued...)

The monitoring data in this area is sparse, however, it does appear to support the belief that these violations are committed by larger distributors of explosives materials.

ATF supports an increase in the offense level for unlawfully trafficking in or manufacturing explosives. ATF would increase the base offense level to 12 and enhance that level based upon the quantity of explosive materials involved in the offense.[88] Although the proposed guideline would establish the base offense level for these violations at a level 10, as discussed below, it would also incorporate an adjustment based upon quantity of explosive materials.

23. Proposed Section 2K1.1(a)(4)(B):

(4) [10], if the defendant

(B) made any false or fictitious oral or written statement; furnished or exhibited any false, fictitious, or misrepresented identification; or knowingly withheld information, for the purpose of obtaining explosive materials, or a license, permit, exemption or relief from disability under federal law, in violation of 18 U.S.C. §842(a)(2);

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[87](...continued)

Transport./Minor Purpose Prostitution	2G1.2	16	10 yrs
Broadcasting Obscene material	2G3.2	12	2 yrs
Perjury or Subornation	2J1.3	12	5 yrs

[88] ATF letter to the Commission (November 16, 1990).

Present Guideline

§2K1.3 provides a total offense level of 10 for this offense.

Proposed Guideline

Proposes base offense level of 10 for this offense. Inserts statutory language, not included in the present guideline, which clarifies the circumstances under which the guideline would apply.

Statutory Provisions

18 U.S.C. § 842(a)(2) (prohibits any person from withholding information or making or using any false or fictitious, oral or written, statement or identification for the purpose of obtaining explosive materials or an explosive materials permit, license, exemption or relief from disability.)

Discussion

The proposed guideline would not change the base offense level for using false information to obtain explosive materials. However, because of the specific offense characteristics proposed below, a more serious offense level could result under the proposed guideline if other aggravating factors were present in the offense.

The proposed guideline adds language drawn from the statute that is intended to clarify the circumstances in which the guideline would apply.

24. Proposed Section 2K1.1(a)(4)(C):

(4) [10], if the defendant

(C) knowingly distributed any explosive material [to a person under twenty-one years of age], to a person prohibited by any state law or any published ordinance from receiving such explosives at the place of distribution, or to a person the defendant had reason to believe intended to transport such materials into a state in violation of the law of that state; or

Present Guideline

§2K1.3(b)(3) provides a total offense level of 10 for these offenses.

Proposed Guideline

Proposes base offense level of 10 for these offenses.

Statutory Provisions

18 U.S.C. § 842(a)(3) (prohibits any person other than a licensee or permittee from distributing explosives materials to a person who doesn't live in the state in which the distributor resides.) Ten year statutory maximum.

18 U.S.C. § 842(b)(3) (prohibits a licensee from distributing explosive materials to out of state residents unless allowed by state law.) Ten year statutory maximum.

18 U.S.C. § 842(c) (prohibits licensee from distributing explosive materials to any person who intends to transport the materials to another state in violation of state law.)
Ten year statutory maximum.

18 U.S.C. § 842(d)(1) (prohibits licensee from distributing explosive materials to a person under twenty-one years of age.) Ten year statutory maximum.

18 U.S.C. § 842(e) (prohibits licensee from distributing explosive materials to any person in any state where it would violate a state law or published ordinance applicable at the place of distribution.) Ten year statutory maximum.

Discussion

The proposed guideline would not change the base offense level for distributing explosive materials to persons under twenty-one years of age or in violation of a state law. (Bracketed language contained at §2K1.(a)(3) would treat sales to under-age persons more seriously than the present guideline). However, because of the specific offense characteristics proposed below, a more serious offense level could result under the proposed guideline if other aggravating factors were present in the offense.

25. Proposed Section 2K1.1(a)(4)(D):

(4) [10], if the defendant

(D) unlawfully transported, shipped, caused to be transported, or received in interstate or foreign commerce, any explosive materials.

Present Guideline

§2K1.3 provides a base offense level of 6 for all offenses and a four-level enhancement if the defendant knowingly distributed "explosives" to a person prohibited by state law from possessing such materials or to any person who the defendant had reason to believe would unlawfully transport the explosives into a state in violation of the law.

Proposed Guideline

Proposes base offense level of 10 for unlawfully transporting, shipping, causing to be transported or receiving explosive materials in interstate or foreign commerce. These offenses are not clearly specified in existing §2K1.3. However, the guideline proposes to treat these offenses the same as the unlawful distribution of explosive materials to a person who the defendant knows will unlawfully transport or possess those explosive materials across state lines.

Statutory Provisions

18 U.S.C. § 842(a)(3)(A) (prohibits any person other than a licensee or permittee from transporting, shipping, causing to be transported, or receiving in interstate or foreign commerce, any explosive material. Allows a person who lawfully buys explosives to transport to a contiguous state if not in violation of contiguous state's law.) Ten year statutory maximum.

Issue

Should the guideline be amended or clarified to specify that the unlawful transport, shipment, causing to transport, or receipt of explosive materials in interstate or foreign commerce will be treated the same as the unlawful distribution of explosive materials?

Discussion

The proposed guideline would not change the ultimate offense level in cases where the defendant distributes explosive materials by shipping or transporting them to a person in violation of state law or causing them to be received in violation of state law. However, the existing guideline only sanctions the unlawful "distribution" of "explosives" at a total offense level 10. The proposed guideline would clarify that defendants should be treated similarly whether they "distribute," "transport," "ship," "cause to be transported," or "receive" explosive materials in violation of the law. Depending on the context in which the foregoing terms are used, the terms may be synonymous. However, the existing guideline fails to account for violations involving the unlawful "transport" or "shipment" of explosive materials, thereby justifying an argument for a base offense level 6. If different sanctions are imposed for one or more of these violations, even though there may be little substantial distinction between the underlying factual circumstances, there is potential for disparity. Such disparate

treatment would not appear to be warranted given the similarity between offenses involving "distributions," "transporting" or shipping." The working group, therefore, recommends the addition of an offense characteristic to cover the broad range of terms.

Further the proposed guideline replaces the term "explosives", used in the present guideline, with the more inclusive term "explosive materials" used in the statute.

26. Proposed Section 2K1.1(a)(5): Level 6-8 for All Other Offenses

Present Guidelines

§2K1.3 provides a base offense level 6 for miscellaneous explosive materials offenses. §2K1.1 provides a base offense level 6 for failure to report the theft of explosives. §2K1.2 provides a base offense level 6 for improper storage of explosives.

Proposed Guideline

Proposes a consolidated guideline with a base offense level 6 for all other explosive materials offenses.

Statutory Provisions

18 U.S.C. § 842(f) (prohibits any licensee or permittee from wilfully manufacturing, importing, purchasing, distributing or receiving explosive materials without completing the records required to be kept by regulation established by the Secretary of he Treasury). Ten year statutory maximum.

18 U.S.C. § 842(g) (prohibits any licensee or permittee from knowingly making a false entry in a record required to be maintained by regulation). Ten year statutory maximum.

18 U.S.C. § 842(j) (prohibits any person from storing explosive materials in violation of regulations concerning storage). One year statutory maximum.

18 U.S.C. § 842(k) (requires any person who has knowledge of the theft or loss of explosive materials to report such theft or loss within twenty-four hours). One year statutory maximum.

Issues

a. Should the guidelines for the above offenses be consolidated?

b. Should the offense level for any of the above offenses be increased?

Discussion

The existing guidelines treat each of the above offenses as a level 6. There does not appear to be any real need for having multiple guidelines in this regard. On the other hand, by consolidating the guidelines, the probation officers, the courts, and the litigants will only need to refer to a single guideline for multiple explosive offenses. A consolidated guideline offers the potential advantage of simplifying the determination of an offense level in this area, as well as basing the guidelines more on real offense conduct and less on the statute of conviction.

The proposed guideline also offers the option of maintaining the status quo with a base offense level 6 for the pertinent offenses or increasing the base offense level to 8 for all such offenses. Additionally, the Commission may want to consider whether some of these offenses should remain at a level 6 while one or more are raised. Specifically, it should be noted that §§ 842(f) and (g) are both ten year offenses, while §§ 842(j) and (k) are one year offenses. Further, while § 842(a)(1) punishes as a level 10 a false oral or written statement made by any person for the purpose of obtaining explosive materials or a permit, license, etc., the existing guideline only establishes a level 6 for a licensee or permittee who knowingly makes a false entry in records

required to be maintained. It is difficult to imagine a situation where this latter offense would be committed other than to cover up some other more serious violation.[89]

PART II. SPECIFIC OFFENSE CHARACTERISTICS

27. Proposed Section 2K1.1(b)(1):

> (1) If the Defendant unlawfully possessed, distributed, imported, transported, or manufactured twenty-five pounds or more of explosive materials, increase as follows for the quantity of unlawful explosive materials involved:
>
> | | Pounds of Unlawful Explosive Material | Increase in Level |
> |---|---|---|
> | (A) | at least 25 but less than 50 lbs | add 1 |
> | (B) | at least 50 but less than 75 lbs. | add 2 |
> | (C) | at least 75 but less than 100 lbs. | add 3 |
> | (D) | at least 100 but less than 125 lbs. | add 4 |
> | (E) | at least 125 but less than 150 lbs. | add 5 |
> | (F) | at least 150 but less than 175 lbs. | add 6 |
> | (G) | at least 175 but less than 200 lbs. | add 7 |
> | (H) | 200 lbs. or more | add 8 |
>
> [unless the defendant, other than a defendant subject to (a)(1), (a)(2) or (a)(3) of this guideline, used all of the explosive materials solely for lawful commercial purposes.]

Present Guideline

§2K1.3 presently makes no distinction in offense level for quantity of explosive materials involved in the offense conduct.

Proposed Guideline

Proposes the use of an Explosives Quantity Table for the unlawful possession, distribution, transportation, importation or manufacture of explosive materials.

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[89] The proposed and existing guideline does contain a specific offense characteristic directing that the guideline for the substantive offense be used where the record keeping offense reflects an effort to conceal a substantive offense.

Issue

Should an explosives quantity table be used for explosives offenders?

Should the explosives quantity table be used where the unlawful explosives materials were otherwise possessed for lawful commercial uses?

Discussion

The addition of an explosive materials quantity table would allow for more serious treatment of violators who unlawfully traffick in large quantities of explosive materials and thereby present a greater danger to society. The table would be similar to the proposed firearms table and would allow for aggregation of relevant conduct that might otherwise be unavailable under the grouping rules. The threshold level of twenty-five pounds is somewhat arbitrary as are the incremental increases in levels as the quantity is increased. ATF has suggested the use of a table that would require a two level increase for each fifty pounds of explosive materials. The proposed table is based upon a similar breakdown, proposing one-level enhancements for each twenty-five pounds.

One additional reason for proposing a table is that it provides a method to increase the sentencing range of the serious offender within the statutory maximum, without unduly punishing the smaller violator. For instance, under the present scheme, a defendant who sells two pounds of explosive materials to another person would have the same offense level as the defendant who unlawfully sells two hundred pounds of explosive materials to the same person (probably resulting in a sentence significantly less

than three years). Under the proposal, the latter defendant would be treated more severely (an offense level allowing for a sentence roughly twice as severe) given the larger quantity of explosive materials and the substantial danger presented thereby.

An option would provide that this specific offense characteristic would not apply, except where the defendant was a prior felon or other prohibited person, if the explosive materials were used solely for otherwise lawful commercial uses. Such an exception would be similar to the "sporting purpose" exception to the firearms guideline except that not would not prevent an offense level from being increased if the explosive materials were used for an unlawful purpose or if another specific offense characteristic applied. For instance, if a construction foreman obtained stolen explosive which he otherwise lawfully used in a job site, he would be sentenced for possession of stolen explosives but that sentence would not be aggravated on the basis of the quantity of explosives used. Further, if a record keeping offense was committed, the offense level would not be increased on the basis of the quantity of explosive materials, provided the record keeping offense or the explosive materials were not related to other criminal activity such as the sale to a prohibited person or another offense.

28. Proposed Section 2K1.1(b)(2):

> **(2) If the offense involved any explosive material that the defendant knew or had reason to believe was stolen, increase by 6 levels.**

Present Guideline

§2K1.3(b)(2) provides for a 6 level enhancement if the offense involved explosives that the defendant knew or had reason to believe were stolen.

Proposed Guideline

Proposes no change in the magnitude of the enhancement. However, by its placement in the new guideline structure, it allows for a potential greater total offense level if other aggravating factors exist.

Statutory Provisions

18 U.S.C. § 842(h) (prohibits any person from receiving, concealing, transporting, shipping, storing, bartering, selling, or disposing of stolen explosive materials). Ten year statutory maximum.

Discussion

Would allow for same total offense level (level 12) as existing guideline where defendant merely possessed, concealed, sold, etc. stolen explosive materials. However, provides for higher offense levels where defendant is felon or other aggravating factors exist.

Available monitoring data under §2K1.3 shows that nearly one half (10 of 22) of those explosive materials cases involved stolen explosive materials. Further, the sentences in those cases averaged 19.7 months whereas the overall average sentence under §2K1.3 was 9.8 months.

Stolen explosive materials pose a particular danger to society because by the very nature of the offense, no records are maintained of the transactions thereby limiting the ability to trace the flow and use of those materials. As a result, a substantial portion of stolen explosive materials are used in connection with other criminal activity.

29. Proposed Section 2K1.1(b)(3):

> **[(3) If the defendant was a prohibited person and sold, dealt, or otherwise disposed of any explosive material to any person, [other than a licensee or permittee,] increase by [1-2] level(s).]**

Present Guideline

Provides no enhancement for this conduct.

Proposed Guideline

Proposes 1-2 level increase where defendant not only possessed the explosive materials, but sold, dealt, or otherwise disposed of explosive materials, to a person other than a licensee or permittee.

Issue

Should there be an enhancement of 1-2 levels for the prohibited person who distributes explosive material?

Discussion

Proposes enhancement where a prohibited person sold, dealt, or otherwise disposed of explosive material, to more appropriately reflect the seriousness of such conduct. The working group believes that prohibited persons who make explosives materials available to others are more likely to be providing explosives materials to be used in other criminal activity than are legitimate explosive materials dealers. This is largely due to the fact that

prohibited persons who sell explosives materials will likely not maintain records of those transactions. On the other hand, licensees are required to maintain such records so that the purchases of those materials can be identified if necessary.

The proposed guideline contains bracketed language which would exempt transfers to licensees or permittees. Although this provision doesn't really serve as an encouragement to prohibited persons to dispose of illegally possessed materials, it at least recognizes that the preferred method of disposal is to a licensee or permittee who will be required to maintain a record of the transaction. To not include this language could arguably serve as a disincentive to the proper transfer of these dangerous materials.

30. Proposed Section 2K1.1(b)(4):

> **(4) If the defendant used, possessed, or transferred any explosive material, or knew, intended, or had reasonable cause to believe the explosive material would be used or possessed, during or in relation to any violent or drug-related conduct, or any felony offense, increase by [2-4] levels. If the resulting offense level is less than level [18], increase to level [18].**

Present Guideline

§2K1.3 provides no enhancement or cross reference for this conduct. **§2K1.6** (Shipping, Transporting, or Receiving Explosives with Felonious Intent or Knowledge; Using or Carrying Explosives in Certain Crimes) does address the issue directly if convicted under § 844(d).

Proposed Guideline

Proposes enhancement of two to four levels, or a minimum offense level of 18, consistent with 18 U.S.C. § 844(d), and present §2K1.6, where the defendant used, possessed, or transferred any explosive materials, or knew, intended, or had reasonable cause to believe the explosive materials would be used or possessed, during

or in relation to any violent or drug-related conduct, or any felony offense.

Statutory Provisions

18 U.S.C. § 844(d) (prohibits any person from receiving, attempting to transport or receive any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any person or to destroy any real or personal property). Twenty year statutory maximum unless death results, then any term of years.

Issue

Should there be an enhancement of two to four levels (with a floor of 18) if the defendant knew, intended, or had reasonable cause to believe the material would be used or possessed, during or in relation to violent or drug-related conduct, or a felony?

Discussion

The proposal would provide for an enhancement in explosive materials cases where the defendant is involved in other violent or drug related conduct. In many cases (e.g. large drug cases, murder, assault with intent), the cross-reference will direct the use of another guideline that will carry more serious sanctions. However, in other cases such as a small drug case (e.g. a sale or possession of only a few ounces of cocaine) the offense level for the underlying offense will be lower than if determined under the proposed guideline with the enhancement. The working group believes that even small drug dealers or other criminals who possess explosive materials in connection with other offenses pose a greater danger than similar defendants who do not possess such materials. Accordingly, the working group recommends that criminals who involve explosive materials in other criminal conduct should be assured of receiving at least a level 18 as they could presently receive under §2K1.6. If adopted by the Commission, this

offense characteristic, in conjunction with the cross reference, would eliminate the need for a separate guideline §2K1.6.

The available monitoring data for §2K1.3 and §2K1.6 shows that 10 of 29 cases under those sections involved the possession of explosive materials in conjunction with or with the intent to use them in other criminal activity. Further, in several other cases it was not possible to determine the intended use. Nonetheless, even with limited data it appears there is a strong correlation between the unlawful possession, transfer, or manufacture of explosive materials and other criminal activity.

31. Proposed Section 2K1.1(b)(5):

> **(5) If a record keeping offense reflected an effort to conceal a substantive offense involving explosive materials, apply the guideline for the substantive offense.**

Present Guideline

Provides for real offense sentencing where record keeping offense was engaged in for the purpose of concealing a substantive offense.

Proposed Guideline

No change.

PART III. CROSS REFERENCES

32. Proposed Section 2K1.1(c):

> **(1) If the defendant used or possessed any explosive material, or knew, intended, or had reasonable cause to believe any explosive material would be used or possessed, during or in connection with the commission or attempted commission of another offense, apply the offense level from the underlying offense if the resulting offense level is greater than that determined above.**

Present Guideline

Cross references provided in §2K1.6 to §2X1.1 (Attempt, Solicitation, Conspiracy) with respect to the commission of another offense). No cross reference in present §2K1.3.

Proposed Guideline

Deletes cross reference direction to §2X1.1, substituting language "apply the offense level from the underlying offense if ... greater than above." Expands language of cross reference to include "knew" or "had reasonable cause to believe ... would be used or possessed."

Statutory Provisions

18 U.S.C. § 844(d). Twenty year penalty, unless death results then any period of years.

Issues

a. Should the cross references direct to §2X1.1 or to the "underlying offense"?

b. Regarding a connection between the explosives offense and some other offense, should the cross reference apply if the defendant "knew" or "had reasonable cause to believe" there was a connection to another offense?

Discussion

The working group believes that the reference to the underlying offense gives clearer direction and that the purposes of the cross reference are better effectuated by expanding its applicability as discussed in the firearms section.

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

APPENDIX A

NOV 16 1990

CC-38,342 FE:SRR

Honorable William W. Wilkins, Jr.
Chairman
United States Sentencing Commission
1331 Pennsylvania Avenue, NW., Suite 1400
Washington, DC 20004

Dear Judge Wilkins:

This is in response to the request of your staff that we review the sentencing guidelines and make recommendations with respect to possible changes in the guidelines for certain firearm and explosive offenses. The changes recommended in this letter are based on our experience with the guidelines.

Initially, we would express our appreciation to the Commission for the careful consideration it gave to our earlier comments on the guidelines and the improvements in the guidelines which became effective on November 1, 1990. As a result, the proposed new sentencing guidelines on arson and "Armed Career Criminals" will be significantly improved. We also want to thank Commissioner Carnes and the members of your staff for meeting with us on October 12, 1990, to discuss these additional recommendations.

Felons in Possession of Firearms

Under 18 U.S.C. § 922(g), it is generally unlawful for a felon to receive or possess a firearm. In November 1988, Congress increased the maximum penalty for this offense from 5 years to 10 years imprisonment. The current sentencing guideline applicable to this offense in section 2K2.1 provides a base offense level of 12 and requires a decrease to level 6 if the defendant obtained or possessed the firearm solely for lawful sporting purposes or for collection. Effective November 1, 1990, this reduction does not apply to National Firearms Act (NFA) weapons, i.e., machineguns, silencers, destructive devices, or short-barrelled rifles and/or shotguns. In our view, the offense level for felons

who possess firearms and those who have prior convictions for crimes of violence or for controlled substance offenses is too low.

Initially, we would point out that the 1986 amendments to the Gun Control Act of 1968 (18 U.S.C. Chapter 44) significantly decreased the number of felons prohibited by section 922(g) from possessing firearms. Effective November 15, 1986, under 18 U.S.C. § 921(a)(20), a felon who has received an expunction, pardon, set aside, or restoration of civil rights, and is not prohibited by the law of the jurisdiction in which convicted from possessing firearms is no longer prohibited under Federal law from possessing firearms. In addition, under 18 U.S.C. § 925(c), persons prohibited from possessing firearms because of a disabling conviction may apply to ATF for relief from their firearms disabilities. Thus, a section 922(g) offense has become more serious because only individuals not having any of these indicia of rehabilitation are prohibited from possessing firearms.

Because of the insufficient sentences provided for by the guidelines, ATF has experienced difficulty in having individuals prosecuted who possess firearms and who have committed a prior crime of violence or a controlled substance offense. Some United States attorneys are reluctant to expend time and resources to prosecute these cases. Thus, the guidelines should provide an increase in the base offense level to 18. If the defendant has one prior conviction for controlled substance offenses or crimes of violence, the offense level should be increased to 20. If the defendant has two prior convictions for controlled substance offenses or crimes of violence, the offense level should be increased to 22. If the defendant <u>used</u> a firearm or explosive in a prior felony, the offense level should be increased by two levels. If the defendant <u>used</u> a firearm or explosives in two prior felonies, the offense level should be increased by four levels. Finally, there should be a 2-level enhancement if the weapon possessed is an unregistered NFA weapon.

These classes of individuals pose a serious threat to society, yet they do not qualify for sentencing as "career offenders" or as "armed career criminals." Therefore, a significant deterrent to such possession should be

implemented. Enclosure one contains a discussion of cases where defendants with prior violent felonies or controlled substance offenses received minimal sentences.

Furthermore, the decrease in offense level, if the defendant obtained or possessed the firearm solely for lawful sporting purposes or collection, should be eliminated. The fact that the defendant originally acquired the firearm for sporting or collection purposes is immaterial. Rather, the circumstances surrounding the defendant's possession and use of the firearm should be more significant for purposes of sentencing. This would eliminate frivolous arguments such as that raised by the defendant in United States v. Smeathers, 884 F.2d 363 (8th Cir. 1989), who, having fired a rifle throughout his home after a quarrel with his wife, and having been convicted of being a felon in possession of the rifle, argued that his sentence should be reduced because the firearm was obtained for sporting purposes. If the Commission believes that there should be a sentence reduction available in those cases involving "technical" violations of section 922(g), such instances should be limited to persons having firearms for sporting purposes who have no more than one prior felony conviction which was neither a violent felony nor a substance abuse offense.

Furthermore, except for NFA weapons, we do not believe that the "type" of firearm possessed, e.g., handgun, shotgun, or rifle, should be a factor in the guidelines. For your further information, enclosure two includes a breakdown of firearms taken into ATF custody since 1983. While the enclosure might indicate that more handguns are involved in crime than any other type of firearm, we would conclude from our experience that criminals will use any type of firearm that is available. In our view, any felon with a firearm is potentially dangerous. Therefore, the "type" of firearm possessed by a felon should not be a major concern in sentencing.

Engaging in a Firearms Business Without a License

Under 18 U.S.C. § 922(a)(1), it is unlawful to willfully engage in the business of dealing in firearms without a license. Under this section, ATF must prove that the defendant devoted time, attention, and labor to dealing in firearms with the principal objective of livelihood

and profit through the repetitive purchase and resale of firearms. However, a person who makes occasional sales, exchanges or purchases of firearms for the enhancement of a personal collection, or for a hobby, or who sells all or part of his or her personal collection of firearms, would not be engaging in a firearms business. See 18 U.S.C. § 921(a)(20)(C).

The current sentencing guideline applicable to this offense in section 2K2.2 provides a base offense level of 6. If the offense involved distribution of firearms, or possession with intent to distribute, the guideline provides for an increase in the offense level depending on the number of firearms distributed or involved in the violation. In our view, the base level of 6 is too low. Any willful violation of section 922(a)(1) is serious, notwithstanding the number of firearms involved in the violation. As noted above, dealing in firearms without a license is not a "technical violation" since the legitimate gun collector or hobbyist is not subject to this provision. With respect to the enhanced penalties based on the number of firearms illegally distributed, we are unable to make a recommendation for change in the guideline. In our view, the number of firearms involved in the offense would not necessarily indicate the seriousness of the crime. Indeed, a small number of firearms sold to terrorists or members of organized crime may have a greater consequence from a law enforcement standpoint than a larger number of firearms illegally sold to otherwise law-abiding citizens. However, we would recommend an increase in the base level for the offense from 6 to 12. In addition, we would recommend that "Commentary 2" accompanying this guideline allow for an upward departure if the number of weapons involved exceeds 25 rather than 50. The distribution of 25 or more firearms clearly indicates a trafficker in firearms warranting an increase in the sentencing level.

Receipt of Explosives by Felons

Under 18 U.S.C. § 842(i)(1), it is generally unlawful for any person who has been convicted of a felony to receive explosives. Under section 2K1.3 of the guidelines, the base offense level for unlawfully receiving explosives is 6 and if the defendant is prohibited under section 842(i) from receiving explosives, the offense level is increased 10

levels to 16. We recommend an increase in the offense level to 18 for individuals who receive explosives and who have been convicted of a crime of violence or a controlled substance offense. If the defendant has two prior convictions for controlled substance offenses or crimes of violence, the offense level should be increased to 20. If the defendant used a firearm or explosive in the prior felony, the offense level should be increased by two levels. If the defendant used a firearm or explosive in two prior offenses the offense level should be increased by four levels. Similar to firearms violators, these individuals pose a serious threat but do not qualify for sentencing as "career offenders" or as "armed career criminals."

Unlawfully Trafficking in Explosives

Under 18 U.S.C. § 842(a)(1), it is unlawful to engage in the business of manufacturing, importing or dealing in explosives without a license. The current sentencing guideline for this offense in section 2K1.3 provides a base level of 6. While increases in offense levels are provided in certain circumstances, e.g., dealing in stolen explosives or sales to felons, the base level of 6 is too low for the serious offense of illegally engaging in the business of an explosives manufacturer, importer, or dealer. In one case, for example, an individual pled guilty to dealing in explosives without a license (M-80's and M-200's) and was sentenced to probation for 3 years and fined $1,420.

The clandestine manufacture of explosives, including illegal fireworks, poses a serious threat to public safety, particularly to children. Increasing the base level to 12 would comport with the seriousness of the offense. In addition, consideration might be given to an enhancement of the level based upon the quantity of explosives involved. For example, the sentence could be increased by two levels for every 50 pounds of explosives involved in the violation. Thus, an illegal fireworks manufacturer in possession of 200 pounds of explosives could be subject to sentencing at a base level of 12 and an additional enhancement of 8 levels based on the amount of explosives.

Honorable William W. Wilkins, Jr.

We appreciate this opportunity to comment on the sentencing guidelines. If additional information is desired, please let us know.

Sincerely yours,

Associate Director
(Law Enforcement)

Enclosures

On April 13, 1990, Anthony Watkins, a three-time convicted felon and member of the Bloods Street Gang, was found in possession of two handguns and a small quantity of marijuana. Watkins was subsequently indicted and pled guilty to one count of 18 U.S.C. 922(g)(1), the title 21 charges for the marijuana were dismissed. Watkins was sentenced in Tucson, Arizona, to 12 months of incarceration. The sentencing guidelines for Watkins were in the vicinity of 18 to 24 months.

In April 1989, Delbert Lee Thorne, who had two prior burglary convictions, was found in possession of three long guns. Subsequently, Thorne pled guilty to one count of 18 U.S.C. section 922(g)(1) in the Western Judicial District of Virginia. Originally, Thorne was sentenced to 6 months of incarceration and 3 years of probation. The U.S. attorney's office appealed the sentence and Thorne was resentenced to 21 months of incarceration and 2 years of supervised probation.

Recently, Raoul Tanguma, a twice-convicted felon on narcotics charges, pled guilty to one count of 18 U.S.C. section 922(g)(1). Tanguma was found in possession of two firearms while out on parole. Tanguma was sentenced to 14 months of incarceration. The presiding district court judge stated that he wished he could have given Tanguma additional jail time.

In 1987, Eluid Guerra was indicted by a Federal grand jury for violation of 18 U.S.C. section 922(g)(1). A short time later, Guerra became a fugitive. In August 1989, Guerra was rearrested in Texas. Guerra has two prior Federal convictions for narcotics violations. Guerra pled guilty and received 12 months of incarceration.

On February 17, 1989, Roberto Valles Narvaiz, a four-time convicted felon, pled guilty to one count of 18 U.S.C. section 922(g)(1) and was sentenced to 12 months of incarceration and 3 years of supervised probation. Narvaiz' convictions included three narcotics convictions and a theft conviction.

FIREARMS ENFORCEMENT PROGRAM

FY	DEF.	FELONY	NARC.	T/GUNS	HG	LG	OTHER
83	2,533	1,534	896	9,616	3,544	3,217	2,855
84	2,293	1,316	1,185	9,436	4,701	3,161	1,574
85	3,137	1,696	1,192	11,242	3,857	3,913	3,472
86	3,699	2,117	1,524	11,891	4,637	3,540	3,714
87	3,917	2,061	1,958	8,583	3,735	3,203	1,645
88	4,648	2,282	2,639	12,863	7,026	2,775	3,062
89	6,669	3,044	4,066	15,019	8,351	3,957	2,711
90	7,955	3,702	4,431	12,469	5,811	4,510	2,151
	34,851	17,752	17,891	91,119	41,662	28,276	21,184

FELONY--DEFENDANTS THAT HAVE PRIOR FELONY CONVICTIONS

NARC--DEFENDANTS WITH PRIOR NARCOTICS BACKGROUND

T/GUNS--TOTAL FIREARMS TAKEN IN BY ATF.

H/G--TOTAL HANDGUNS TAKEN IN BY ATF.

L/G--TOTAL LONG GUNS (RIFLES AND SHOTGUNS) TAKEN IN BY ATF.

45% OF ALL FIREARMS TAKEN IN BY THE BUREAU ARE HANDGUNS.

51% OF ALL DEFENDANTS HAVE PRIOR FELONY CONVICTIONS.

51% OF ALL DEFENDANTS HAVE SOME NARCOTICS TRAFFICKING BACKGROUND.

BETWEEN FY83 AND FY87 37% OF ALL DEFENDANTS HAD PRIOR NARCOTICS INVOLVEMENT; HOWEVER, BETWEEN FY88 AND FY90 63% OF ALL DEFENDANTS WERE INVOLVED IN NARCOTICS.

OTHER CATEGORY--(SAWED-OFF SHOTGUNS, MACHINEGUNS, MACHINEGUN CONVERSIONS, SILENCERS, AND OTHER NFA WEAPONS).

ENCLOSURE 2

CLOSED

MAR 23 1990

CC-38,342 FE:JBP

Honorable William W. Wilkins, Jr.
Chairman
United States Sentencing Commission
1331 Pennsylvania Ave., N.W., Suite 1400
Washington, DC 20004

Dear Judge Wilkins:

This is in response to the Sentencing Commission's request for comments on proposed amendments to the sentencing guidelines published in the Federal Register on February 16, 1990.

Initially, we would express our appreciation for the careful consideration the Commission gave our earlier comments on the guidelines in our letter of December 14, 1989. As a result, the proposed new sentencing guideline on arson is a significant improvement.

With respect to firearms, we strongly support Option 2 for the proposed armed career criminal guideline in section 2K2.6. Under Option 1, the only increase above the base offense level of 34 occurs when in connection with the use of the weapon or ammunition in the instant offense a victim sustained death, permanent or life threatening injury, serious bodily injury or bodily injury. Regardless of the seriousness of the defendant's prior convictions, the base offense level cannot be increased above 34.

In our December 14 letter, we discussed pre-guidelines cases where defendants received sentences of more than 15 years under 18 U.S.C. § 924(e), including the case of Warren Bland who had a long history of vicious and sadistic sexual assaults. He received a sentence of life imprisonment under section 924(e). Attachment B to our December 14 letter shows that a firearm was found in Bland's car, but no injury resulted from his use of the firearm in the instant offense. Under Option 1, Bland's offense level could not be increased

above 34. Under option 2, Bland's brutal attacks upon and torture of his victims would result in a sentence at the offense level of 38.

In Attachment A to our December 14 letter, we discussed a pre-guidelines case, United States v. Gourley, 835 F.2d 249 (10th Cir. 1987). Gourley received a life sentence as an armed career criminal. He pressed a loaded sawed-off shotgun against the throat of an undercover police officer and pulled the trigger but the shotgun malfunctioned. Fortunately, the police officer was not injured. Under Option 1, Gourley's offense level could not be increased above 34. Under option 2, Gourley's use and brandishing of a firearm would result in sentencing at the offense level of 38 which we believe would be appropriate in such a case.

Our letter also discussed United States v. Jordan, 870 F.2d 1310 (7th Cir. 1989), where the defendant used a firearm to fire at an off-duty police officer outside the store where the officer was employed as a security officer. Apparently, the officer was not injured. Jordan was sentenced to 20 years in prison. Under Option 1, Jordan's offense level would only be 34. Under Option 2, the offense level would be 38 because he used and brandished a firearm during the instant offense.

We strongly urge the adoption of Option 2 because it takes into account the circumstances surrounding the defendant's prior convictions and the circumstances involving the defendant's instant offense of possessing a firearm. A review of the cases discussed in Attachment A to our December 14 letter demonstrates that judges based their decisions in pre-guidelines cases on these circumstances when sentencing armed career criminals to more than 15 years imprisonment. Option 1 too narrowly restricts the factors used in sentencing under section 924(e).

Section 2K2.1 of the guidelines provides for the sentencing of persons convicted of violations of 18 U.S.C. § 922(g) (felons and other prohibited persons in possession of firearms) and 26 U.S.C. § 5861(d) (possession of unregistered National Firearms Act weapons). A proposed amendment to this section would provide an increase of 2 offense levels if the defendant possesses a loaded firearm or both an

unloaded firearm and ammunition that could be used in the firearm. We support this amendment. A defendant possessing a loaded firearm or the firearm and ammunition for the firearm obviously poses more of a threat to society. For example, the offense level should be increased to 18 if the defendant possessed a loaded machinegun. Moreover, we recommend an increase of 2 levels where the defendant possessed a loaded firearm to which a silencer is attached or possessed a loaded firearm and a silencer which is capable of being attached to the firearm.

The Commission also requested comment on whether an offender who is convicted of possessing a firearm or ammunition, and has one or two prior convictions for serious drug offenses or violent felonies but is not subject to sentencing under 18 U.S.C. § 924(e), should receive a 2-level increase in the offense level for each such prior conviction. We support the 2-level increase for each such prior conviction. As discussed in Attachment C to our December 14 letter, courts under repealed 18 U.S.C. § 3575 repeatedly enhanced sentences for felons in possession of firearms based on their prior convictions for serious crimes. A defendant who possesses a firearm and who has a prior conviction for manslaughter presents more of a threat of violence to society and should receive a more severe sentence than a defendant whose prior conviction is for larceny. Since a firearm is so easily used to commit crimes of violence and is a tool of the trade for drug dealers, defendants who have prior convictions for such crimes should be deterred from possessing firearms.

In 1988, Congress increased the maximum penalty for a violation of 18 U.S.C. § 922(g) (a felon in possession of a firearm) from 5 years to 10 years. ATF concentrates its prosecutions for this offense on defendants who have prior convictions for violent crimes or drug trafficking offenses. The doubling of the maximum sentence by Congress for the offense suggests that Congress believed the defendants actually prosecuted under section 922(g) were serious offenders. The offense levels in the current guidelines are simply too low to adequately deter serious criminals from possessing firearms.

We suggest that the 2-level increase for a defendant with a prior drug offense apply to defendants previously convicted of a "controlled substance offense" (as defined in section

4B1.2 of the guidelines) rather than a "serious drug offense." A serious drug offense requires that a State offense have a maximum penalty of 10 years imprisonment or more. Under section 11379.5(a) of the California Health and Safety Code, the sale or manufacture of PCP is punishable by imprisonment in State prison for 3, 4, or 5 years. Under section 11370.4(b), a person convicted of selling PCP is subject to an additional term of 5 years imprisonment if the substance containing PCP exceeds 10 pounds by weight or 33 1/3 gallons by liquid volume. Under section 11352(a) of the California Health and Safety Code, the sale of heroin is punishable by imprisonment in State prison for 3, 4, or 5 years. Under section 11370.4(a), a person convicted of selling heroin is subject to an additional term of 5 years imprisonment if the substance containing heroin exceed 10 pounds by weight. The term serious drug offense excludes the great majority of drug trafficking offenses committed in California. The term controlled substance offense includes the sale of PCP and heroin. We believe the offense of selling PCP and heroin and similar offenses in California are serious offenses and should result in a 2-level increase in the offense level.

We recommend that any amendment make it clear that the 2-level increase for having prior convictions for drug or violent crimes applies to those convicted of possessing unregistered National Firearms Act weapons as well as to felons and other proscribed persons unlawfully possessing firearms in violation of 18 U.S.C. § 922(g). Defendants who possess contraband (unregistered) National Firearms Act weapons and have such prior convictions impose a significant threat. These defendants should receive stiffer sentences than defendants who have no such prior convictions.

We support the proposed elimination of the reduction in offense level for unlawful possession of National Firearms Act weapons if the defendant "obtained or possessed the firearms solely for lawful sporting purposes or collection." However, we also believe that this reduction in offense level should be eliminated for all other firearms offenses. At a minimum, the provision should be amended to delete reference to the purpose for which firearms were obtained. The fact that the defendant originally acquired the firearm for sporting or collection purposes is immaterial. Rather,

the circumstances surrounding the defendant's possession and use of the firearm should be more significant for purposes of sentencing. This would eliminate frivolous arguments such as that raised by the defendant in United States v. Smeathers, 884 F.2d 363 (8th Cir. 1989), who, having fired a rifle throughout his home after a quarrel with his wife and having been convicted of being a felon in possession of the rifle, argued that his sentence should be reduced because the firearm was obtained for sporting purposes.

On page 5733 of the Federal Register, the Commission seeks comments on several issues relating to the firearms guidelines. Item 5 asks whether existing guidelines that incorporate violent activities or gun possession should provide additional adjustments due to prior violent or serious drug convictions or sentences. We would favor the amendments, however, the guidelines should apply to controlled substance offenses rather than serious drug offenses. Item 3 proposes an amendment to the criminal history guidelines to provide higher adjustments for each prior conviction involving violent or serious drug offenses. We would favor Item 3 if the adjustments would equal or exceed the 2-level increase for defendants having such prior convictions who are convicted of possessing firearms and if the guidelines covered controlled substance offenses rather than serious drug offenses.

Item 2 asks whether the career offender guideline should be amended to apply to all instant offenses involving possession of a firearm. We recommend that the offense of possession of a firearm by a felon be considered a crime of violence if the circumstances of the offense show that the defendant fired the gun, pointed it at an individual, or otherwise used the gun to threaten an individual. The base offense level as a career offender would be 24 and the criminal history category would be VI, resulting in a sentence of 100-125 months. A felon who in the instant offense used a firearm in a violent or threatening manner and has 2 prior violent felony or controlled substance offenses should receive a substantially longer sentence than a felon who merely possesses a firearm. In United States v. Williams, 892 F.2d 296 (3rd Cir. 1989), the defendant fired a pistol at one person and threatened to shoot another. He was

Honorable William W. Wilkins, Jr.

convicted of being a felon in possession of a firearm under 18 U.S.C. § 922(g)(1) and was sentenced as an armed career criminal under 18 U.S.C § 924(e) because he had three prior convictions for crimes of violence. The court also ruled defendant's current offense of possessing a firearm a crime of violence because he fired it at a person. The court sentenced defendant as a career offender to 360 months imprisonment.

We appreciate this opportunity to comment on the proposed amendments to the guidelines. If we can be of further assistance to the Commission, please let us know.

Sincerely yours,

SIGNED

Daniel M. Hartnett
Associate Director
(Law Enforcement)

JBPatterson:yky
CCJBP #259
3/21/90

CODE	INITIATOR	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
	CC AE						
SUR-NAME	Patterson						
DATE	3-21-90	3/22/90	3/22	3/22	3/23/90		

ATF F1325.6A (4-87) CORRESPONDENCE APPROVAL AND CLEARANCE
REPLACES 10-86 EDITION WHICH IS OBSOLETE

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

•U.S. Government Printing Office: 1989-242-704/96368

CLOSE

DEC 14 1989

CC-38,342 FE:JBP

Honorable William W. Wilkins, Jr.
Chairman
United States Sentencing Commission
1331 Pennsylvania Ave., N.W., Suite 1400
Washington, DC 20004

Dear Judge Wilkins:

Your staff has contacted us and requested that we review the sentencing guidelines and make recommendations with respect to possible changes in those areas within the jurisdiction of the Bureau Alcohol, Tobacco and Firearms (ATF). The changes recommended in this letter are based on our experience with the guidelines.

Arson

Under 18 U.S.C. § 844(i), it is unlawful to damage or destroy or attempt to damage or destroy by means of fire or an explosive any property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce. Under section 2K1.4 of the guidelines, the base offense level for this offense is only 6. (For example, a defendant with two serious prior convictions would only receive a sentence of 2-8 months, and the defendant could be placed on probation.) The Commentary to the guidelines states that a review of presentence reports indicates that many arson cases involve malicious mischief, i.e., minor property damage under circumstances that do not present an appreciable danger. We believe that the Commentary is an inaccurate description of prosecutions under section 844(i).

Title XI of the Organized Crime Control Act of 1970, of which section 844(i) is a part, was enacted by the Congress to combat bombings and other serious criminal misuses of explosives. The focus of the title was not upon malicious mischief or minor damage to property, not presenting an appreciable danger. When amending the statute in 1982 to cover fires as well as explosions, the Congress accurately described the purpose of Title XI--to provide Federal jurisdiction over the criminal use of explosives (e.g., extortion, terrorism, and revenge). H.R. Rep. No. 97-678, 97th Cong., 2d Sess., reprinted in 1982 U.S. Code Cong. & Ad. News 2631-2635.

The House Report also alluded to the types of serious arson cases prosecuted under section 844(i), stating that "Identifying fires caused by explosives is technically difficult. Determining the cause of a deliberately set fire involves an extensive physical and chemical inventory of the debris at the fire scene, and extensive chemical laboratory analysis of the debris. Determining the persons responsible for causing the fire involves laborious analysis of insurance policy applications, records of property transfers, extensive corporate ownership records, balance sheets, profit and loss statements, and comparison with information concerning other suspicious fires. Fire is used extensively not only for the criminal purposes of extortion, terrorism and revenge, but to conceal other crimes such as homicide, and for fraud against insurance companies." Id at 2632.

The report also states that in a 1981 hearing "numerous representatives of the fire fighting profession, the law enforcement profession, and the insurance industry testified that the arson investigations performed by BATF were of critical importance, and if anything, ought to be expanded." Id at 2632.

Significantly, ATF does not utilize section 844(i) to prosecute arson incidents involving malicious mischief. Rather, ATF's law enforcement program with respect to arson emphasizes the use of section 844(i) in combatting arson-for-profit, a major economic crime of national magnitude. This program instructs ATF law enforcement personnel to direct their investigations toward those incidents involving industrial or commercial activities where the suspected perpetrators are members of organized crime, white-collar criminals, members of organized arson rings, and violent criminals whose illegal activities impact upon the community at large.

A review of the reported cases under section 844(i) reveals no case predicated upon malicious mischief. The reported cases fall within the following categories: arson and bombings for profit (including insurance fraud) or some other commercial motive; arson and bombings to injure a person or damage property for revenge; and other serious arsons and bombings.

In setting the base offense level at only 6, the guidelines appear to ignore the risk of injury to emergency personnel and private citizens when emergency personnel respond to an arson scene. The risk to firefighters in large commercial buildings is substantial. The guidelines do not take these risks into account and seem to ignore congressional intent to severely punish violations of section 844(i), resulting in injury to emergency personnel. In 1984, Congress amended section 844(i) to make explicit that an injury to or the death of a public safety officer would result in an increased sentence. The committee report accompanying the legislation states: "The Committee intends that a death or injury is a direct or proximate result of conduct proscribed in section 844(d), (f), or (i), if it is reasonably foreseeable. For example, included in the reasonably foreseeable consequences of the burning or destruction by an explosive of a building affecting interstate commerce in violation of subsection 844(i) would be a response by firemen and others (including high speed driving of fire equipment and ambulances), crowd control by policemen, and the examination of the remains of the building and undetonated explosives by any one of a number of law enforcement officers and technicians." S. Rep. No. 98-225, 98th Cong., 2d Sess. 359, reprinted in 1984 U.S. Code Cong. & Ad. News 3508.

We recommend that the base offense level for arson should be increased to 24. Arson in violation of section 844(i) is a serious offense and is a crime of violence for purposes of the Career Offender provisions.

Under the current guidelines, if the defendant "endangered" the safety of another person, an increase of 4 levels is made. If the defendant "recklessly endangered" the safety of another person, an increase of 14 levels is made. If the defendant knowingly created a "substantial risk of death or serious bodily injury," an increase of 18 levels is made. Information from Assistant U.S. Attorneys handling these cases indicate that these guidelines are confusing and not easy to apply. For example, uncertainty exists with respect to the appropriate sentencing level where a fireman or private citizen is injured while firefighters are driving to the scene, and the defendant did not intend this consequence.

Arson cases under section 844(i) are, by their nature, difficult and complex cases to prosecute. United States Attorneys are more reluctant to prosecute these cases when the sentencing guidelines for increasing the base offense level above 6 are difficult to apply.

If the base offense level is increased to 24, the increase in offense level for endangering the safety of another person could be eliminated; the increase for recklessly endangering the safety of another person could be reduced from 14 levels to 4 levels; and the increase for knowingly creating a substantial risk of death or serious bodily injury could be reduced from 18 levels to 8 levels. United States Attorneys will be more willing to prosecute arson cases under section 844(i) when they are certain that a reasonable sentence will be imposed even if the increases for recklessly endangering the safety of another or for knowingly creating a substantial risk of death or serious bodily injury are not imposed by the sentencing judge.

Maximum Sentences Under The Armed Career Criminal Act, 18 U.S.C. § 924(e)

Under 18 U.S.C. § 924(e), an individual such as a felon who has three prior convictions for a violent felony or a serious drug offense and who violates 18 U.S.C. § 922(g) by possessing a firearm is subject to a mandatory minimum sentence of 15 years imprisonment. Section 924(e) does not state a maximum term. However, in United States v. Savage, 863 F.2d 595 (8th Cir. 1988), the court held that the maximum sentence under section 5G1.1(b) of the guidelines is 15 years.

In numerous cases where armed career criminals possessed firearms before the sentencing guidelines became effective, judges imposed more than the mandatory minimum 15-year sentence. In reported cases, defendants received the following sentences: life (2 cases); 30 years (1 case); 25 years (1 case); 23 years (1 case); 20 years (5 cases, including 1 case in which the defendant received consecutive sentences of 20 years each on two counts); and 18 years (1 case). In Attachment A to this letter, the reported cases are analyzed in some detail and the factors judges used in imposing more than the minimum 15-year sentence are discussed.

In a recent unreported case, Warren Bland was sentenced to life imprisonment for being an armed career criminal in possession of a firearm. Fortunately, Mr. Bland possessed the firearm before the sentencing guidelines became effective. If he possessed the firearm today, the maximum sentence he could receive would be 15 years. Mr. Bland had a long history of vicious and sadistic sexual assaults. This case is discussed in an article in U.S. News and World Report which is contained in Attachment B. Upon the Commission's request, we would be glad to provide examples of unreported cases in which defendants received more than a 15-year sentence.

A review of the cases shows that a 15-year maximum sentence for armed career criminals is inappropriate. Many factors may warrant sentences in excess of 15 years. A specific guideline should be created to cover sentencing under section 924(e) that would allow judges to sentence defendants to more than 15 years and to a maximum of life imprisonment in appropriate cases.

Under 28 U.S.C. § 994(h), Congress directed the Commission to specify a term of imprisonment at or near the maximum term authorized for defendants who were currently being convicted of a crime of violence or a controlled substance offense and have two previous convictions for crimes of violence or controlled substance offenses. Pursuant to this directive, the Commission promulgated the career offender guidelines in Chapter 4, Part B. "Armed career criminals" under 18 U.S.C. § 924(e) are by definition more serious and more hardcore offenders than are "career offenders." That is to say, armed career criminals must have already committed three prior violent felonies or serious drug offenses and, in addition, be found in unlawful possession of a firearm. Every armed career criminal under section 924(e) would have qualified as a career offender upon the commission of his third violent felony or serious drug offense if the third offense had been prosecuted in Federal court.

Under section 5G1.1 of the guidelines, the maximum sentence that may be imposed under section 924(e) is 15 years or 180 months. Under section 4B1.1 of the guidelines, career offenders will receive longer sentences than armed career criminals even though the criminal record of the career offender may well be shorter and the nature of his

criminality less serious. For example, when the statutory maximum for an offense is life (as it is under section 924(e)) and the defendant is a career offender, the guideline range specified by section 4B1.1 is 360 months (30 years) to life. The armed career criminal can only receive a maximum of 180 months or 15 years. The congressional intent embodied in section 994(h) is that hardcore offenders receive sentences at or near the statutory maximum. It is inconsistent with this intent to limit sentences under section 924(e) to the statutory minimum of 15 years. Judges should be able to sentence armed career criminals to the statutory maximum provided in the statute--life imprisonment in appropriate cases.

Felons In Possession of Firearms

Under 18 U.S.C. § 922(g), it is generaly unlawful for a felon to receive or possess a firearm. In November 1988, the Congress increased the maximum penalty for this offense from 5 years to 10-years imprisonment. The current sentencing guideline applicable to this offense in section 2K2.1 provides a base offense level of 12 and requires a decrease to level 6 if the defendant obtained or possessed the firearm solely for lawful sporting purposes or for collection. The offense level for felons who possess concealable or non-sporting firearms and who have prior convictions for crimes of violence or for controlled substance offenses is too low.

The 1986 amendments to the Gun Control Act of 1968 (18 U.S.C. Chapter 44) significantly decreased the number of felons prohibited by section 922(g) from possessing firearms. Effective November 15, 1986, under 18 U.S.C. § 921(a)(20), a felon who has received an expunction, pardon, set aside, or restoration of civil rights and who is not prohibited by the law of the jurisdiction in which convicted from possessing firearms is no longer prohibited under Federal law from possessing firearms. Thus, a section 922(g) offense has become more serious because only individuals not having any of these indicia of rehabilitation are prohibited from possessing firearms.

Because of the insignificant sentences provided for by the guidelines, ATF has experienced difficulty in having individuals prosecuted who possess firearms and who have

committed a prior crime of violence or a controlled substance offense. The guidelines should provide an increase in the offense level to 18 if the defendant is in possession of a concealable or non-sporting firearm, the firearm is loaded or the defendant possesses ammunition for the firearm, and the prior felony conviction is for a controlled substance offense or a crime of violence. This class of individuals poses a serious threat to society if they possess these types of firearms and a significant deterrent to such possession should be implemented. Furthermore, the decrease in offense level if the defendant obtained or possessed the firearm solely for lawful sporting purposes or collection should be eliminated for this class of defendants. If the defendant used a firearm in the prior felony, the offense level should be increased to 22. For purposes of our recommendation, the term "non-sporting firearm" would mean a firearm not meeting the sporting purposes criteria for importation into the United States under 18 U.S.C. § 925(d)(3).

If the defendant has two prior convictions for controlled substance offenses or crimes of violence and is in possession of a concealable or non-sporting firearm and the firearm is loaded or the defendant is in possession of ammunition for the firearm, the offense level should be increased to 26. These individuals pose a serious threat but do not qualify for sentencing as "career offenders" or as "armed career criminals." If the defendant used a firearm in two prior offenses, the offense level should be increased to 30.

Under former 18 U.S.C. § 3575, which was repealed for offenses committed on or after November 1, 1987, a defendant who had two prior felony convictions and was convicted of a third felony could be sentenced as a dangerous special offender and receive an enhanced sentence. Attachment C provides examples of cases where the defendants were sentenced to 8 and 10-years imprisonment for being a felon in possession of a firearm but where, under the sentencing guidelines, the sentence would only be 15-21 months. Under the guidelines, if the defendant received the 2 level reduction for acceptance of personal responsibility the sentence would only be 10-16 months. Also, these defendants could qualify for home detention or community confinement rather than imprisonment for up to one-half of their sentence. Attachment C also contains a discussion of other

cases where the defendant received a substantial sentence for being a felon in possession of a firearm.

Being a felon in possession of a firearm is a serious offense. In United States v. Jones, 651 F. Supp. 1309 (E.D. Mich. 1987), the court held that this offense is a crime of violence for purposes of detaining a defendant without bail. The court found that there was a substantial and continuing risk that a convicted felon will commit a violent act during the period the felon possesses the firearm. A felon possessing a firearm is especially serious when the felon has a prior record for crimes of violence or drug offenses. In United States v. Burton, 629 F.2d 975, 977 (4th Cir. 1980), the court stated: "Convicted felons, particularly those who have been convicted of violent crimes, constitute a greater threat to society if armed than if they were not." In United States v. Oliver, 683 F.2d 224, 234 (7th Cir. 1982), the court described the offense as "a serious offense with potentially violent overtones." In United States v. Felder, 744 F.2d 18, 21 (3rd Cir. 1984), the court observed that the offense "was particularly heinous in view of the defendant's long and serious history of assaultive behavior which involves, inter alia, separate convictions for robbery and voluntary manslaughter."

In some cases, a defendant may have committed three prior violent felonies or serious drug offenses but may not qualify for sentencing as an armed career criminal under section 924(e) because of a defect in one of the convictions. In United States v. Clawson, 831 F.2d 909 (9th Cir. 1987), the court held that a defendant may challenge the constitutional validity of his three prior convictions in an armed career criminal case. If a defendant is convicted of three violent crimes but the record is silent on whether he was represented by counsel in pleading guilty to one of the crimes, he cannot be sentenced as an armed career criminal. This defendant would have an offense level of 12 and he would probably be in Criminal History Category III. His sentence would be 15-21 months, and if he accepted personal responsibility for the offense, the sentence would be reduced to 10-16 months. He could serve one-half of this in home detention or community confinement. Our proposal would result in a more reasonable sentence for this defendant.

We believe our proposal narrowly targets those individuals whose possession of firearms poses a significant threat to society. For example, the offense level for an individual in possession of a sporting firearm, e.g., a conventional hunting rifle or shotgun, would remain at 12 even if the individual had previously been convicted of a crime of violence or a controlled substance offense.

We also believe that the reduction to offense level 6 if the defendant obtained or possessed the firearm solely for lawful sporting purposes or collection should be eliminated or severely curtailed. As a basis for sentence reduction, defendants are asserting this provision in clearly inappropriate cases. In United States v. Smeathers, 884 F.2d 363 (8th Cir. 1989), a convicted felon fired a rifle throughout his home after a quarrel with his wife. His sole argument on appeal was that his offense level should be reduced because he had obtained the rifle solely for sporting purposes. This argument was rejected by the court. In United States v. Pope, 871 F.2d 506, 508 (5th Cir. 1989), a felon claimed that he possessed a silencer as part of a gun collection. The court stated that only a lawful collection of guns can be considered a mitigating factor under section 2K2.2(b)(3): "it would be contrary to the clear intent of this provision to find that an illegal gun collection, such as one possessed by a convicted felon, should be used to reduce the sentence of a person guilty of violating a firearms statute." This case appears to be in conflict with section 2K2.1(b)(1) of the current guidelines which requires a reduction of the offense level to level 6 if the defendant possessed the silencer solely for lawful sporting purposes or for collection.

Unregistered Weapons Under The National Firearms Act (NFA)

Under 26 U.S.C. § 5861(d), it is unlawful for an individual to possess a National Firearms Act firearm which is not registered to that individual. Firearms under the NFA include weapons such as machineguns, sawed-off rifles and shotguns, silencers, and bombs. Section 2K2.1 of the guidelines specifies an offense level of 16 for the possession of an unregistered NFA weapon. The offense levels for felons who possess NFA weapons and who have a prior felony conviction for a crime of violence or a controlled substance offense should be increased from 16 to

20. This class of individuals poses an extremely serious threat to society if they possess NFA weapons and a significant deterrent to their possession of these weapons should be implemented. If the prior felony conviction involved the use of a firearm, the offense level should be increased to 24. The offense level should be increased to 28 if the defendant has two prior convictions for controlled substance offenses or crimes of violence. While these individuals pose a serious threat, they do not qualify for sentencing as "career offenders" or as "armed career criminals." The offense level should be increased to 32 if the defendant has two prior convictions which involved the use of firearms.

Congress recently amended 18 U.S.C. § 924(c) to increase the penalty for using a machinegun or a firearm equipped with a silencer during a crime of violence or a drug trafficking crime to a mandatory term of imprisonment of 30 years. This penalty is in addition to the penalty for the drug trafficking crime or crime of violence and shows the seriousness with which the Congress views the association of NFA weapons with violent crimes and drug offenses.

In United States v. Lopez, 875 F.2d 1124 (5th Cir. 1989), the district court made an upward departure from the guidelines in sentencing Lopez for possession of machineguns in part because he was a multi-convicted felon. The appellate court ruled that the district court's grounds for departure were not sufficient. In cases arising before the sentencing guidelines took effect, courts held that it was proper to impose consecutive sentences for possessing an unregistered NFA weapon and for being a felon in possession of the same firearm. In other cases, courts have imposed lengthy sentences on felons who possessed NFA weapons. These cases are discussed in Attachment D.

This guideline also requires a decrease to level 6 if the defendant obtained or possessed the NFA weapon solely for lawful sporting purposes or for collection. This decrease should be eliminated because under 26 U.S.C. § 5861(d) it is illegal to possess an NFA weapon unless it is registered to the person possessing it. These weapons are contraband. (See 49 U.S.C. § 781(b)(2) which provides that any firearm with respect to which a violation of the NFA has occurred is a contraband article and a vehicle used to transport the

firearm is subject to forfeiture.) Most certainly, this decrease to level 6 should not be available to any defendant who possess an unregistered NFA weapon after being convicted of a controlled substance offense or a crime of violence.

Receipt of Explosives by Felons

Under 18 U.S.C. § 842(i)(1), it is generally unlawful for any person who has been convicted of a felony to receive explosives. Under section 2K1.3 of the guidelines, the base offense level for unlawfully receiving explosives is 6 and if the defendant is prohibited under section 842(i) from receiving explosives, the offense level is increased 10 levels to 16. We recommend an increase in the offense level to 20 for individuals who receive explosives and who have been convicted of a crime of violence or a controlled substance offense. If the defendant used a firearm or explosive in the prior felony, the offense level should be increased to 26.

If the defendant has two prior convictions for controlled substance offenses or crimes of violence, the offense level should be increased to 30. These individuals pose a serious threat but do not qualify for sentencing as "career offenders" or as "armed career criminals." If the defendant used a firearm or explosive in two prior offenses the offense level should be increased to 34.

We appreciate this opportunity to comment on the sentencing guidelines. If additional information is desired, please let us know.

Sincerely yours,

SIGNED

Associate Director
(Law Enforcement)

Attachments

JBPatterson:jbp:emr 12/11/89
CCJBP #234

CODE	INITIATOR	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
	CC:FE	LE:E:A					
SUR-NAME	Patterson	Wilkin					
DATE	12-12-89	12/13/89	12/13	12/14	12/14		

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DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
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Attachment A

In two reported cases, the defendants received life sentences for being armed career criminals in possession of a firearm. United States v. Jackson, 835 F.2d 1195 (7th Cir. 1987); United States v. Gourley, 835 F.2d 249 (10th Cir. 1987).

In United States v. Jackson, supra, 30 minutes after being released from prison as part of a "work release program," Jackson robbed another bank. He had been serving a sentence for two bank robbery convictions. Jackson had previously been convicted of a total of four armed bank robberies and one armed robbery. The court stated that armed bank robbery on the day of release--following earlier armed robbery convictions going back to 1973--marked Jackson as a career criminal. The court also stated that specific deterrence had failed in Jackson's case.

In United States v. Gourley, supra, the trial judge reviewed Gourley's criminal record--11 convictions including two armed robberies and two burglaries. The trial judge also considered the fact that more than one-half of his prior crimes involved the use of firearms. Two undercover officers went to a room at a motel to attempt to buy narcotics. While the two officers were waiting in the room, Gourley burst in and pressed a sawed-off shotgun against the throat of one of the officers. A struggle ensued during which Gourley tried to pull out a .357 magnum from his waistband. Evidence produced at the sentencing hearing showed there were firing pin impressions on a shotgun shell taken from the shotgun Gourley pressed to the officer's throat. The trial judge concluded that had it not been for the malfunction of the weapon at least one police officer probably would have been killed. The Seventh Circuit stated that the circumstances surrounding Gourley's arrest and his 11 prior felony convictions justified the life sentence. The court concluded that Gourley's record demonstrated that convictions and imprisonment did not deter him from returning to crime after he was released. The court stated that because the hope of rehabilitation was unrealistic in Gourley's case, the sentencing judge had to look to other factors in reaching his decision, such as the desire to prevent repeated crimes by the defendant and the deterrence of others who would commit similar crimes.

In the following cases, the defendants received more than 20 years. In United States v. Shegog, 787 F.2d 420 (8th Cir. 1986), the defendant was sentenced to 30 years as an armed

career criminal. He was also convicted of possession of PCP with intent to distribute. In United States v. Cloyd, 819 F.2d 836 (8th Cir. 1987), the defendant was sentenced to 25 years as an armed career criminal by the trial judge and the Eighth Circuit deferred a decision on whether he should have been sentenced as an armed career criminal. Cloyd used the firearm in a bank robbery for which he was also convicted. He was also convicted of violating 18 U.S.C. § 924(c). In United States v. Rush, 840 F.2d 574 (8th Cir. 1988) (en banc), Cloyd's 25-year sentence as an armed career criminal was affirmed. In United States v. Blannon, 836 F.2d 843 (4th Cir. 1988), the defendant was sentenced to 23 years. The court mentioned that the defendant had been arrested 19 times between the ages of 14 and 18 and had 3 prior robbery or burglary convictions. The court in Blannon stated that the maximum penalty is life imprisonment and that the trial judge has broad discretion. The court observed that the trial judge had specifically set out the reasons for the 23-year sentence. The trial court had stated that it wished to incapacitate the defendant to prevent him from committing crimes and that incapacitation had always been viewed as one of the appropriate ends of punishment.

In the following cases the defendants received sentences of 20 years. In United States v. Quintero, 872 F.2d 107 (5th Cir. 1989), the defendant received consecutive 20-year prison terms on each of two counts of being an armed career criminal in possession of a firearm. On May 27, 1987, Quintero was found to have heroin in his pocket when encountered by police and in a search of an apartment police found two rifles. On October 13, 1987, police found a gun on the floor of Quintero's car after apprehending him in a high speed chase. He had two prior convictions for burglary with intent to commit theft and one prior conviction for assault with intent to rob while armed. In United States v. Jordan, 870 F.2d 1310 (7th Cir. 1989), the defendant had pled guilty to attempted murder. Jordan had used a firearm to fire at an off-duty police officer outside the store where the officer was employed as a security officer. The court mentioned that Jordan had three prior robbery convictions. In United States v. Pirovolos, 844 F.2d 415 (7th Cir. 1988), the defendant was sentenced to 20 years imprisonment with a mandatory term of 15 years without probation or parole. The court mentioned that Pirovolos had 3 prior convictions for armed robbery.

In United States v. Clawson, 644 F. Supp. 187 (D. Or. 1986), affirmed 831 F.2d 909 (9th Cir. 1987), police officers dressed in plain clothes encountered Clawson and identified themselves. Clawson began to run. After taking a few steps, he reached for the small of his back, as if to draw a gun from his waistband. One officer drew his gun and ordered him to "freeze." An altercation developed between another officer and an associate of Clawson's. Clawson began to edge away from the officer who had ordered him to stop. The officer told him to stop or he would shoot. The officer ordered Clawson to lay down and he handcuffed Clawson. When the officer was distracted by the altercation, Clawson sat up and began to move around. The officer pushed Clawson down and heard metal strike the pavement. The officer looked down and saw a handgun on the ground behind Clawson. In United States v. Jackson, 824 F.2d 21 (D.C. Cir. 1987), the defendant was apprehended in an apartment in possession of two .38 caliber pistols. The opinion states that he had one prior bank robbery conviction.

In United States v. Lego, 855 F.2d 542 (8th Cir. 1988), the defendant was sentenced to 18 years. The defendant was under indictment on two counts of being a felon in possession of a firearm, two handguns, when local police officers arrested him for possession of a third handgun.

An examination of the reported cases shows the courts have considered the following factors in sentencing defendants to more than the required 15-year minimum sentence as armed career criminals:

- the number of times the defendant had been arrested
- the number and the nature of the defendant's prior offenses
- whether the prior offenses involved the use of a firearm or the attempted discharge or the discharge of a firearm
- whether the prior offenses involved violence
- whether the defendant was on probation or parole or under indictment when he possessed the firearm
- the periods of time the defendant spent out of prison without being arrested or convicted

- how long the defendant had been released from prison before committing the current firearms offense

- the circumstances of the current offense

- whether other State or Federal offenses were committed during the current firearms offense

- whether the current offense involved the use of a firearm or the attempted discharge or the discharge of a firearm

- whether violence was involved in the current offense

- the degree of danger that the defendant posed to society, i.e., the defendant's dangerousness

- the possibility of rehabilitation of the defendant

- deterrence of the defendant

- general deterrence

- incapacitation or prevention of additional crimes by the defendant.

A criminal lack of common sense

BY JOHN LEO

The life story of Warren Bland is one of those tales evenly divided between the viciousness of the criminal and the folly of the criminal-justice system. Consider this career:

In 1958, Bland stuck a knife in the stomach of a man in a Los Angeles bar and got off with probation. In 1960, he was arrested in a series of sexual assaults on women in Los Angeles County. Three women fought back and avoided rape. One had her jaw broken in the process. Originally charged with one rape, three attempted rapes, a kidnapping and a robbery, he plea-bargained down to one rape and one kidnapping and was sent to a state mental hospital under the state's "mentally disordered sex offender" program, which has since been abandoned. The hospital warned that Bland was a sexual psychopath who would be "assaultive and/or homicidal toward women" if released.

For seven years, Bland was studied, interviewed, counseled, psychoanalyzed and "treated." In the process, the hospital disregarded its own warning. Always expert at simulating rehabilitation, Bland was hailed in a probation report for his "complete change and attitude toward his problem," and the hospital set him free.



Within months, he was back at his chosen life's work, violent sexual attacks. He was convicted of two more rapes. At his sentencing, another dark report announced that Bland was "clearly a dangerous individual who warrants segregation from society for the longest time that is possible under existing laws."

Existing laws being what they are, Bland served just seven years. Shortly after his release, he kidnapped an 11-year-old girl and her mother. The mother was molested. The girl was sexually assaulted and tortured.

In yet another of those compassionate criminal-justice breaks that kept coming his way, Bland plea-bargained and served only three years for those crimes. The crimes were growing more violent; the jail terms were getting shorter.

Lethal habits. Eight months after his release, Bland was back in jail, this time for sodomizing and torturing a small boy. At this point, in any sensible society, Bland would have been tossed into a dungeon for the rest of his life, but in California he plea-bargained for 9 years and served only 4½ years.

Bland got out again in early 1986. In December, Phoebe Ho, age 7, disappeared while walking to school in South Pasadena. She was found dead in a ditch in Riverside County, mutilated with the kind of instruments Bland had used before. A 14-year-old girl in Orange County died the same way, and an 81-year-old San Diego woman was found bound, nude and choked to death, with Bland as the chief suspect.

Sought in the Ho murder, Bland fled and was found by police—working under an alias in a McDonald's in Pacific Beach. He was wounded in the buttocks while trying to escape. In his car, police found a gun and evidence linking him to Ho. He was charged with her murder.

Enter the Feds. Larry Burns, an assistant U.S. Attorney in San Diego, filed federal charges against Bland under the Armed Career Criminal Act, the brainchild of Senator Arlen Specter (R-Pa.). This fairly new, fairly obscure legislation was passed in 1984. As originally written, it provided that anyone caught with a gun after three burglaries or robbery felonies will go to jail for a minimum of 15 years to a maximum of life imprisonment, with no possibility of parole. The act was amended and enlarged in 1986 to apply to anyone who had committed three crimes of violence or serious drug offenses.

In his brief to the court, Burns noted dryly that "a public perception has arisen, in California in particular, that the stewards of our criminal-justice system have failed to come to grips in a realistic and common-sense manner with the mounting crime wave." This is lawyerly understatement. What he might have said is that the state of California botched the Bland case for three decades and is implicated by its incompetence in the savage murder of little Phoebe Ho. It has known for 29 years that Bland is a violent sexual psychopath, yet it let him go five times.

This casual approach did not end with Bland's latest arrest in Pacific Beach. Nearly three years after Ho's death, the Riverside County prosecutor still has not managed to hold even a preliminary hearing in the case. If it continues at its current pace, the case could easily drag on for another three to five years.

As Burns notes, if the criminal-justice system fails to protect the citizens, the public will lose confidence and turn to vigilantism. Yes. And if the nation is serious about crime, it will not release sexual monsters like Bland every few years and simply let victims pay the price for the next brief round of confinement.

The lack of seriousness about violence was the real source of the outrage over Willie Horton, just as it was in the outrage over the misguided policies at the Patuxent Institution in Maryland, where a triple-murderer serving a life sentence was allowed unsupervised furloughs. The Patuxent program is being revamped, a straw in the wind. Another such straw is the announcement by New York Governor Mario Cuomo that he now favors a lifetime sentence without parole for some hardened criminals, a position he adopted when opponents of his seventh annual veto of the death penalty appeared to have enough votes to override.

The Armed Career Criminal Act also fits this new realism. Under this act, it took only 30 minutes in court for Larry Burns to accomplish what the state of California failed to do for 30 years—take Bland off the streets permanently. With no fanfare at all, the sentencing came last week. Warren Bland will stay in federal prison for the rest of his life. ■

Attachment C

In United States v. Felder, 744 F.2d 18 (3rd Cir. 1984), the defendant received an enhanced 10-year sentence as a dangerous special offender for being a felon in possession of a firearm under 18 U.S.C. App. § 1202(a). Section 1202 has since been repealed. The maximum sentence under section 1202 was only 2 years. He had only two prior convictions so under the sentencing guidelines he would not qualify as a career offender and he would not qualify as an armed career criminal under 18 U.S.C. § 924(e). Under the guidelines, Felder's offense would have an offense level of 12 and he would probably be in Criminal History Category III. His sentence would be 15-21 months and if he accepted personal responsibility for the offense the sentence would be reduced to 10-16 months. He could serve one-half of this in home detention or community confinement.

In the Felder case, the court considered nine of defendant's arrests, including arrests for rape and two arrests for aggravated assault, as well as his convictions. At page 21, the appellate court noted the the trial court's observation that "Felder's offense, possession of a gun by a felon was particularly heinous in view of the defendant's long and serious history of assaultive behavior which involves, inter alia, separate convictions for robbery and voluntary manslaughter." There is no indication in the opinion that Felder was misusing the firearm. It appears he was merely in possession of the firearm.

In United States v. Williamson, 567 F.2d 610 (4th Cir. 1977), the defendant received an 8-year enhanced sentence as a dangerous special offender for being a convicted felon in possession of a firearm under 18 U.S.C. App. § 1202. The only convictions mentioned in the opinion are a conviction for housebreaking and larceny and another conviction for manslaughter. Under the guidelines, Williamson's offense would have an offense level of 12 and he would probably be in Criminal History Category III. His sentence would be 15-21 months and if he accepted personal responsibility for the offense the sentence would be reduced to 10-16 months. He could serve one-half of this in home detention or community confinement. There is no indication in the opinion that Williamson was misusing the firearm. It appears he was merely in possession of the firearm.

In United States v. Scott, 804 F.2d 104 (8th Cir. 1986), the defendant received a 10-year enhanced sentence as a dangerous special offender for being a convicted felon in

possession of a firearm under section 1202. The only convictions mentioned in the opinion are convictions for armed robbery and robbery and conveying a weapon in a Federal prison. It appears that under the sentencing guidelines he would not qualify as a career offender and he would not qualify as an armed career criminal under 18 U.S.C. § 924(e). Under the guidelines, Scott's offense would have an offense level of 12 and he would probably be in Criminal History Category IV. His sentence would be 21-27 months and, if he accepted personal responsibility for the offense, the sentence would be reduced to 15-21 months. There is no indication in the opinion that Scott was misusing the firearm. It appears he was merely in possession of the firearm.

In United States v. Oliveri, 806 F.2d 61 (3rd Cir. 1986), the defendant received an 8-year enhanced sentence as a dangerous special offender for being a convicted felon in possession of a firearm under 18 U.S.C. App. § 1202. The opinion mentions eight convictions but the defendant had only two convictions for violent crimes and no convictions for drug offenses. Under the sentencing guidelines, he would not qualify as a career offender and he would not qualify as an armed career criminal under 18 U.S.C. § 924(e). Under the guidelines, Oliveri's offense would have an offense level of 12 and he would probably be in Criminal History Category VI. His sentence would be 30-37 months and, if he accepted personal responsibility for the offense, the sentence would be reduced to 24-30 months. There is no indication in the opinion that Oliveri was misusing the firearm. It appears he was merely in possession of the firearm.

In United States v. Ouimette, 798 F.2d 47 (2nd Cir. 1986), police officers heard a muffled shot from within a bar and discovered confusion and brawling inside the bar. The police officers observed Ouimette dropping a revolver and a pair of gloves to the floor. There was only one firearm involved in this case. Ouimette received a sentence as a dangerous special offender of 18 years--9 years for being a felon in receipt of a firearm under 18 U.S.C. § 922(h) and 9 years for receiving a firearm with an obliterated serial number under 18 U.S.C. § 922(k). The appellate court upheld the consecutive sentences for violations of sections 922(h) and 922(k). The case was remanded to the trial court for a decision on whether Ouimette was entitled to a new trial based on newly discovered evidence. In an earlier reported

decision on this case--United States v. Ouimette, 753 F.2d 188, 194 (1st Cir. 1985)--the appellate court had rejected a challenge to the severity of the sentence. The court stated that in light of Ouimette's extensive criminal record which showed a marked propensity for violence, the sentence was not disproportionately severe. The court did not list Ouimette's prior convictions.

In other cases, defendants received enhanced sentences as dangerous special offenders for being a felon in possession or receipt of a firearm--

United States v. Grier, 851 F.2d 982 (7th Cir. 1988) (10 years for a violation of 18 U.S.C. § 1202)

United States v. Porter, 831 F.2d 760 (8th Cir. 1987) (15 years for a violation of section 1202)

United States v. Vigil, 818 F.2d 738 (10th Cir. 1987) (5 years for a violation of section 1202)

United States v. Blade, 811 F.2d 461 (8th Cir. 1987) (9 years for a violation of section 1202)

United States v. Hanahan, 798 F.2d 187 (7th Cir. 1986) (10 years for a violation of section 1202)

United States v. Oliver, 787 F.2d 124 (3rd Cir. 1986) (12 years for a violation of section 1202)

United States v. Adams, 771 F.2d 783 (3rd Cir. 1985) (10 years for a violation of section 1202)

United States v. Davis, 710 F.2d 104 (3rd Cir. 1983) (12 years for a violation of section 1202)

In other firearms cases, defendants received lengthy sentences. In United States v. Gardner, 579 F.2d 474 (8th Cir. 1978), the court affirmed the sentence of the defendant. The defendant was sentenced to 10 years--two consecutive 5-year terms for being a felon in receipt of a firearm and for falsifying the firearms transaction form in purchasing the firearm from a licensed firearms dealer. In United States v. Gardner, 605 F.2d 1076 (8th Cir. 1979), the court again upheld the sentence imposed on Gardner. Example B.10 of the supplementary illustrations promulgated by the Commission

states that a count for being a felon in possession of a firearm and a count for making a false statement in the acquisition of a firearm are grouped together. This means that the defendant can only be sentenced for being a felon in possession of a firearm and the false statement in acquiring the firearm is totally ignored.

In United States v.Santiago-Fraticelli, 730 F.2d 828 (1st Cir. 1984), the defendant also received a 10-year sentence--two consecutive 5-year terms for being a felon in receipt of a firearm and for falsifying the firearms transaction form in purchasing the firearm from a licensed firearms dealer. The court did not discuss the defendant's prior criminal record in detail. The opinion states that in 1970 the defendant was convicted of a felony in New York. The defendant argued that pretrial publicity portrayed him as a Mafia boss and the mastermind behind the murder of an assistant district attorney.

In United States v. Mazak, 789 F.2d 580 (7th Cir. 1986), the defendant received a 6-year sentence--two consecutive 3-year terms for being a felon in receipt of a firearm and for falsifying the firearms transaction form in purchasing the firearm from a licensed firearms dealer. The court did not discuss the defendant's prior criminal record.

In United States v. Oliver, 683 F.2d 224 (7th Cir. 1982), the defendant received a 5-year sentence for being a felon in receipt of ammunition under 18 U.S.C. § 922(h) and a consecutive sentence of 5 years probation for being a felon in possession of a firearm in violation of 18 U.S.C. App. § 1202.

Attachment D

Courts have consistently held that a defendant may receive a consecutive sentence for possessing an unregistered NFA weapon and for being a felon in receipt or possession of the same weapon. United States v. Gann, 807 F.2d 134 (8th Cir. 1986); United States v. Gann, 732 F.2d 714 (9th Cir. 1984); United States v. Ching, 682 F.2d 799 (9th Cir. 1982); United States v. Wright, 581 F.2d 704 (8th Cir. 1978). In the Wright case, the defendant received a 10-year sentence for possessing an unregistered sawed-off shotgun and a 5-year sentence for being a felon in receipt of the same shotgun. The sentences ran consecutively. It does not appear that Wright used the shotgun in any crime. The shotgun was found when a car being driven by Wright was stopped by local police officers investigating an armed robbery.

In United States v. Pleasant, 730 F.2d 657 (11th Cir. 1984), a defendant received a 21-year sentence as a dangerous special offender under 18 U.S.C. § 3575 for possessing an unregistered sawed-off shotgun. The court stated that he had been convicted for stabbing a man in prison and for second degree murder when he beat a man to death with a shovel.

In United States v. Scott, 859 F.2d 792 (9th Cir. 1988), Scott received a 25-year sentence when an ATF agent purchased two NFA weapons from Scott and his companions. Scott received a 10-year sentence as a dangerous special offender for conspiracy to unlawfully possess NFA weapons and a sentence of 15 years as a dangerous special offender for possessing and transferring unregistered NFA weapons. The opinion stated that he had three prior felony convictions but did not discuss the convictions in detail.

UNITED STATES SENTENCING COMMISSION
1331 PENNSYLVANIA AVENUE, NW
SUITE 1400
WASHINGTON, D.C. 20004
(202) 626-8500
FAX (202) 662-7631

William W. Wilkins, Jr. Chairman
Julie E. Carnes
Helen G. Corrothers
Michael S. Gelacak
George E. MacKinnon
A. David Mazzone
Ilene H. Nagel
Benjamin F. Baer (ex officio)
Paul L. Maloney (ex officio)

MEMORANDUM

TO: COMMISSIONER CARNES
RICH MURPHY
FIREARMS WORKING GROUP

FROM: VINCE VENTIMIGLIA

RE: REVIEW OF CASE FILE SUMMARIES FOR FIREARMS GUIDELINE § 2K2.1 (1989)

DATE: NOVEMBER 9, 1990

This memorandum will summarize the 64 (sixty-four) cases sentenced under firearms guideline § 2K2.1 (1989), applying various factors identified by the Firearms Working Group. The attached tables detail the findings summarized in this memorandum.

I. SUMMARY OF GENERAL CHARACTERISTICS OF CASES REVIEWED, ACCORDING TO GUIDELINE SUBSECTION

A. NUMBER OF CASES SENTENCED UNDER THE 1989 GUIDELINE.[1]

Sixty-four (64) single-guideline cases were sentenced under the 1989 version of the guideline, according to 1989 Monitoring

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[1] The 1989 amendments modified § 2K2.1 by increasing the base offense level for a § 5861 offense from 9 to 16, 2K2.1(a)(1), by increasing the base offense level for a § 922(g) offense from 9 to 12, 2K2.1(a)(2), and by providing a base offense level for a § 922(a)(6) of 6, 2K2.1(a)(3).

data. These cases may have included multiple firearms counts or multiple statutes of convictions, but § 2K2.1 applied to all cases.[2]

The working group attempted to review all case files sentenced under the 1989 version of the guideline.[3] Since the offense had to have been committed after November 1, 1989, in order to be subject to the 1989 guideline, the working group estimated that, for all practical purposes, no cases sentenced before July 1, 1990, applied the 1989 guideline.

Of 137 cases sentenced after July 1, 1990, and received by Monitoring prior to October 15, 1990:

(1) twelve (12) applied § 2K2.1(a)(1) (1989);

(2) forty-three (43) applied § 2K2.1(a)(2) (1989), including five (5) cases that were sentenced under the Career Offender provisions, or under Armed Career Criminal provisions (see 18 U.S.C. § 924(e));

(3) nine (9) applied § 2K2.1(a)(3) (1989); and

(4) the remaining seventy-three (73) applied the 1987 version of the guideline.

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[2] Monitoring provided a list of 1554 cases, sentenced after the Mistretta decision, that applied firearms guideline § 2K2.1 alone (about 1250 cases), in conjunction with other firearms guidelines (about 100 cases), or in conjunction with one or two other guidelines (about 200 cases).

[3] U.S.S.G. § 2K2.1(a)(1) (1989) provides a base offense level 16 for violations of 18 U.S.C. § 922(o) and 26 U.S.C. § 5861; U.S.S.G. § 2K2.1(a)(2) (1989) provides a base offense level 12 for violations of 18 U.S.C. §§ 922(g), (h), or (n); U.S.S.G. § 2K2.1(a)(3) (1989) provides a base offense level 6 for violations of other firearms statutes -- primarily 18 U.S.C. § 922.

In addition to a review of all 1989 guideline cases, we will review a random 15% sample of the remaining 1300 cases sentenced under the 1987 guideline.[4]

B. MOST FREQUENT STATUTES OF CONVICTION

The most common provisions violated by Defendants sentenced under § 2K2.1(a)(1) (1989), were 26 U.S.C. § 5861(d) (possession or receipt of unregistered firearm) (eleven Defendants) and 18 U.S.C. § 922(g)(1) (felon in possession of a firearm) (four Defendants).[5]

Defendants sentenced under § 2K2.1(a)(2) were convicted of 18 U.S.C. § 922(g)(1) (felon in possession).

The most common provision violated by § 2K2.1(a)(3) (1989) Defendants was 18 U.S.C. § 922(a)(6) (providing false statement in connection with acquisition of firearm). All Defendants were convicted under this statute, or its analogue, 18 U.S.C. § 924(a)(1)(A).

C. OFFENSE LEVEL AND SENTENCE IMPOSED

Sentences imposed and offense levels under each guideline varied considerably. As might be expected, total offense levels clustered within two levels of the base offense level for each guideline subsection. Average sentences imposed tended to be high

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[4] The 1987 version of U.S.S.G. § 2K2.1 provided a uniform base offense level 9 for receipt or possession of firearms by prohibited persons. A separate memorandum will summarize findings of this review.

[5] As noted supra, the Defendant may have been convicted under multiple statutes.

in light of the average offense levels -- suggesting some effort to sentence firearms offenders to the extent permissible within the permissible § 2K2.1 guideline range.

Average sentence imposed under § 2K2.1(a)(1) was 18 months; under § 2K2.1(a)(2) was 14 months; and under § 2K2.1(a)(3) was 3.5 months.

Average total offense level received under § 2K2.1(a)(1) was level 13; under § 2K2.1(a)(2) was level 10; and under § 2K2.1(a)(3) was level 5 -- all near the base offense level for each guideline.

Sentence ranges under § 2K2.1(a)(1) ranged from probation to 43 months; sentences under § 2K2.1(a)(2) ranged from probation to 48 months; and sentences under § 2K2.1(a)(3) ranged from probation to 6 months.

Sentence distributions under § 2K2.1(a)(1) were evenly spread over the spectrum. Sentences under § 2K2.1(a)(2) tended to be bunched above 10 months, with almost one-third of Defendants receiving over 20-month sentences, and two-thirds receiving over 10-month sentences. One-third of sentences under § 2K2.1(a)(3) were probation (the bottom of the distribution of sentences for this guideline) and one-third were six-month sentences (the top of the distribution of sentences for this guideline).

Offense level ranges ranged from level 4 to level 19 under § 2K2.1(a)(1); from level 4 to level 16 under § 2K2.1(a)(2); and from level 4 to level 9 under § 2K2.1(a)(3).

Offense level distributions under § 2K2.1(a)(1) were clustered around the base offense level 16 for this guideline. Half of

Defendants sentenced under § 2K2.1(a)(1) received a total offense level 16 or level 14 (typically after receiving acceptance of responsibility under 3E1.1). Offense levels under § 2K2.1(a)(2) were similarly clustered near the base offense level 12, with 22 receiving total offense level 10 (typically after receiving an acceptance of responsibility reduction), and an additional 10 receiving total offense level 12. Offense levels under § 2K2.1(a)(3) also clustered around the base offense level 6 with reduction for acceptance of responsibility. Seven Defendants (over two-thirds) received total offense level 4. The remaining third of Defendants received total offense level 9, the top of the distribution of offense levels for this guideline.

D. DEPARTURES

Departures from the § 2K2.1 range generally matched departure figures for guidelines for other offenses.[6]

Upward departures occurred three (3) times under § 2K2.1, each time under § 2K2.1(a)(2), and each time under 18 U.S.C. § 922(g) (felon in possession). Upward departures represented eight percent (8%) of § 2K2.1(a)(2) cases, twice the average rate of departure for all offenses.

Upward departure justifications included, in one (1) case, type of firearms, existence of an arsenal of weapons, intended unlawful use, and prior similar convictions; and in the two (2)

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[6] The *United States Sentencing Commission Annual Report 1989 (Table XII, page 54)* notes that downward departure rates are 8.9% of all cases, while upward departures represent 3.5% of all cases.

remaining cases based on inadequacy of criminal history.

Downward departures occurred three (3) times for an overall downward departure rate of 4.6%. An additional downward departure was based on substantial assistance. Downward departures occurred in three § 2K2.1(a)(1) cases, and three (3) times under § 2K2.1(a)(2).

Downward departure justifications included (1) the threat that Defendant would be required to serve a State term of imprisonment from which he had been paroled, if sentenced to a prison sentence; (2) the judge's acknowledgment that the departure was "unwarranted" but would not bring "the temple of justice" "crashing down around our heads"; (3) analogizing the commercial, entrepreneurial, and inventive aspirations of Defendant to the sporting purposes reduction under § 2K2.1(a)(1); and (4) substantial assistance.

Average departure sentence was eight (8) months for upward departures, and twelve (12) months for downward departures.

E. SENTENCES IMPOSED AT THE TOP, MIDDLE, AND BOTTOM OF THE APPLICABLE GUIDELINE RANGE

Sentences under the guideline subsections appeared to be disproportionately sentenced to the top of the guideline range.[7] This distribution is confirmed by Monitoring data for 1987 firearms

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[7] Monitoring data on post-Mistretta cases sentenced through June 30, 1990, show the sixteen non-firearms guidelines most frequently applied averaging 15% of cases sentenced at the top of the range. *Memorandum from Candy Johnson to Commission and staff* titled "Information Available on Cases Sentenced Since Mistretta through June 30, 1990." (October 12, 1990).

guidelines.[8] In conjunction with the highly predictable offense levels noted above, the high number of cases sentenced at the upper end of the range suggests some concern with the available guideline range.

Top of the range sentences occurred under § 2K2.1(a)(1) in 3 (25%) of the cases; in 10 (26%) of the cases under § 2K2.1(a)(2); and in 1 (11%) of the cases under § 2K2.1(a)(3).

Middle of the range sentences occurred under § 2K2.1(a)(1) in 2 (16%) of the cases; in 7 (18%) of the cases under § 2K2.1(a)(2); and in 4 (44%) of the cases under § 2K2.1(a)(3).

Bottom of the range sentences occurred under § 2K2.1(a)(1) in 6 (49%) of the cases; in 15 (39%) of the cases under § 2K2.1(a)(2); and in 4 (44%) of the cases under § 2K2.1(a)(3).

II. SUMMARY OF CORRELATION OF SENTENCE WITH VARIOUS FACTORS

Data for all § 2K2.1 cases, except for the five career offender and armed career criminal cases, were combined to establish base data for the § 2K2.1 firearms guideline. This base data was then correlated with certain specific factors identified by the working group as having potential relevance to sentencing decisions under firearms guidelines.

The base data for § 2K2.1 include fifty-nine (59) cases, three (15%) of which were upward departures, fifteen (25%) of which were

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[8] Monitoring data for cases sentenced under 2K2.1 show 26.5% of Defendants sentenced to the top of the range, 27.8% sentenced to the middle of the range, and 20% sentenced to the bottom of the range. *Id.*

sentenced to the upper end of the range, thirteen (22%) of which were sentenced to the middle of the range, twenty-five (42%) of which were sentenced to the lower end of the range, and four (6%) of which were downward departures. The average sentence imposed under § 2K2.1 was fifteen (15) months. The average total offense level received under § 2K2.1 was level 10.

A. PRESENCE OF DRUGS IN OFFENSE OR RELEVANT CONDUCT

The presence of drug-related conduct appears to be a significant factor when sentencing for firearms offenses. The percentage of cases sentenced to the upper end of the guideline range is particularly high, as is the average sentence imposed.

Nine (15%) of the cases found Defendants apparently involved in drug-related offenses as well as firearms offenses. Two (22%) of the cases were sentenced at the lower end of the range, (including one downward departure), three (33%) in the middle of the range, and four (44%) at the upper end (including one departure upwards). Defendants in these cases averaged 18-month sentences, considerably higher than the average 15-month sentence imposed in all cases. The average offense level was 11.

B. CRIMINAL HISTORY CATEGORY

Defendants tended to have more serious criminal histories than might intuitively be expected, and Criminal History Category appears to be a significant factor in determining the offense level and length of sentence imposed. Defendants in the highest

categories have extraordinarily high average sentences -- almost twice the average for Defendants in all categories combined -- even though the average offense level received by these high-category offenders was equivalent to the average for all Defendants.

The number of offenders in each category was relatively evenly spread (though offenders sentenced under § 2K2.1 tended to have lengthier criminal histories than the overall Defendant.)[9] Fifteen (26%) of Defendants were Category I, fifteen (26%) were Category II, thirteen (19%) were Category III, four (7%) were Category IV, three (5%) were Category V, and nine (15%) were Category VI.

Defendants in the **two highest categories** (Category V and Category VI) were sentenced to the upper end of the guideline range in five (5) of twelve (12) cases, and to the middle of the spectrum in six (6) of twelve (12) cases. There was one (1) upward departure. No Defendant in these categories received a sentence at the lower end of the range. Defendants in these categories averaged thirty-eight (38) month sentences -- more than twice the average of all cases. The average offense level for Defendants in these categories was 9.5 for Category VI, and 13 for Category V (compared with an overall level 10).

Defendants in the **two lowest categories** (Category I and Category II) were sentenced to equivalent average offense levels (level 9 and level 10.5, respectively), but received significantly

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[9] Monitoring data available through the criminal history working group reveals that the overall criminal history figures are 62.5% for Category I, 11.3% for Category II, 11.3% for Category III, 5.6% for Category IV, 3.2% for Category V, 6.1% for Category VI.

lower average sentences (six (6) months and eleven (11) months, respectively). Fully half of these Defendants were sentenced to the lower end of the guideline range.

C. PRIOR CONVICTIONS FOR CRIMES OF VIOLENCE, AND FIREARM AND DRUG OFFENSES

The length of sentence imposed does not seem strongly correlated with the existence of prior firearms or drug-related offenses or convictions for crimes of violence.[10] However, departures in all three upward departure cases were explicitly justified by those Defendants' prior records, particularly for firearms and other serious offenses.

Thirty-six (61%) of Defendants had committed prior offenses related to firearms, drugs, or crimes of violence. These Defendants were sentenced to the lower end of the guideline range in thirteen cases (36%), the middle of the range in seven cases (20%), and the upper end of the range in ten cases (28%). These Defendants were sentenced to an average of 14 (fourteen) months, slightly lower than the fifteen-month average for all cases combined. The average offense level was 10, the same as that for all cases.

D. CURRENT OR REASONABLY FORESEEABLE CRIMINAL USE

The cases show a strong correlation between the sentence

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[10] This is not an irrational finding, since a sizeable majority of offenders sentenced under § 2K2.1 have been convicted of 18 U.S.C. § 922(g)(1) (felon in possession).

imposed, and the current or reasonably foreseeable criminal use of the weapon. Where criminal use occurred or was foreseeable, the average sentence imposed was high. Most upward departures occurred in these cases. Where some personal or protective use was intended, the average sentence and sentence within the guideline range was low.

Criminal use occurred or was arguably reasonably foreseeable in eighteen cases (31%) -- that is Defendants had just prior to their arrest used the weapon in the commission of a crime, or intended in the near future to use the firearm in the commission of a crime. In these cases, Defendant was sentenced to an average of seventeen (17) months imprisonment, with four cases (22%) sentenced at the lower end of the guideline range, six (33%) at the middle, and five (28%) at the upper end of the range. Two (2) upward departures, and one (1) downward departure occurred in these cases. The average offense level was just over level 10.

Firearm sales occurred in twenty-six cases (44%), where Defendants sold or intended to sell the firearms. Defendants in these cases were sentenced to an average of fifteen (15) months, with ten (47%) at the lower end of the guideline range, five (24%) in the middle, and six (29%) at the upper end of the range. The average offense level was level 10.

Personal reasons predominated in fifteen cases (25%) -- that is, Defendants appeared to possess the weapons for personal reasons related to hunting, target practice, protection, collecting, or the like. These Defendants averaged sentences of 11 months, with nine

cases (72%) sentenced at the lower end of the guideline range, three (24%) at the middle end of the range, and one (8%) at the upper end of the range. There was one upward departure. The average offense level was level 9.

E. NUMBER OF FIREARMS INVOLVED

The number of weapons ranged from one (1) to twenty-six (26). The average number of weapons in each case was 4.5 firearms. Twenty-three cases (36%) involved only one (1) weapon.

Average sentences did not correlate well with the number of weapons involved. For example, in the eighteen cases (30%) involving more than six (6) weapons, the average sentence was thirteen (13) months, while in the eleven cases (19%) involving three (3) to five (5) weapons, the average sentence was sixteen (16) months. Both of these categories had an average offense level 11.

However, **distribution of cases** significantly tended to be higher where more than six (6) weapons were involved. In those cases, six (33%) were sentenced at the lower end of the guideline range, three (17%) were sentenced in the middle, and six (33%) were sentenced at the upper end of the range. There were two (2) departures downward, and one (1) upward.

F. TYPE OF FIREARM INVOLVED

The cases show a strong correlation between type of firearm

used and the sentence imposed.[11]

National Firearms Act firearms were involved in fifteen (15) cases. The average sentence imposed was nineteen (19) months, and the average level was level 13. The cases were sentenced at or above the upper end of the guideline range in 35% of the cases, to the middle in two cases (14%), and at or below the lower end of the range in 53% of the cases.

Machineguns were involved in two cases. The average sentence imposed was twenty-two (22) months, and the average level was level 11. The cases are sentenced relatively high within the relevant ranges, with one case an upward departure, and one case sentenced at the lower end of the guideline range.

Bombs or grenades were involved in two cases, but the results for those cases are striking. The average sentence imposed was thirty (30) months, with one case sentenced at the upper end of the range, and the other sentenced above the range, as an upward departure. The average guideline level was only level 13.

Mixed types of firearms were involved in nineteen cases (33%). The average sentence was seventeen (17) months, and the average offense level was level 10. Sentences in these cases clustered disproportionately at the upper end of the guideline range, with only three cases (16%) sentenced at the lower end of the range, six (32%) at the middle of the range, and six (32%) at the upper end of the range. There was one downward departure, and three cases (16%)

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[11] In cases where more than one type of firearm was involved, the presence of a National Firearms Act firearm, or the predominant non-N.F.A. weapon, determined the "type" of firearm involved.

involved upward departures.

Handguns were involved in twenty-four cases (39%). The average sentence imposed was fifteen (15) months, and the average offense level received was over level 11. Despite the above-average term imposed, thirteen cases (55%) were sentenced at the lower end of the range, five (20%) at the middle of the range, and six (24%) at the upper end, including one upward departure.

G. LOADED FIREARM

Defendants who possessed loaded firearms, or possessed firearms and ammunition of a type fired by the weapon, typically received lengthy sentences.

Loaded firearms were involved in 13 cases (22%). The average sentence imposed was eighteen and a half (18.5) months -- considerably longer than the overall average sentence of 15 months. The average offense level received was level 11. Nine (72%) of the Defendants received sentences above the middle of the guideline range. All three (3) departure sentences involved Defendants carrying loaded weapons.

TABLE I-A -- FIREARMS GUIDELINE 2K2.1 (1989)

SENTENCE AND OFFENSE LEVEL ANALYSIS

	§ (a)(1)	§ (a)(2)	§ (a)(3)
number of cases	12	38 **	9
statutes of conviction	5861(d) (11) 922(g) (4)	922(g)(1)	922(a)(6) (7) 924(a)(1) (2)
sentence range	probation to 43 months	probation to 48 months	probation to 6 months
average sentence	18 months	14 months	3.5 months
sentence frequency	n/a	more than ... 20 mos (12) 10 mos (27)	probation (3) 6 months (3)
offense level range	level 4 to level 19	level 4 to level 16	level 4 to level 9
average offense level	level 13	level 10	level 5
offense level frequency	level 16 (2) level 14 (4)	level 10 (22) level 12 (10)	level 4 (7) level 9 (2)
departures upward	0	3 (8%)	0
departures downward	1 (8%) *	3 (8%)	0
average upward departure	n/a	8 months	n/a
average downward departure	26 months	7 months	n/a
top sentence range	3 (25%)	10 (26%)	1 (11%)
middle sentence range	2 (16%)	7 (18%)	4 (44%)
bottom sentence range	6 (49%)	15 (39%)	4 (44%)

** does not include five additional cases sentenced under Career Offender or Armed Career Criminal provisions

* downward departure for substantial assistance

TABLE I-B -- FIREARMS GUIDELINE 2K2.1 (1989)

CORRELATION OF FACTORS WITH SENTENCE AND LEVEL

	NUMBER OF CASES	UPWARD DEPART	UPPER RANGE	MIDDLE RANGE	LOWER RANGE	DOWN DEPART	AVG TERM	AVG LEVEL
OVERALL	59	3 (5%)	15(25%)	13(22%)	25(42%)	4 (6%)	15 mos	10
DRUGS	9	1 (11%)	3 (33%)	3 (33%)	1 (11%)	1 (11%)	18 mos	11
PRIORS	36	3 (8%)	10(28%)	7 (20%)	13(36%)	3 (8%)	14 mos	10
CRIMINAL USE	18	2 (11%)	5 (28%)	6 (33%)	4 (22%)	1 (11%)	17 mos	10.5
SALE	26	0	6 (29%)	5 (24%)	10(47%)	0	15 mos	10
POSSESSN	15	1 (8%)	1 (8%)	3 (24%)	6 (48%)	3 (24%)	11 mos	9
LOADED FIREARM	13	3 (24%)	3 (24%)	3 (24%)	4 (32%)	0	18.5mos	11
1 OR 2 FIREARMS	29	2 (7%)	6 (20%)	5 (17%)	14(48%)	2 (7%)	14 mos	9
3-5 FIREARMS	11	0	1 (9%)	4 (36%)	6 (54%)	0	16 mos	11
6 OR MORE FIREARMS	18	1 (6%)	6 (33%)	3 (17%)	6 (33%)	2 (11%)	13 mos	11
NFA FIREARMS	15	1 (7%)	4 (28%)	2 (14%)	7 (46%)	1 (7%)	19 mos	13
MACHINE GUN	2	1 (50%)	0	0	1 (50%)	0	22 mos	11
BOMB OR GRENADE	2	1 (50%)	1 (50%)	0	0	0	30 mos	13
MIXED FIREARMS	19	3 (16%)	6 (32%)	6 (32%)	4 (21%)	1 (6%)	17 mos	10
HANDGUNS	24	1 (4%)	5 (20%)	5 (20%)	13(55%)	0	15 mos	11.5

TABLE I-C -- FIREARMS GUIDELINE 2K2.1 (1989)

CRIMINAL HISTORY CORRELATION WITH SENTENCE AND LEVEL

	CATEGORY I	CATEGORY II	CATEGORY III	CATEGORY IV	CATEGORY V	CATEGORY VI	OVERALL
NUMBER OF CASES	15	15	13	4	3	9	59
AVERAGE TERM	6 mos	11 mos	14.5 mos	12 mos	37 mos	38.5 mos	15 mos
AVERAGE LEVEL	9	10.5	12	7	13	9.5	10
UPWARD DEPARTURE	0	1	0	1	0	1	3
TOP OF RANGE	2	5	3	0	2	3	15
MIDDLE OF RANGE	2	3	1	0	1	5	12
BOTTOM OF RANGE	11	5	7	2	0	0	25
DOWNWARD DEPARTURE	0	1	2	1	0	0	4

TABLE I-D -- FIREARMS GUIDELINE 2K2.1 (1989)

CAREER OFFENDER AND ARMED CAREER OFFENDER ANALYSIS

	ARMED CAREER CRIMINAL 18 U.S.C. 924(e)	CAREER OFFENDER
NUMBER OF CASES	3	2
AVERAGE TERM	180 months	240 months
AVERAGE OFFENSE LEVEL	13	12
AVERAGE CAREER OFFENDER LEVEL	N/A	30

Table I		
RATES OF DEPARTURE		
(FIREARMS 2K2.1)		
TYPE	Number	Percent
Sentences Within Guideline Range	266	84.4
Sentences Above Guideline Range	31	9.8
Sentences Below Guideline Range	13	4.1
Sentences Below Guideline Range for Substantial Assistance on Motion of Government	5	1.6
TOTAL	315	100.0

Table Ia		
REASONS GIVEN BY SENTENCING COURTS FOR UPWARD DEPARTURES		
(FIREARMS 2K2.1)		
REASON	Number	Percent
No reason	11	35.5
Property damage or loss	1	3.2
Weapons and dangerous instrumentalities	5	16.1
Criminal purpose	1	3.2
Public Welfare	2	6.5
Weapon use	1	3.2
Dangerous or inhumane treatment	1	3.2
Old cases	1	3.2
General adequacy of criminal history; does not reflect seriousness of criminal history	19	61.4
Significance or similarity of past conduct	1	3.2
Other Adequacy of criminal history	1	3.2
Prior criminal record-risk of future criminal conduct	2	6.5
Role in offense	1	3.2
Pursuant to a plea agreement	3	9.7
Adequate punishment to meet the purposes of sentencing	1	3.2
Deterrence	1	3.2
Guidelines do not reflect the seriousness of the offense	1	3.2
Defendant's propensity toward violence	1	3.2
Punishment	1	3.2
Nature/Seriousness of the offense	2	6.5
Dollar amount involved in crime (general)	1	3.2
Terrifying the victim	1	3.2
Other	2	6.5

Table Ib		
REASONS GIVEN BY SENTENCING COURTS FOR DOWNWARD DEPARTURES		
(FIREARMS 2K2.1)		
REASON	Number	Percent
No reason	11	61.1
Substantial assistance at motion	4	22.2
General adequacy of criminal history; does not reflect seriousness of criminal history	2	11.1
Significance or similarity of past conduct	1	5.6
Career offender	1	5.6
Adequate punishment to meet the purposes of sentencing	2	11.1
Deterrence	1	5.6
Acceptance of responsibility	1	5.6
Rehabilitation	2	11.1
Nature/Seriousness of the offense	1	5.6
Substantial assistance motion likely	1	5.6
Other	4	22.2

UNITED STATES SENTENCING COMMISSION
1331 PENNSYLVANIA AVENUE, NW
SUITE 1400
WASHINGTON, D.C. 20004
(202) 626-8500
FAX (202) 662-7631

William W. Wilkins, Jr. Chairman
Julie E. Carnes
Helen G. Corrothers
Michael S. Gelacak
George E. MacKinnon
A. David Mazzone
Ilene H. Nagel
Benjamin F. Baer (ex officio)
Paul L. Maloney (ex officio)

MEMORANDUM

TO: COMMISSIONER CARNES

FROM: VINCE VENTIMIGLIA

RE: REPORTED GUIDELINES CASES REGARDING FIREARMS GUIDELINE U.S.S.G. §§ 2K2.2 AND 2K2.3

DATE: SEPTEMBER 28, 1990

This memorandum will summarize reported guidelines cases concerning U.S.S.G. §§ 2K2.2 and 2K2.3, including the 1987 version of § 2K2.3, which was substantially similar to the current § 2K2.2. No reported guidelines cases for U.S.S.G. § 2K2.5 appeared.

In general, the reported cases involve upward departures, a number of which the appellate courts reverse. It may be that the district courts feel frustrated with the inadequacy of the guideline for this relatively serious offense, and are forced to depart upward, sometimes on less than sustainable grounds. On the other hand, the large number of reversed upward departures may be explained by various more mundane factors. A review by Monitoring should confirm any discernable trends.

A summary of departure reasons given in these cases follows the summary of the cases.

U.S.S.G. § 2K2.2 (1987)

All of the available reported cases applying § 2K2.2 are sentenced under the 1987 version -- none are sentenced under the current guideline.

U.S. v. Lopez, 875 F.2d 1124 (5th Cir. 1989), involved a convicted felon, recently paroled, who was stopped at a border checkpoint with a loaded .357 Magnum pistol under the front seat of his car, and seven machineguns, four rifles, and six shotguns in the trunk. The eighteen firearms were stolen, unregistered, and their serial numbers had been altered.

After Defendant pled to a 26 U.S.C. § 5861(d) count, the district court applied the guidelines, finding Defendant subject to level 11 (27-33 months, criminal history category VI), and then departed upward to eight years (96 months). The court justified the departure on grounds that Defendant's use of heroin, the number and type of weapons involved, the criminal history of Defendant, Defendant's recent release from prison, and Defendant's potential harm to society. But more virulently, the court departed on grounds that the § 2K2.2 (1987) guideline sentence was "weak and ineffectual," "does not reflect the conduct" in this case, fails to account adequately for large numbers of weapons, "absolutely gives away this offense," is "wrong," and places "total offense level and

criminal history points on the head of a pin."

The appellate court, sympathizing with the lower court, nevertheless remanded for resentencing, in light of the sentencing court's inadequate rationale for a departure. The circuit court suggested additional, more appropriate, grounds for a departure, including the unique potential for widespread harm, the presence of a loaded weapon under the front seat, (see § 5K2.6, possession of weapon in commission of the offense), § 5K2.9 (commission of offense to facilitate another offense), and §§ 1B1.2(b) and 1B1.3 (relevant conduct). The circuit court also lamented the lack of distinction under the guidelines between types of firearms, and noted that the plea agreement may have been so unreasonable as to have required its rejection.

The current guidelines would permit a guideline sentence of 16 (46-57 months), less than half the applicable statutory maximum.

USSC No. 89-9982, involved a case in which Defendant manufactured and placed a pipebomb under the car of a co-worker. Someone removed the bomb, placed it in an alley, and a week later the bomb exploded in the hands of children, injuring all of them, and killing one of them.

Defendant was convicted under 26 U.S.C. § 5861(f) of manufacturing the bomb, and was sentenced to 60 months in prison, after the trial court departed upward from a level 10 guideline sentence (6-12 months), finding that Defendant had experimented with bombs over a period of time, and had placed the lighted bomb

near the car, with apparent intent to injure or kill. The Circuit court struck the first justification for the departure, but approved the second justification, stating that the Commission had not considered dangerous use of the firearms or explosives, only the possession of such weapons.

The current guideline sentence would likely be at least level 14 (15-21 months).

U.S. v. Foster, 898 F.2d 25 (4th Cir. 1990), involved a jilted Defendant who found his former girlfriend and her new beau in bed. Under cover of night, Defendant purchased explosive components and constructed a homemade bomb, which he concealed in the boyfriend's car. The bomb failed to explode, and Defendant admitted to placing the bomb, but claimed he placed it only as a warning.

Defendant was charged under 26 U.S.C. § 5861(f) for manufacturing a bomb. The court applied the cross reference provision under § 2K2.2(c) to establish a higher guideline sentence under § 2A2, the aggravated assault guideline (base offense level 15, total offense level 18, 27-33 months) instead of § 2K2.2 (base offense level 12, total offense level 12, 10-16 months). Defendant was sentenced to 27 months in prison. The sentence under current guidelines would be total offense level 16 (21-27 months).

U88C No. 89-12591, involved a Defendant convicted under 18 U.S.C. §§ 922(a)(6) and (g), and 26 U.S.C. § 5861(d) and (g), for the possession of two unregistered pipebombs which he intended to use

on a list of public officials, including various State, local, and federal law enforcement officials and judges, who had created legal difficulties for him. Defendant had a list of personal information prepared about each official, including license plate numbers, and Defendant had assumed various false identities in connection with his underground work.

The district court calculated the § 2K2.2(a) guideline sentence at level 16 (100-125 months based on career offender provisions), and departed upward. The departure is justified by the "dangerousness of the defendant's conduct," "deterrent need for his removal from society," and the fact that "the guidelines even with the enhancements taking (sic) into account don't adequately reflect the dangerousness of this Defendant." Defendant appears to have had a prior drug abuse problem, has a history of crime (criminal history category V), some of it violent. The court was clearly concerned about the mental stability of the Defendant.

Sentencing in January 1989 appeared to be designed to ensure Defendant received an appropriate psychiatric evaluation over the coming 90 days, so the judge sentenced to the statutory maximum, and consecutively, on all eight counts, for a total sentence of 60 years. Sentencing in May 1989 appears to have followed the evaluation, but the upward departure, and the grounds justifying the departure, had not changed.

On appeal, Defendant appears to challenge only the following sentences: two consecutive ten-year sentences for possession of unlawfully-made destructive devices in violation of 26 U.S.C. §

5861(c), and two consecutive ten-year sentences for possession of unregistered firearms in violation of 26 U.S.C. § 5861(d).

The appellate court held that double jeopardy prevented consecutive sentences for possession and for non-registration of the same firearm where the total sentence exceeds the statutory maximum for one violation. Further, the reasonableness of a departure is based on the size of the increase over the guideline maximum, and so the departure will not be upheld until the guidelines are recalculated using correct career criminal figures. The Circuit court calculated the sentence at level 16 (41-51 months based on criminal history category V).

Current guidelines would permit level 20 (63-78 months) -- a level that might yet prompt the lower court to depart upward.

U.S.S.G. § 2K2.3 (1987)

Prior to the 1989 amendments, § 2K2.3 was substantially similar to the current § 2K2.2 in the activity it sought to restrict, as well as its guideline structure. As a result, reported decisions applying § 2K2.3 (1987) may reveal strengths and weaknesses relevant to sentencing under § 2K2.2 (1989).

U.S. v. Uca, 867 F.2d 783 (3rd Cir. 1989), involved two Defendants convicted of conspiracy to commit firearms offenses, in violation of 18 U.S.C. §§ 371 and 922. Defendants attempted to export fifty-six (56) firearms they had purchased in Pennsylvania, apparently for use in an overseas war in Albania. Under the guidelines, the Defendants were subject to 6-12 months imprisonment, and 2-8 months, respectively.

The trial court sentenced Defendants to 30 and 18 months, respectively, departing upward on the basis of number of guns (the sentencing court was particularly critical of guideline treatment of this calculation), intent to use the guns for a specific purpose, untraceability of the guns, and most prominently, threat to public welfare and safety. The appellate court invalidated the departure, saying (1) number of weapons and non-traceability of the weapons was explicitly considered by the Commission in developing § 2K2.3 as it existed prior to the 1989 amendments (and § 2K2.2 as it now exists); (2) danger to public welfare must be "substantially in excess of that which ordinarily is involved in the offense of conviction"; and (3) the guideline contemplates unlawful purpose

for the firearms.

The current guideline sentences likely would not differ from those established by the sentencing court above (level 10 and level 8).

USSC No. 89-10199, involved a Defendant who agreed to sell for cash a number of weapons, including semi-automatic weapons, to undercover agents the Defendant believed were convicted felons. Defendant was convicted on two counts, §§ 922(a)(1) (dealing in firearms without a license), and 922(g)(1) (felon in possession of a firearm), and sentenced to 60 months after the judge departed upward from a level 9 sentence (21-27 months) to two concurrent 60-month sentences, finding that Defendant's criminal history category underrepresented his criminal history, particularly in light of the fact that the Defendant had been convicted and sentenced for the same offense at least once before. No statement of reasons appears in the file to justify the admitted upward departure.

The appellate court, following the Fifth Circuit, agreed that prior convictions for the same offense might call for greater sanctions to deter Defendant from committing the same offense yet a third time. However, the appellate court found the doubling of the sentence to be unreasonable, and indicated a preference for a ten to fifteen per cent increase, more commensurate with a single criminal history category increase. The appellate court, however, expressed support for the sentencing result achieved by the lower court, and noted the ability of the sentencing court on remand to

sentence Defendant to a guideline term consecutive (instead of concurrent, as the court initially did) to a state term Defendant was then serving. The resulting time served would approximate the length of the term imposed under the challenged departure.

USSC No. 89-25770, involved a Defendant sentenced to 36 months imprisonment, after pleading to one count of Conspiracy to Engage in a Business of Dealing in Firearms Without a License, in violation of 18 U.S.C. § 922(a)(1), and 18 U.S.C. § 371. Defendant purchased and resold at least 177 weapons, including several styles capable of firing multiple rounds without reloading. A number of the weapons were later used to commit homicide, robbery, and other violent crimes. Defendant often was paid in cocaine. Defendant's guideline sentence was level 13 (12-18 months) using a base offense level 6, with enhancements for number of weapons (+5), sale to prohibited purchaser (+2), and aggravating role (+2), and minus two levels for acceptance of responsibility (-2).

The court granted an upward departure to level 19 based on the failure of the Commission to account for the seriousness of the offense, and the danger such dealing presents to the public, under § 5K2.14, particularly in light of the number (177) and type (semi-automatic) of weapons, as well as the class of purchaser and the purchaser's known, intended use for the weapons.

The appellate court invalidated this departure with respect to the first ground; but upheld the departure on the third ground, noting that the guideline does not account for the purposes for

which the weapons will be used, particularly when the seller is cognizant of those violent or illegal purposes. *Contra* U.S. v. Uca, 867 F.2d 783 (3rd Cir. 1989). The appellate court nevertheless vacated and remanded for resentencing since the lower court failed to identify the increase in sentence attributable to the single, valid ground for departure.

SUMMARY OF DEPARTURE REASONS IN APPELLATE CASES

Justification Permitted by Appellate Court:

U.S. v. Lopez, 875 F.2d 1124 (5th Cir. 1989) -- under § 2K2.2/3

* unique potential for widespread harm
* § 5K2.5, presence of a loaded weapon under the front seat
* § 5K2.9, commission of offense to facilitate another offense
* §§ 1B1.2(b) and 1B1.3 (relevant conduct)

89-9982 -- under § 2K2.2/3

* dangerous use of firearms or explosives

89-10199 -- under § 2K2.2/3

* prior convictions for firearms offenses not accounted for adequately in criminal history (increase limited to 10-15%)

U.S. v. Uca, 867 F.2d 783 (3rd Cir. 1989) -- under § 2K2.2/3

* where danger to public welfare is "substantially in excess of that which ordinarily is involved in the offense of conviction"

Justification Not Permitted by Appellate Court:

U.S. v. Lopez, 875 F.2d 1124 (5th Cir. 1989) -- under § 2K2.2/3

* Defendant's use of heroin
* the number and type of weapons involved
* the criminal history of Defendant
* Defendant's recent release from prison, Defendant's potential harm to society
* "weak and ineffectual" guidelines

89-25770 -- under § 2K2.2/3

* number and type of weapons
* class of purchaser
* purchaser's known, intended use for the weapons

U.S. v. Uca, 867 F.2d 783 (3rd Cir. 1989) -- under § 2K2.2/3

* number of guns
* intent to use the guns for a specific purpose
* inability to trace the guns
* threat to public welfare and safety

UNITED STATES SENTENCING COMMISSION
1331 PENNSYLVANIA AVENUE, NW
SUITE 1400
WASHINGTON, D.C. 20004
(202) 626-8500
FAX (202) 662-7631

William W. Wilkins, Jr. Chairman
Julie E. Carnes
Helen G. Corrothers
Michael S. Gelacak
George E. MacKinnon
A. David Mazzone
Ilene H. Nagel
Benjamin F. Baer (ex officio)
Paul L. Maloney (ex officio)

November 16, 1990

MEMORANDUM

TO: Commissioner Carnes
Firearms Working Group

FROM: Pam Barron

SUBJECT: Appellate Decisions Re: 18 U.S.C. § 922(g), Felon in Possession of a Firearm

The synopsized cases provide some idea of the sentences and issues in §922(g) cases. Although they are pre-November 1, 1989, amendment cases and may be of limited utility, they do illustrate how infrequently the range under the guideline approaches the 10-year maximum sentence authorized by the statute.

Attachment

United States v. Alvarez, 914 F.2d 915 (7th Cir. 1990)

Defendant was convicted of one count under 18 U.S.C. § 922(g) of being a felon in possession of a firearm, facing a "relatively low offense level" of 9 under U.S.S.G. §2K2.1 (sentenced July 26, 1989). The district court determined that the instant offense was a crime of violence which qualified defendant as a career offender. He also qualified for enhanced penalties of 15 years to life under the provision of 18 U.S.C. § 924(e). Based on this statute, his guideline sentence was calculated at level 37, category VI (360 months-life). The district court sentenced him to 30 years imprisonment. Defendant contests the characterization of felon in possession as a "crime of violence" for Career Offender purposes. In determining whether an offense is a crime of violence (using the definition at U.S.S.G. §4B1.2 which referred to 18 U.S.C. § 16) the court "must look to the underlying conduct as well as the elements of the offense charged." Affirmed.

United States v. Amerson-Bey, 898 F.2d 681 (8th Cir. 1990)

Defendant was convicted of one count of being a felon in possession of a firearm, 18 U.S.C. § 922(g)(1) (1989). His sentence was enhanced one level under U.S.S.G. §2K2.1(b)(1) because the firearm was stolen (scienter not required by this circuit). The court upheld the enhancement, noting that effective November 1, 1989, the enhancement would be two levels under §2K2.1(b)(2).

United States v. Anderson, 886 F.2d 215 (8th Cir. 1989)

Defendant pled guilty to possession of a firearm by a felon in violation of 18 U.S.C. § 922(g) (Supp. V 1987). The base offense level was increased to reflect that the gun he possessed was stolen, see U.S.S.G. §2K2.1(b)(1) (Oct. 1987). Defendant received a departure from criminal history category IV to VI, and was sentenced to 36 months. Remanded for court to re-consider the extent of its departure (2 categories) based on inadequacy of criminal history (since court failed to specifically compare defendant's history to those in the next higher category).

United States v. Belanger, 892 F.2d 473 (6th Cir. 1989)

Defendant pled guilty to making a false statement in connection with acquiring a firearm and receipt of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(a)(6) and 922(g). He purchased a rifle for recreational use without revealing that he had been previously convicted of a crime punishable by more than one year of imprisonment. The base offense level was 9, and he was given a 4-level reduction because he possessed the firearm for recreational purposes only (Level 5, Category VI, range 9-15 months). He

had 29 criminal history points, and the court departed up to 24 months based on the inadequacy of criminal history category VI. Affirmed.

United States v. Carey, 898 F.2d 642 (8th Cir. 1990)

Defendant was convicted of one count of possession of a firearm by a convicted felon, under 18 U.S.C. § 922(g)(1)(1988). His sentence was enhanced pursuant to 18 U.S.C. § 924(e)(1)(1988), because of his prior convictions for violent felonies. Under §924(e), the 15-year mandatory minimum became the minimum period of imprisonment to be served. The court departed upward to 19 years, and the departure was affirmed as legally permissible and reasonable. District court found that the criminal history score (Level VI, 21 points) was underrepresentative in view of three uncounted felony convictions (over 15 years old) and eight uncounted misdemeanor convictions.

(one count case, pre-Nov. 1, 1989 amendment)

United States v. Cota-Guerro, 907 G.2d 87 (9th Cir. 1990)

Defendant pled guilty to being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g). His guideline sentence was calculated at level 7, category III (4-7 months). The court departed upward to two years of imprisonment based on the inadequacy of the criminal history score. Fourteen convictions, including several assaults with weapons, were excluded because they were more than 10 years prior to the instant offense. The appellate court held that consideration of these offenses was proper, but vacated and remanded because the district court also relied on an improper ground in considering untried charges of rape and brandishing a weapon based on arrest records alone, and failed to provide notice in advance of sentencing that it planned to depart.

(one-count case, pre-Nov. 1, 1989 amendment)

United States v. Dean, 908 F.2d 1491 (10th Cir. 1990)

Defendant pled guilty to one count of possession of a firearm by a convicted felon, 18 U.S.C. § 922(g)(1) (possession of a 12-gauge, semi-automatic shotgun), and another count (possession of a revolver) was dismissed. The guideline range was 18-24 months. The district court departed upward to four years. Defendant was 36 years old, "and had been either in prison, on parole, or subject to an active arrest warrant for sixteen of the last 21 years." He had 17 criminal history points, resulting in criminal history category VI. Several "related cases" convictions were not considered in deriving the criminal history score. Reversed and remanded because district court may have included an improper ground for departure. The district court "failed to state any unusual

circumstances surrounding the facts of the sentencing offense which would have permitted the court to use the nature of the sentencing offense as grounds for departure." Dissent would affirm departure and its degree.

(one-count case, pre-Nov. 1, 1989 amendment)

United States v. Dinges, No. 90-1559 (8th Cir. Oct. 30, 1990)

Defendant pled guilty to being an unlawful user of marijuana in possession of firearms in violation of 18 U.S.C. § 922(g)(3). He was found in possession of 5 coils of explosive blasting fuse, a 12-gauge semi-automatic shotgun, a Poly-Technologies AKS-762 semi-automatic 39 mm rifle, a Smith & Wesson .41 magnum pistol, an Iver Johnson .22 caliber semi-automatic pistol, a Smith & Wesson .22 caliber semi-automatic pistol, and various ammunition and drugs. His guidelines were calculated under §2K2.1(a) (level 9) and reduced two levels under §3E1.1 for acceptance. His sentence was calculated at level 7, category I, range 1-7 months. He was sentenced to 7 months imprisonment. The court rejected his argument that he should have received a downward adjustment because the weapons were possessed for sporting or recreational purposes.

(one count case, pre-Nov. 1, 1989 amendment)

United States v. Harvey, 897 F.2d 1300 (5th Cir. 1990)

Defendant was convicted of possession of a firearm by a felon in violation of 18 U.S.C. §§ 922(g)(1) and 846. The court departed upward and sentenced defendant to 60 months of imprisonment. The base offense level was 9, criminal history category V (18-24 months). Departure based on failure of criminal history category to adequately reflect defendant's past criminal history (since several prior convictions were more than 10 years old).

United States v. Jackson, 903 F.2d 1313 (10th Cir. 1990)

Defendant pled guilty to possession of ammunition by a felon, in violation of 18 U.S.C. § 922(g)(1). Based upon the seriousness of his prior criminal history, the district court departed upward from the 4-10 month range (level 7, Category III) to the statutory maximum of five years of imprisonment.

Defendant had several prior serious convictions, including forgery, robbery by assault (within 2 years after release from prison for the forgery) and a two-count conviction for selling heroin, which fell outside the applicable time limit and were not included in calculating his criminal history. He had also received only three points for a prior

conviction for shooting with intent to kill three separate victims (sentences ran concurrently). The court determined that this criminal history warranted departure above Category VI. The court also noted that by virtue of his favorable plea agreement, defendant had avoided being charged as an armed career criminal under 18 U.S.C. § 924(e).

United States v. Joan, 883 F.2d 491 (6th Cir. 1989)

Defendant pled guilty to possession with intent to distribute marijuana, use of a telephone to facilitate a drug offense, and being a felon in possession of a firearm, in violation of 21 U.S.C. §§ 841(a)(1), 843(b), and 18 U.S.C. § 922(g). His guideline sentence was calculated at level 18, category VI (range 57-71 months). The court departed up to 120 months. The court noted that, as a result of his plea agreement, defendant avoided a 270-322 month range. The court considered defendant's prior record and similar adult conduct not resulting in conviction (including two counts of aggravated robbery and one count of kidnapping, where defendant pled to one count; an aggravated trafficking count and having weapons under a disability, where he pled to the trafficking, and facts revealed he was carrying a .44 magnum and $30,000), and concluded that defendant was a threat to the public welfare. His offense level was increased from 18 to 24, category VI (range 100-125 months). Affirmed.

United States v. Kikumura, No. 89-5129 (3d Cir. Nov. 2, 1990)

Defendant was tried and convicted of 12 counts, including possession a firearm as an illegal alien, 18 U.S.C. § 922(g)(5), the most serious charge being 18 U.S.C. § 844(d), transporting an explosive in interstate commerce knowing or intending to injure individuals or destroy property. The offense level for the 18 U.S.C. § 844(d) violation was calculated under U.S.S.G. §2K1.6, and the base offense level was determined to be 18, category I (range 27-33 months). The district court departed up to 30 years. The appellate court remanded for various technical reasons, opining that a departure to 360 months was unreasonable, but a departure to 262 months would not be.

United States v. Lang, 898 F.2d 1378 (8th Cir. 1990)

Defendant pled guilty to possession of firearms by a convicted felon in violation of 18 U.S.C. §§ 922(g) and 924(a). He was sentenced to 21 months imprisonment, followed by a 3-year term of supervised release. His original base offense level of 10, at criminal history category III, had a prescribed range of 10-16 months. The appellate court upheld the trial court's departure to the next higher criminal history category, IV, range 15-

21 months, because defendant's criminal history category did not adequately reflect the seriousness of his conduct. He had received probation or lenient treatment for several offenses.

(one count, pre-Nov. 1, 1989 amendment)

United States v. Madewell, No. 89-3700 (7th Cir Oct. 30, 1990)

Defendant was convicted of violating 18 U.S.C. § 922(g)(1), felon in possession of a firearm. The base offense level was computed by referencing the guideline "relevant to the 'offense conduct' underlying his arrest and conviction." U.S.S.G. §2K2.1(c)(2) and comment. (backg'd) (Nov. 1989). The court applied U.S.S.G. §2A2.2, Aggravated Assault: 15, +3 for brandishing a firearm, §2A2.2(b)(2), +3 because the victim of the assault was a law enforcement officer, §3A1.2 (total level = 21, range 41-51 months). Affirmed. [Note: offense occurred in August 1988. The appellate court referenced the Nov. 1989 Guidelines Manual without comment.]

United States v. McDowell, 888 F.2d 285 (3d Cir. 1989)

Defendant pled guilty to making a false statement in relation to the sale of a firearm, 18 U.S.C. § 922(a)(6); possessing a firearm in and affecting commerce, 18 U.S.C. § 922(g)(1), and operating an illegal gambling operation, 18 U.S.C. § 1955. He received an enhancement for obstruction of justice and was sentenced to 24 months imprisonment (level 15). Affirmed.

United States v. Oliver, No. 89-5055 (4th Cir. Aug. 30, 1990) (unpub.)

Defendant pled guilty to one count of being a felon in possession of a firearm, 18 U.S.C. § 922(g)(1). His offense level of 9 was reduced by two levels pursuant to §3E1.1, acceptance of responsibility. His calculated guidelines score was level 7, category III (range 4-10 months). The district court departed upward to 37 months (equivalent to level 17, category III, range 30-37 months) because his criminal history and likelihood of recidivism closely resembled a "career offender." Affirmed.

United States v. Peoples, 904 F.2d 23 (9th Cir. 1990)

Defendant pled guilty to one count of being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a). He received a one-level enhancement under U.S.S.G. §2K2.1(b)(2) because the firearm was stolen. The court rejected his

argument that he should only receive an enhancement if he personally stole the weapon. He was sentenced to 16 months imprisonment.

(one count case, pre-Nov. 1, 1989 amendment)

United States v. Perez, 897 F.2d 751 (5th Cir. 1990)

Defendant was convicted of possession of a firearm by a felon, 18 U.S.C. §§ 922(g)(1), 924(a); possession of an unregistered firearm, 26 U.S.C. §§ 5861(d), 5871; and possession of a firearm without a serial number, 26 U.S.C. §§ 5861(i), 5871.

The court calculated the sentence for the 26 U.S.C. § 5861 violations using the cross-reference provided at §2K2.2(c)(1), and applied §2A2.2, adjusting the offense level upwards for the use of a firearm while committing an aggravated assault.

(multi-court case, pre-Nov. 1, 1989 amendment)

United States v. Pologruto, 914 F.2d 67 (5th Cir. 1990)

Defendant pistol-whipped and injured two individuals and forced one to drive him around in a search for certain precursor chemicals he had helped finance for a methamphetamine manufacturing operation.

Defendant pled guilty to being a felon in possession of a firearm. The court looked to the cross-reference provision in §2K2.1(c)(2), and applied §2X1.1, attempted robbery. Ultimately, the court applied the robbery guideline, §2B3.1, including the adjustments under that section. The offense level was calculated at 28, criminal history category III (range 97-121 months). The district court departed downward to 84 months to effectuate the plea bargain. Affirmed.

United States v. Pope, 871 F.2d 506 (5th Cir. 1989)

Defendant pled guilty to one count of unlawfully possessing an unregistered firearm, a silencer, 26 U.S.C. § 5861(d), and one count of illegal possession of a firearm by a felon, 18 U.S.C. § 922(g). He was sentenced to 24 months on each count, to run concurrently. Affirmed.

United States v. Rogers, No. 90-8023 (5th Cir. Oct. 31, 1990)

Defendant pled guilty to one count of possession of a firearm by a felon, 18 U.S.C. §§ 922(g)(1), 924(a). Defendant's base offense level was calculated at 9, enhanced by 2 levels for obstruction of justice, and criminal history category VI (based on 21 points) for a score of level 11, category VI, range 27-33 months. The court departed upward to 48 months imprisonment.

one count case, pre-Nov. 1, 1989 amendment)

United States v. Schmude, 901 F.2d 555 (7th Cir. 1990)

Defendant pled guilty to one count of dealing in firearms without a license, and one count of being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(a)(1) and 922(g)(1). The guidelines calculation placed defendant at level 9, category VI (range 21-27 months). The district court departed upward to 60 months, based on the underrepresentativeness of the criminal history score. The appellate court held that the degree of departure was unreasonable.

The ground for departure did not warrant a doubling of the guideline sentence. The appellate court notes that incrementally, each criminal history category is 10-15% greater, and that this would be a reasonable guide to consider in departing from category VI. The appellate court also notes that the departure sentence could have been achieved by ordering the guideline sentence to run consecutive to the unexpired state sentence.

United States v. Scott, 914 F.2d 461 (7th Cir. 1990)

Defendant was convicted of being a felon in possession of a firearm, 18 U.S.C. § 922(g), and of possessing an unregistered firearm, 26 U.S.C. § 5861(d). The base offense level under §2K2.2(a) was calculated at 12 (range 10-16 months). Based on the fact that the firearm was a sawed-off shotgun, defendant was involved with drugs, and admitted membership in a street gang, the district court departed to offense level 24, reduced to level 22 for acceptance, finding that the circumstances justified doubling the offense severity (level 22, category III, sentenced to 60 months). Vacated and remanded for district court to articulate a "sufficiently reasoned basis for its departure" and to "justify its departure in terms of the structure of the guidelines." (pre-November 1, 1989 guidelines used).

United States v. Shinners, 892 F.2d 742 (8th Cir. 1989)

Defendant was convicted under 18 U.S.C. § 922(g) but sentenced under the guidelines for aggravated assault, as provided for by then cross-reference §2K2.1(c)(1), which stated "[i]f the defendant used the firearm in committing or attempting another offense, apply the guideline in respect to such other offense." U.S.S.G. §2K2.1(c)(1) & App. C, amend. 189. The finding of fact that appellant's conduct constituted aggravated assault was not clearly erroneous. Under §2A2.2, the base offense level was 15, plus a 5-level increase because the firearm discharged during the assault.

(one-count case, pre-Nov. 1, 1989 amendment)

United States v. Smeathers, 884 F.2d 363 (8th Cir. 1989)

Defendant pled guilty to possession of a firearm by a felon, 18 U.S.C. §§ 922(g), 924(a)(1) (Supp. V 1987). He was sentenced to 14 months imprisonment. Defendant argued for a reduction in offense level under U.S.S.G. §2K2.1(b)(2) because he obtained the weapon, a shotgun, solely for sport or recreation. At the time of arrest, defendant was using it in his home to punctuate a quarrel with his wife. Reduction denied, sentence affirmed.

United States v. Snyder, 913 F.2d 300 (6th Cir. 1990)

Defendant pled guilty to possession with intent to distribute cocaine, 21 U.S.C. §§ 841(a)(1) and (b)(1)(B); and possession of a firearm by a felon, 18 U.S.C. §§ 922(g) and 924(a)(2). "Because the drugs and [two] weapons were both found during the search of Snyder's residence . . . Count II (possession of a firearm by a former felon) was correctly categorized as a specific offense characteristic of the cocaine conviction (Count I)." See U.S.S.G. §§ 2K2.1, 3D1.2, 3D1.3. The district court adopted the offense level of the plea agreement (27) and added two levels for the presence of firearms; for offense level 29, category I (range 87-108 months) and sentenced defendant to 97 months imprisonment.

United States v. Wilson, 878 F.2d 921 (6th Cir. 1989)

Defendant pled guilty to unlawful possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g). He did not receive a reduction for acceptance of responsibility under §3E1.1, and was sentenced to 10 months imprisonment. The court rejected his claim that he was entitled to a four-level reduction because the gun was possessed innocently as collateral for a debt, interpreting §2K2.2 narrowly as providing an all-inclusive list of potential lawful uses, limited to sport, recreation, or collecting. Affirmed.

(one count case, pre-Nov. 1, 1989 amendment)

UNITED STATES SENTENCING COMMISSION
1331 PENNSYLVANIA AVENUE, NW
SUITE 1400
WASHINGTON, D.C. 20004
(202) 626-8500
FAX (202) 662-7631

William W. Wilkins, Jr. Chairman
Julie E. Carnes
Helen G. Corrothers
Michael S. Gelacak
George E. MacKinnon
A. David Mazzone
Ilene H. Nagel
Benjamin F. Baer (ex officio)
Paul L. Maloney (ex officio)

MEMORANDUM

TO: COMMISSIONER CARNES
RICH MURPHY
FIREARMS WORKING GROUP

FROM: VINCE VENTIMIGLIA

RE: REVIEW OF CASE FILE SUMMARIES FOR FIREARMS GUIDELINE § 2K2.2 (1989)

DATE: DECEMBER 3, 1990

This memorandum will summarize the seventeen cases sentenced under firearms guideline § 2K2.2 (1989), applying various factors identified by the Firearms Working Group. The attached tables detail the findings summarized in this memorandum.

I. SUMMARY OF GENERAL CHARACTERISTICS OF CASES REVIEWED, ACCORDING TO GUIDELINE SUBSECTION

A. NUMBER OF CASES SENTENCED UNDER THE 1989 GUIDELINE.[1]

Seventeen single-guideline cases were sentenced under the 1989 version of the guideline, according to 1989 Monitoring data. These

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[1] The 1989 amendments modified § 2K2.2 by increasing the base offense level for a § 5861 offense from 12 to 16, 2K2.2(a)(1), and by decreasing the base offense level from 12 to 6 for all other offenses, 2K2.1(a)(2).

cases may have included multiple firearms counts or multiple statutes of convictions, but § 2K2.2 applied to all cases.[2]

The working group attempted to review all case files sentenced under the 1989 version of the guideline.[3] Since the offense had to have been committed after November 1, 1989, in order to be subject to the 1989 guideline, the working group estimated that, for all practical purposes, no cases sentenced before July 1, 1990, applied the 1989 guideline.

Of the cases sentenced after July 1, 1990, and received by Monitoring prior to October 15, 1990, eight applied § 2K2.2(a)(1) (1989); and nine applied § 2K2.2(a)(2) (1989)

In addition to a review of all 1989 guideline cases, we reviewed a random 15% sample of the remaining 330 cases sentenced under the 1987 guideline.[4]

B. MOST FREQUENT STATUTES OF CONVICTION

The most common provisions violated by defendants sentenced under § 2K2.2(a)(1) (1989), were 26 U.S.C. § 5861(d) (possession or

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[2] Monitoring provided a list of 330 cases, sentenced after the Mistretta decision.

[3] U.S.S.G. § 2K2.2(a)(1) (1989) provides a base offense level 16 for violations of 26 U.S.C. § 5861; and U.S.S.G. § 2K2.2(a)(2) (1989) provides a base offense level 6 for violations of other firearms statutes -- primarily 18 U.S.C. § 922.

[4] The 1987 version of U.S.S.G. § 2K2.2 provided a uniform base offense level 12 for receipt or possession of firearms by prohibited persons. A separate memorandum will summarize findings of this review.

receipt of unregistered firearm) (seven defendants).[5]

Defendants sentenced under § 2K2.2(a)(2) were convicted under 18 U.S.C. § 922(a)(6) (false statement to a dealer) (two defendants), 18 U.S.C. § 922(a)(1) (unlicensed engaging in the business of dealing firearms) (three defendants), and several additional statutes.

C. OFFENSE LEVEL AND SENTENCE IMPOSED

Sentences imposed and offense levels under each guideline varied considerably. As might be expected, total offense levels clustered within two levels of the base offense level for each guideline subsection. Average sentences, however, were low.

Average sentence imposed under § 2K2.2(a)(1) was 11 months; and under § 2K2.2(a)(2) was 4.4 months.

Average total offense level received under § 2K2.2(a)(1) was almost level 15; and under § 2K2.2(a)(2) was over level 5 -- all near the base offense level for each guideline.

Sentence ranges under § 2K2.2(a)(1) ranged from probation to 36 months; and sentences under § 2K2.2(a)(2) ranged from probation to 36 months.

Sentence distributions under § 2K2.2(a)(1) were evenly spread over the spectrum, with three over fifteen months, and five less than six months. Sentences under § 2K2.2(a)(2) tended to be bunched at probation.

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[5] As noted supra, the Defendant may have been convicted under multiple statutes.

Offense level ranges ranged from level 14 to level 17 under § 2K2.2(a)(1); and from level 4 to level 12 under § 2K2.2(a)(2).

Offense level distributions under § 2K2.2(a)(1) were clustered around the base offense level 16 for this guideline. Five defendants sentenced under § 2K2.2(a)(1) received a total offense level 14 (typically after receiving acceptance of responsibility under 3E1.1). Offense levels under § 2K2.2(a)(2) were similarly clustered near the base offense level 6, with five receiving total offense level 4 (typically after receiving an acceptance of responsibility reduction), and an additional two receiving total offense level 5.

D. DEPARTURES

Departures were considerably more skewed under § 2K2.2, than might be expected for guidelines for other offenses.[6]

Upward departures occurred one time under § 2K2.2(a)(2). **Downward departures** occurred six times under § 2K2.2(a)(1), two of which were departures for substantial assistance. **Average departure sentence** was twenty months for upward departures, and sixteen months for downward departures.

E. SENTENCES IMPOSED AT THE TOP, MIDDLE, AND BOTTOM OF THE APPLICABLE GUIDELINE RANGE

Sentences under the guideline subsections appeared to be

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[6] The *United States Sentencing Commission Annual Report 1989 (Table XII, page 54)* notes that downward departure rates are 8.9% of all cases, while upward departures represent 3.5% of all cases.

disproportionately sentenced to the bottom of the guideline range.[7]

Middle of the range sentences occurred under § 2K2.2(a)(1) in 1 (13%) of the cases; and in 1 (11%) of the cases under § 2K2.2(a)(2).

Bottom of the range sentences occurred under § 2K2.2(a)(1) in 1 (13%) of the cases; and in 7 (78%) of the cases under § 2K2.2(a)(2).

II. SUMMARY OF CORRELATION OF SENTENCE WITH VARIOUS FACTORS

Data for all § 2K2.2 cases, were combined to establish base data for the § 2K2.2 firearms guideline. This base data was then correlated with certain specific factors identified by the working group as having potential relevance to sentencing decisions under firearms guidelines.

The base data for § 2K2.2 include seventeen cases, one (6%) of which was an upward departure, two (12%) of which were sentenced to the middle of the range, eight (47%) of which were sentenced to the lower end of the range, and six (35%) of which were downward departures. The average sentence imposed under § 2K2.2 was seven and a half months. The average total offense level received under § 2K2.2 was just under level 10.

A. CURRENT OR REASONABLY FORESEEABLE CRIMINAL USE

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[7] Monitoring data on post-Mistretta cases sentenced through June 30, 1990, show the sixteen non-firearms guidelines most frequently applied averaging 15% of cases sentenced at the top of the range. *Memorandum from Candy Johnson to Commission and staff* titled "Information Available on Cases Sentenced Since Mistretta through June 30, 1990." (October 12, 1990).

Criminal use occurred or was arguably reasonably foreseeable in only one case -- that is defendants had just prior to their arrest used the weapon in the commission of a crime, or intended in the near future to use the firearm in the commission of a crime. Defendant was sentenced in this case to a thirty-six month term, a sentence at the lower end of the guideline range. The offense level was level 15.

Firearm sales occurred in ten cases where defendants sold or intended to sell the firearms. Defendants in these cases were sentenced to an average of nine months, with one (10%) upward departure, one (10%) in the middle, and seven (70%) at the lower end of the range. There was one downward departure. The average offense level was above level 7.

Personal reasons predominated in four cases -- that is, defendants appeared to possess the weapons for personal reasons related to hunting, target practice, protection, collecting, or the like. These defendants averaged sentences of three months, with one case (25%) sentenced at the lower end of the guideline range, and three (75%) downward departures. The average offense level was almost level 13.

B. NUMBER OF FIREARMS INVOLVED

The number of weapons ranged from one (1) to four hundred (400). The average number of weapons in each case was under four firearms.

Average sentences correlated fairly well with the number of

weapons involved. For example, in the three cases involving more than eight weapons, the average sentence was twelve months, while in the eight cases involving three to seven firearms, the average sentence was nine and a half months. Where there were fewer than three firearms, the average sentence was under three months.

C. TYPE OF FIREARM INVOLVED

National Firearms Act firearms were involved in seven cases. The average sentence imposed was 4.4 months, and the average level was level 13. The cases were sentenced at or below the lower end of the range in all of the cases.

Bombs or grenades were involved in one case, with the sentence imposed being fourteen months, and the guideline level only level 4.

Sawed-off firearms were involved in three cases, and accounted for three of the downward departures among the N.F.A. firearms cases. The average sentence imposed was almost fifteen months, and the average level was level 4.

Mixed types of firearms were involved in five cases. The average sentence was ten months, and the average offense level was level 14. Sentences in these cases included two cases sentenced at the lower end of the range and one at the middle of the range. There was one downward departure, and one upward departure.

Non-N.F.A. firearms were involved in eight cases. The average sentence imposed was seven and a half months, and the average offense level received was over level 7. Two cases were sentenced

at the middle of the range, five at the lower end, and there was one downward departure.

TABLE II-A -- FIREARMS GUIDELINE 2K2.2 (1989)

SENTENCE AND OFFENSE LEVEL ANALYSIS

	$ (a)(1)	$ (a)(2)
number of cases	8	9
statutes of conviction	5861(d) (7) 5861(f) (1)	922(a)(6) (2) 922(a)(1) (3)
sentence range	probation to 36 months	probation to 36 months
average sentence	11 months	4.4 months
sentence frequency	3 greater than 15 mos 5 less than 6 mos	6 probations
offense level range	level 14 to level 17	level 4 to level 12
average offense level	level 14.75	level 5.44
offense level frequency	level 14 (5)	level 4 (5) level 5 (2)
departures upward	0	1 (11%)
departures downward	6 (75%) *	0
average upward departure	n/a	20 months
average downward departure	16 months	n/a
top sentence range	0	0
middle sentence range	1 (13%)	1 (11%)
bottom sentence range	1 (13%)	7 (78%)

* includes 2 downward departures for substantial assistance

TABLE II-B -- FIREARMS GUIDELINE 2K2.2 (1989)

CORRELATION OF FACTORS WITH SENTENCE AND LEVEL

	NUMBER OF CASES	UPWARD DEPART	UPPER RANGE	MIDDLE RANGE	LOWER RANGE	DOWN DEPART	AVG TERM	AVG LEVEL
OVERALL	17	1(6%)	0	2(12%)	8(47%)	6(35%)	7.5	9.8
DRUGS	1	--	--	--	--	1(100%)	36	15
PRIORS	2	--	--	--	1(50%)	1(50%)	18	9.5
CRIMINAL USE	1	--	--	--	--	1(100%)	36	15
SALE	10	1(10%)	--	1 (10%)	7(70%)	1(10%)	9	7.4
POSSESSN	4	--	--	--	1(25%)	3(75%)	3	12.7
1 OR 2 IREARMS	6	--	--	1(17%)	2(34%)	3(50%)	2.7	9.3
3-7 FIREARMS	8	--	--	1(12%)	5(63%)	2(25%)	9.5	9.8
8 OR MORE FIREARMS	3	1(33%)	--	--	1(33%)	1(33%)	12	9
NFA FIREARM	7	--	--	--	2(29%)	5(71%)	4.4	13.3
BOMB OR GRENADE	1	--	--	--	--	1(100%)	14	4
MIXED FIREARMS	5	1(20%)	--	1(20%)	2(40%)	1(20%)	10.1	14.4
SAWED-OFF FIREARMS	3	--	--	--	--	3(100%)	14.7	4
NON-NFA FIREARMS	8	--	--	2(25%)	5(63%)	1(12%)	7.5	7.6

UNITED STATES SENTENCING COMMISSION
1331 PENNSYLVANIA AVENUE, NW
SUITE 1400
WASHINGTON, D.C. 20004
(202) 626-8500
FAX (202) 662-7631

William W. Wilkins, Jr. Chairman
Julie E. Carnes
Helen G. Corrothers
Michael S. Gelacak
George E. MacKinnon
A. David Mazzone
Ilene H. Nagel
Benjamin F. Baer (ex officio)
Paul L Maloney (ex officio)

MEMORANDUM

TO: COMMISSIONER CARNES

FROM: VINCE VENTIMIGLIA

RE: REVIEW OF CASE FILE SUMMARIES FOR FIREARMS GUIDELINE § 2K2.2 (1987)

DATE: OCTOBER 9, 1990

This memorandum will summarize the 15% sample of cases sentenced under firearms guideline § 2K2.2 (1987), applying the variables identified during the recent meeting of the Firearms Working Group.

1. How many cases were sentenced under this guideline?

330 cases were sentenced under the guideline, according to 1989 Monitoring data. The 15% random sample included a request for 50 cases. However, the summaries provided below only consider 34 cases. The remaining files were not used since they involved the 1989 guideline (six files), involved other statutes (two files should have been § 2K2.1 cases), were mispulled (three files), or could not be readily provided (five files).

2. What were the most common statutes of conviction?

The most common provision violated by 1987 Defendants was 26 U.S.C. § 5861(d) (receipt or possession of unregistered firearm). Virtually all Defendants were convicted under this statute.

3. Under what version of the guidelines was each case sentenced? (The 1989 amendments modified § 2K2.2 in a number of ways, including increasing the base offense level for a § 5861 offense from 12 to 14.)

34 cases were sentenced under the 1987 guidelines.

4. What offense levels and actual sentences are imposed?

1987 sentences ranged in length from probation to 39 months. The average 1987 sentence was 11 months long. Six (18%) 1987 sentences of probation were handed down. 1987 offense levels ranged from 2-18, the average level being 10. Twenty-one (63%) of the 1987 offense levels were level 10 (base offense level 10 minus two levels for acceptance of responsibility).

5. How many departure sentences involve these guidelines? How many are upward? How many are downward? What is the extent of the departure? What was the rationale for the departure?

Departures appeared not to play a significant role in sentencing under the 1987 guideline. Two (6%) of 1987 sentences involved departures. There was one upward departure to 39 months. The departure of six months was intended to compensate for inadequate criminal history category. Defendant in this case was a member of the Hells Angels motorcycle gang, and had dealt in 30 machineguns, silencers, and AR-15s. There was one downward departure of six months (to probation) based on the judge's "own judgment and experience as to what he think[s] an appropriate sentence is" and since the guidelines remove too much discretion from the sentencing judge.

6. How many sentences were made at the top 25% of the applicable guideline range? At the top of the applicable guideline range?

A substantial number of sentences appeared at the top of the guideline range for the 1987 guideline. Six (18%) of the 1987 sentences were at the upper level of the guideline range (including one departure, and one sentence one month shorter than the maximum possible under the guidelines).

7. How do sentences vary with the following factors --

a. presence of drugs in offense or relevant conduct?

The presence of drug-related conduct may be a significant factor when considering sentencing for firearms offenses. Ten (30%) of the 1987 cases where Defendants were apparently involved in drug distribution as well as firearms offenses. Five of the cases were sentenced at the lower end of the range, three in the middle of the range, and two at the upper end (including one departure upwards). Defendants in these cases averaged 14-month sentences, considerably higher than the average 10-month sentence imposed in all cases. The average offense level was 11.

b. criminal history category of the Defendant?

Criminal History Category appears to be a significant factor in determining the offense level and length of sentence imposed. Defendants in 1987 cases were generally category I. 59% were Category I, 15% were Category II, 14% were Category III, and 6% each were Category IV and V. Defendants in the three highest categories were sentenced to the highest guideline sentence possible in three of nine cases, and to the middle of the spectrum in four of nine cases. Defendants in these categories averaged 22 month sentences -- more than twice the average of all cases. The average offense level was 12.

c. prior firearms offenses? prior drug offenses? prior crimes of violence?

The length of sentence imposed seems to be correlated with the existence of prior offenses or convictions.

Fourteen (42%) Defendants in 1987 cases had committed prior offenses related to firearms (ten Defendants), drug (five Defendants), or crimes of violence (seven Defendants). These Defendants were sentenced to the lower end of the guideline range in four cases (28%), the middle of the range in four cases (28%), and the upper end of the range in six cases (42%). These Defendants were sentenced to an average of 15 months, considerably higher than the average of 11 months in all cases combined. The average offense level was 10.

d. nature of the possession of the firearm?

The cases show a strong correlation between the intended or recent use for the weapon, and the sentence imposed.

In fifteen cases (45%), Defendants had just prior to their arrest used the weapon in the commission of a crime, or intended in the near future to use the firearm in the commission of a crime. In these cases, Defendant was sentenced to an average of 17 months imprisonment, with four cases sentenced at the lower end of the guideline range, two at the middle, and nine at the upper end of the range.

In ten cases (30%), Defendants intended to sell the firearms. Defendants in these cases were sentenced to an average of 10 months, with five cases at the lower end of the guideline range, four in the middle, and one at the upper end of the range.

In nine cases (25%), Defendants appeared to possess the weapons for personal reasons related to hunting, target practice, protection, collecting, or the like. These Defendants averaged

sentences of 4 months, with all cases sentenced at the lower end of the guideline range.

e. type of firearms involved?

The 1987 cases show a strong correlation between type of firearm used and the sentence received. (In cases with more than one firearm, the most dangerous weapon is considered for purposes below.)

Six cases (18%) involved machineguns. The average sentence imposed was 19 months, with one case sentenced at the lower end of the guideline range, one at the middle of the range, and four at the upper end.

Four cases (12%) involved pipebombs or grenades. The average sentence imposed was 19 months, with one case sentenced at the lower end of the range, two at the middle of the range, and one at the upper end of the range.

Four cases (12%) involved automatic weapons (including AR-15s or AK-47s). The average sentence imposed was ten months, with one case sentenced at the lower end of the range, two at the middle of the range, and one at the upper end of the range.

Seventeen cases (50%) involved sawed off weapons (usually shotguns). The average sentence imposed was nine months, with eleven cases sentenced at the lower end of the range, three at the middle of the range, and three at the upper end.

The remaining two cases involved handguns or rifles. In both cases, probation was imposed.

f. number of firearms involved?

The 1987 cases also correlate with the number of weapons involved. The average number of guns per conviction was 4.5, with a range from one to thirty guns.

In the eight cases (24%) involving more than six weapons, the average sentence was 18 months, with two cases sentenced at the lower end of the range, three at the middle, and three at the upper end, with sentences ranging from 6-39 months.

In the remaining cases no concrete trend could be determined, based on number of weapons alone.

g. geographical region, and urban or rural location

The 1987 cases include thirteen cases (39%) occurring in "urban" settings, and twenty-one (61%) occurring in "rural" locations, particularly where Defendant living in a remote area

possesses a gun primarily for protection, hunting, or similar personal reasons. Note: categorizing the cases is not exact, due to multiple locations for a crime, and other factors.

Those in urban areas averaged eleven month sentences and were sentenced seven times at the lower end of the guideline range, three times at the middle of the range, and three times at the upper end. Those in rural areas also averaged eleven month sentences, with ten sentenced at the lower end of the guideline range, eight at the middle, and three at the upper end.

1987 cases occurred predominantly in the Midwest and the South. Only one case occurred in the Northeast. The 1987 cases show three cases (9%) from the District of Oregon, four cases (12%) from Texas, four cases (12%) from Tennessee, and three cases (9%) from the Northern District of Indiana.

2K2.2
(SINGLE COUNT CASES ONLY)

RELATIVE POSITION OF SENTENCE TO GUIDELINE RANGE

RELATIVE POSITION	Frequency	Percent
BELOW	27	12.4
BOTTOM	74	33.9
LOWER	27	12.4
UPPER	36	16.5
TOP	46	21.1
ABOVE	8	3.7
TOTAL	218	100.0

Frequency Missing = 101

Table II		
RATES OF DEPARTURE		
(FIREARMS 2K2.2)		
TYPE	Number	Percent
Sentences Within Guideline Range	128	86.5
Sentences Above Guideline Range	6	4.1
Sentences Below Guideline Range	10	6.8
Sentences Below Guideline Range for Substantial Assistance on Motion of Government	4	2.7
TOTAL	148	100.00

Table IIa		
REASONS GIVEN BY SENTENCING COURTS FOR UPWARD DEPARTURES		
(FIREARMS 2K2.2)		
REASON	Number	Percent
No reason	3	50.0
Criminal Purpose	2	33.3
General adequacy of criminal history; does not reflect seriousness of criminal history	2	33.3
Charge/Plea doea not reflect the seriousness of the offense	1	16.7
Guidelines do not reflect the seriousness of the offense	1	16.7
Other	1	16.7

Table IIb		
REASONS GIVEN BY SENTENCING COURTS FOR DOWNWARD DEPARTURES		
(FIREARMS 2K2.2)		
REASON	Number	Percent
No reason	9	64.3
Age	1	7.1
Mental and emotional conditions	2	14.3
Physical condition	1	7.1
Drug dependence and alcohol abuse	1	7.1
Previous employment record	1	7.1
Family ties and responsibilities	1	7.1
Community ties	4	28.6
Substantial assistance at motion	1	7.1
Lesser harm	1	7.1
No prior record/first offender	1	7.1
To put defendant's sentence in line with co-defendants	1	7.1
First felony conviction	1	7.1
Counseling/treatment (general)	1	7.1
Defendant was a police officer or ex-police officer	1	7.1
Other	1	7.1

2K2.2

DISTRIBUTION OF OFFENSE LEVEL BY CRIMINAL HISTORY CATEGORY

OFFENSE LEVEL / Frequency / Percent	CRIMINAL HISTORY CATEGORY 1	2	3	4	5	6	Total
4	16 4.34	4 1.08	2 0.54	0 0.00	0 0.00	0 0.00	22 5.96
5	4 1.08	1 0.27	0 0.00	0 0.00	0 0.00	0 0.00	5 1.36
6	5 1.36	1 0.27	0 0.00	1 0.27	0 0.00	0 0.00	7 1.90
7	3 0.81	1 0.27	1 0.27	0 0.00	1 0.27	0 0.00	6 1.63
8	8 2.17	0 0.00	0 0.00	1 0.27	1 0.27	0 0.00	10 2.71
9	1 0.27	2 0.54	0 0.00	0 0.00	0 0.00	0 0.00	3 0.81
10	62 16.80	29 7.86	16 4.34	6 1.63	3 0.81	2 0.54	118 31.98
11	12 3.25	4 1.08	4 1.08	0 0.00	2 0.54	3 0.81	25 6.78
12	23 6.23	6 1.63	7 1.90	5 1.36	2 0.54	1 0.27	44 11.92
13	8 2.17	3 0.81	2 0.54	0 0.00	1 0.27	0 0.00	14 3.79

(Continued)

OFFENSE LEVEL requency Percent	CRIMINAL HISTORY CATEGORY 1	2	3	4	5	6	Total
14	15 4.07	8 2.17	3 0.81	3 0.81	1 0.27	0 0.00	30 8.13
15	2 0.54	2 0.54	5 1.36	1 0.27	0 0.00	2 0.54	12 3.25
16	10 2.71	2 0.54	2 0.54	2 0.54	0 0.00	0 0.00	16 4.34
17	4 1.08	1 0.27	1 0.27	0 0.00	0 0.00	0 0.00	6 1.63
18	5 1.36	0 0.00	3 0.81	0 0.00	1 0.27	0 0.00	9 2.44
19	1 0.27	1 0.27	0 0.00	0 0.00	0 0.00	2 0.54	4 1.08
20	1 0.27	1 0.27	1 0.27	1 0.27	0 0.00	0 0.00	4 1.08
21	3 0.81	0 0.00	0 0.00	0 0.00	0 0.00	0 0.00	3 0.81
22	1 0.27	0 0.00	0 0.00	0 0.00	0 0.00	1 0.27	2 0.54
23	0 0.00	1 0.27	0 0.00	0 0.00	0 0.00	0 0.00	1 0.27

(Continued)

OFFENSE LEVEL Frequency Percent	CRIMINAL HISTORY CATEGORY 1	2	3	4	5	6	Total
24	2 0.54	1 0.27	3 0.81	0 0.00	0 0.00	2 0.54	8 2.17
25	1 0.27	0 0.00	0 0.00	0 0.00	0 0.00	0 0.00	1 0.27
26	3 0.81	1 0.27	0 0.00	0 0.00	0 0.00	0 0.00	4 1.08
27	1 0.27	0 0.00	0 0.00	0 0.00	0 0.00	0 0.00	1 0.27
28	2 0.54	0 0.00	0 0.00	1 0.27	0 0.00	0 0.00	3 0.81
30	5 1.36	0 0.00	1 0.27	0 0.00	0 0.00	0 0.00	6 1.63
32	1 0.27	1 0.27	0 0.00	1 0.27	0 0.00	0 0.00	3 0.81
34	0 0.00	0 0.00	0 0.00	0 0.00	0 0.00	0 0.00	0 0.00
36	0 0.00	1 0.27	0 0.00	0 0.00	0 0.00	0 0.00	1 0.27
37	0 0.00	0 0.00	0 0.00	0 0.00	0 0.00	1 0.27	1 0.27
Total	199 53.93	71 19.24	51 13.82	22 5.96	12 3.25	14 3.79	369 100.00

Frequency Missing = 160

UNITED STATES SENTENCING COMMISSION
1331 PENNSYLVANIA AVENUE, NW
SUITE 1400
WASHINGTON, D.C. 20004
(202) 626-8500
FAX (202) 662-7631

William W. Wilkins, Jr. Chairman
Julie E. Carnes
Helen G. Corrothers
Michael S. Gelacak
George E. MacKinnon
A. David Mazzone
Ilene H. Nagel
Benjamin F. Baer (ex officio)
Paul L. Maloney (ex officio)

MEMORANDUM

TO: COMMISSIONER CARNES

FROM: VINCE VENTIMIGLIA

RE: REVIEW OF CASE FILE SUMMARIES FOR FIREARMS GUIDELINE § 2K2.3 (1987)

DATE: OCTOBER 2, 1990

This memorandum will summarize the 30% sample of cases sentenced under firearms guideline § 2K2.3 (1987), applying the variables we identified in our request for Monitoring data.

1. How many cases were sentenced under this guideline?

Sixty-six cases were sentenced under the 1987 and 1989 versions of § 2K2.3. The 30% random sample looked at seventeen cases.

2. Under what version of the guidelines was each case sentenced? (For example, the 1989 amendments modified §§ 2K2.2 and 2K2.3 so that the revised § 2K2.2 now applies to similar conduct to which the pre-amendment § 2K2.3 applied.)

All cases, except three, were sentenced under the 1988 version of § 2K2.3. The three exceptions were sentenced under the 1989

versions of § 2K2.3, but one of those was incorrectly sentenced, and should have been sentenced under the 1988 version.[1]

3. What offense levels and actual sentences are imposed?

Sentences ranged in length from probation to twelve months. The average sentence was 4.6 months long. Eight sentences of probation were handed down. In two additional cases, the sentence was limited to time served. Offense levels ranged from 4-12. The average level was 7.3.

4. How many departure sentences involve these guidelines? How many are upward? How many are downward? What is the extent of the departure? What was the rationale for the departure?

Two related cases sentenced before the same judge were not sentenced in the guideline range, but no departure was entered in either case. The judge may have erred and sentenced them as Category I defendants, but no statement of reasons is available.[2] In addition, two aberrational sentences likely were not actually formal departures. The first involved a suspension of a level 10 (6-12 months) sentence of twelve months, and the imposition of three months home detention. The second involved a sentence of probation where the guideline sentence was level 7. This may actually have been a guideline sentence with one month CTC imposed, but the statement of reasons was not available for review.

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[1] No separate review of these three 1989 cases is made, due to the insignificant number of cases available for review.

[2] These cases have been treated as having been sentenced at the lower end of the range.

5. How many sentences were made at the top 25% of the applicable guideline range?

Four (24%) of the sentences were at the upper level of the guideline range, three (18%) were at the middle of the range, and ten (60%) were at the bottom of the range.

6. How do sentences vary with the following factors --

a. presence of drugs in offense or relevant conduct?

Five cases involved defendants apparently involved in drug distribution as well as firearms offenses. In two of the cases (prosecuted in the same district) drug conduct (1.6 kilos of marijuana in both cases) was an explicit factor in determining the guideline sentence, and these sentences were above the average firearm sentence (level 10 and level 12 in the respective cases). In the three remaining cases, two defendants received sentences at the lower end of the range, and one at the upper end (the latter having been found to possess a half kilo of cocaine at the time of arrest).

b. Defendant was a drug user or was on drugs at the time of the offense?

At least one defendant was arrested in the possession of drugs (a small quantity of marijuana), but he denied using the drug. His sentence was at the upper end of the guideline range. Thirteen defendants appear to have abused substances preceding to, and at the time of their arrest. There does not appear to be any consistent correlation of sentence with this factor.

c. injury or no injury to the victim?

In no case was there injury to a victim.

d. criminal history category of the defendant?

Defendants were generally category I, except in two cases of category II defendants, and three cases of category III defendants. Among these last five cases, one defendant was sentenced to the lower end of the guideline range, in two cases, the upper end, and in two cases to the lower end of the range.

e. prior firearms convictions? prior drug convictions? prior convictions for crimes of violence?

Three defendants had prior convictions for crimes of violence, but no correlation with sentence is apparent. A number of defendants also had prior DUI/DWI convictions.

f. section and subsection of statute of conviction?

The most common provision violated was 18 U.S.C. § 371 (conspiracy to violate firearms statutes). This statute limits statutory exposure to five years, but its use as a plea statute likely has no effect on guideline sentence, since the guidelines reference the underlying offense. No single statutory firearms provision was the object of more than two prosecutions.

g. extent of use of the firearm (i.e. brandishing or use)?

In most cases, the firearm was concealed as it was being transported, or was sold to undercover agents. In the two cases where use was intended, arrests prevented actual use.

h. existence of a plea agreement in which additional counts were dropped?

In all cases, plea agreements were entered into, and in all cases counts were dropped, often resulting in drastically reduced

exposure as a result of the plea to a count sentenced under § 2K2.3.

i. type and number of firearms involved?

Typically, firearms other than N.F.A. firearms were involved, i.e. most cases involved semi-automatic weapons, rifles, and various revolvers and pistols. Cases with N.F.A. firearms usually resulted in lengthier than average sentences, or sentences at the upper end of the range.[3] Number of weapons ranged from one to 100, with an average of almost five weapons per case (excluding the case with 100 weapons). Number of weapons was not always an accurate predictor of the resulting sentence: the four cases with the highest number of weapons (159 total firearms) averaged a five month sentence.

j. nature of sentence (single count, concurrent or consecutive sentence)

Cases, with two exceptions, were sentenced as single count sentences. The exceptions involved a concurrent sentence to a state offense, and a guideline sentence of probation as well as a pre-guidelines sentence to twelve months.

k. geographical region, and urban or rural location

The cases split between "urban" (nine cases) and "rural" (ten

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[3] For example, a case with seven pipebombs and a grenade, was sentenced to ten months (double the average § 2K2.3 (1987) sentence) at the lower end of the range; one involving a machinegun, sawed-off shotgun, and three handguns, was sentenced to the upper end of the range for 7 months. However, one case involving 6 automatic weapons was sentenced to the lower end of the range to a probation sentence.

cases) location.[4] Those in urban areas averaged over eight month sentences and averaged level 10 -- considerably higher than the average for all cases. Cases were evenly distributed among geographical regions, with slightly more occurring in the northeast.

[4] Exact categorization of these cases is not easily achieved, due to multiple locations for a crime, and other factors.

2K2.3
(SINGLE COUNT CASES ONLY)

RELATIVE POSITION OF SENTENCE TO GUIDELINE RANGE

RELATIVE POSITION	Frequency	Percent
BELOW	4	13.8
BOTTOM	11	37.9
LOWER	5	17.2
UPPER	3	10.3
TOP	3	10.3
ABOVE	3	10.3
TOTAL	29	100.0

Frequency Missing = 30

Table III		
RATES OF DEPARTURE		
(FIREARMS 2K2.3)		
TYPE	Number	Percent
Sentences Within Guideline Range	27	84.4
Sentences Above Guideline Range	2	6.2
Sentences Below Guideline Range	2	6.2
Sentences Below Guideline Range for Substantial Assistance on Motion of Government	1	3.1
TOTAL	32	100.0

Table IIIa		
REASONS GIVEN BY SENTENCING COURTS FOR UPWARD DEPARTURES		
(FIREARMS 2K2.3)		
REASON	Number	Percent
No reason	2	66.7
Several persons injured	1	33.3
Public Welfare	1	33.3
General adequacy of criminal history; does not reflect seriousness of criminal history	1	33.3

Table IIIb		
REASONS GIVEN BY SENTENCING COURTS FOR DOWNWARD DEPARTURES		
(FIREARMS 2K2.3)		
REASON	Number	Percent
Age	1	33.3
Family ties and responsibilities	1	33.3
Substantial assistance at motion	1	33.3
Lesser harm	1	33.3
Unconvicted behavior added under relevant conduct	1	33.3
No prior record/first offender	1	33.3

2K2.3

DISTRIBUTION OF OFFENSE LEVEL BY CRIMINAL HISTORY CATEGORY

OFFENSE LEVEL / Frequency / Percent	CRIMINAL HISTORY CATEGORY 1	2	3	4	6	Total
2	1 1.43	0 0.00	0 0.00	0 0.00	0 0.00	1 1.43
4	6 8.57	0 0.00	1 1.43	0 0.00	0 0.00	7 10.00
5	2 2.86	0 0.00	0 0.00	1 1.43	0 0.00	3 4.29
6	7 10.00	1 1.43	0 0.00	0 0.00	2 2.86	10 14.29
7	5 7.14	2 2.86	1 1.43	1 1.43	0 0.00	9 12.86
8	3 4.29	0 0.00	0 0.00	1 1.43	0 0.00	4 5.71
9	3 4.29	1 1.43	0 0.00	0 0.00	0 0.00	4 5.71
10	7 10.00	1 1.43	2 2.86	0 0.00	0 0.00	10 14.29
11	3 4.29	0 0.00	1 1.43	0 0.00	0 0.00	4 5.71

(Continued)

OFFENSE LEVEL

CRIMINAL HISTORY CATEGORY

Frequency / Percent	1	2	3	4	6	Total
12	4 5.71	0 0.00	0 0.00	0 0.00	0 0.00	4 5.71
13	1 1.43	0 0.00	0 0.00	0 0.00	0 0.00	1 1.43
14	3 4.29	1 1.43	1 1.43	1 1.43	0 0.00	6 8.57
15	0 0.00	0 0.00	1 1.43	0 0.00	1 1.43	2 2.86
20	0 0.00	1 1.43	0 0.00	0 0.00	0 0.00	1 1.43
21	0 0.00	1 1.43	0 0.00	0 0.00	0 0.00	1 1.43
26	1 1.43	0 0.00	0 0.00	0 0.00	0 0.00	1 1.43
30	2 2.86	0 0.00	0 0.00	0 0.00	0 0.00	2 2.86
Total	48 68.57	8 11.43	7 10.00	4 5.71	3 4.29	70 100.00

Frequency Missing = 41

2K2.5
(SINGLE COUNT CASES ONLY)

RELATIVE POSITION OF SENTENCE TO GUIDELINE RANGE

RELATIVE POSITION	Frequency	Percent
BOTTOM	5	83.3
ABOVE	1	16.7
TOTAL	6	100.0

Frequency Missing = 5

Table IV		
RATES OF DEPARTURE		
(FIREARMS 2K2.5)		
TYPE	Number	Percent
Sentences Within Guideline Range	3	75.0
Sentences Above Guideline Range	1	25.0
Sentences Below Guideline Range	-	-
Sentences Below Guideline Range for Substantial Assistance on Motion of Government	-	-
TOTAL	4	100.0

Table IVa		
REASONS GIVEN BY SENTENCING COURTS FOR UPWARD DEPARTURES		
(FIREARMS 2K2.5)		
REASON	Number	Percent
No reason	1	100.0
Weapons and dangerous instrumentalities	1	100.0

(NOTE: There are no downward departures for 2K2.5)

2K2.5

DISTRIBUTION OF OFFENSE LEVEL BY CRIMINAL HISTORY CATEGORY

OFFENSE LEVEL / Frequency / Percent	CRIMINAL HISTORY CATEGORY 1	3	Total
4	4	1	5
	57.14	14.29	71.43
6	2	0	2
	28.57	0.00	28.57
Total	6	1	7
	85.71	14.29	100.00

Frequency Missing = 5

PROPOSED FIREARMS GUIDELINE

§ 2K2.1 Prohibited Transactions Involving Firearms

(a) Base Offense Level (Apply the Greatest):

(1) **[18-20]**, if the offense conduct involved one or more firearms defined in 26 U.S.C. § 5845(a); [but if the offense conduct involved one or more destructive devices, as defined in 26 U.S.C. § 5845(f), then level **[20-22]**;]

(2) **[24]**, if the defendant is a prohibited person and had at least two prior [convictions for a violent felony or serious drug offense] [felony convictions for a crime of violence or controlled substance offense] [, or firearms offense]; but if the offense conduct involved one or more firearms defined in 26 U.S.C. § 5845(a), then level [26];

(3) **[20]**, if the defendant is a prohibited person and had one prior [conviction for a violent felony or serious drug offense] [felony conviction for a crime of violence or controlled substance offense] [, or firearms offense]; but if the offense conduct involved one or more firearms defined in 26 U.S.C. § 5845(a), then level [22]

(4) **[14-16]**, if the defendant is a prohibited person;

(5) **[12]**, if the defendant

(A) is convicted of 18 U.S.C. § 922(a)(1) (engaging in the business of importing, manufacturing, or dealing in ammunition or firearms), unless the offense conduct involved one or more firearms defined in 26 U.S.C. § 5845(a);

(B) is convicted of 18 U.S.C. § 922(h) (receiving, possessing, or transporting ammunition or firearms while employed by a prohibited person), unless the offense conduct involved one or more firearms defined in 26 U.S.C. § 5845(a);

(C) unlawfully manufactured, sold, imported, or delivered any armor piercing ammunition;

(D) unlawfully engaged in offense conduct which involved one or more "non-detectable" firearms described in 18 U.S.C. § 922(p); or

(6) [6-8], otherwise.

(b) Specific Offense Characteristics

(1) If the defendant, other than a defendant subject to §2K2.1(a)(2) or (a)(3), used or possessed all ammunition, or all firearms, other than a firearm defined in 26 U.S.C. §5845(a), solely for lawful sporting purposes or collection, decrease the offense level determined above to level [6-8].

(2) If the offense involved the use, possession, distribution, or other disposition of three or more firearms, increase as follows for the number of unlawful firearms:

	Number of Firearms	Increase in Level
(A)	3-4	add 1
(B)	5-7	add 2
(C)	8-12	add 3
(D)	13-24	add 4
(E)	25-49	add 5
(F)	50 or more	add 6.

(3) If any firearm was stolen, or had an altered or obliterated serial number, or was not identified by a serial number, increase by 2 levels.

(4) If the defendant is convicted of 18 U.S.C. §922(d) (selling, or otherwise disposing of ammunition or any firearm to a prohibited person), increase by 6 levels.

(5) If the defendant unlawfully sold or delivered ammunition, or any firearm, to an underage person, increase by [1-3] level(s).

(6) If the defendant was a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, and unlawfully sold or delivered or otherwise disposed of any firearm to any person in violation of any State law or public ordinance, increase by 1 level.

(7) If the defendant used, possessed, or transferred any firearm, or knew, intended, or had reasonable cause to believe the firearm would be used, possessed, or transferred during or in relation to any violent or drug-related conduct, or any felony offense, increase by [2-4] levels.

[(8) If the defendant was a prohibited person and sold, dealt, or otherwise disposed of any firearm to any person, [other than a licensed dealer,] increase by [1-2] level(s).]

(9) If the defendant unlawfully possessed or caused any firearm to be present in a federal court facility, increase by [2-4] levels.

(10) If the defendant unlawfully possessed or discharged a firearm in a school zone, increase by [2-4] levels.

(c) Cross Reference

(1) If the defendant used or possessed any firearm, or knew, intended, or had reasonable cause to believe the firearm would be used or possessed, during or in connection with the commission or attempted commission of another offense, apply the guideline for the underlying offense if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 922, 924(b), (f), (g), 930, 1715; 26 U.S.C. § 5861.

Application Notes:

1. The term "firearm," unless otherwise specified by the guideline, means: (A) any weapon (including a starter gun, handgun, rifle, shotgun, short barreled rifle or shotgun, or machinegun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or silencer; or (D) any destructive device. Such term does not include an antique firearm. Refer to 18 U.S.C. § 921(a)(3)-(8) for a more detailed definition. This definition is broader than that used in Application Note 1(e) of the Commentary to §1B1.1 (Application Instructions).

2. A "firearm defined in 26 U.S.C. §5845(a)" means a firearm that, by its nature, is generally considered to be more dangerous than other firearms. A §5845(a) firearm primarily includes: (A) any short barreled shotgun or rifle or any weapon made therefrom; (B) a machinegun; (C) a silencer; (D) a destructive device; or (E) any "other weapon" as that term is defined by 26 U.S.C. §5845(e). A §5845(a) firearm does not include unaltered handguns or regulation-length rifles or shotguns. Refer to 26 U.S.C. §5845(a), et seq., for a more

detailed definition.

[3. The term "firearms offense" means an offense under federal, State, or local law prohibiting the manufacture, assembly, import, export, possession, sale, or distribution of any firearm or ammunition. The term does not include record keeping offenses unless such offense reflected an effort to conceal a substantive offense involving firearms or ammunition.]

4. The term "prohibited person" means anyone who: (1) is under indictment for, or has been convicted of, a "crime punishable by imprisonment for more than one year," as defined by 18 U.S.C. § 921(a)(20); (2) is a fugitive from justice; (3) is an unlawful user of, or is addicted to, any controlled substance; (4) has been adjudicated as a mental defective or committed to a mental institution; (5) being an alien, is illegally or unlawfully in the United States; (6) has been discharged from the Armed Forces under dishonorable conditions; or (7) having been a citizen of the United States, has renounced his citizenship.

5. The terms "crime of violence," "controlled substance offense," and "prior felony conviction" are defined at §4B1.2(1), (2), and App. Note 3, respectively.

6. The term "engaged in the business" is defined at 18 U.S.C. § 921(a)(21). The term "ammunition" is defined at 18 U.S.C. § 921(a)(17)(A). The term "armor piercing ammunition" is defined at 18 U.S.C. § 921(a)(17)(B). The term "underage person" is defined at 18 U.S.C. § 922(b)(1).

7. Under §2K2.1(b)(1), "lawful sporting purposes or collection" as determined by the surrounding circumstances, provides for an offense level [6-8]. Relevant surrounding circumstances include, among others, the number and type of firearms and ammunition, the location and circumstances of possession, the nature of the defendant's criminal history (e.g., whether involving firearms), and the extent to which possession was restricted by local law. Defendants subject to §2K2.1(a)(2) (prohibited person with two prior qualifying convictions) and §2K2.1(a)(3) (prohibited person with one prior qualifying conviction), are not eligible for the "lawful sporting purposes or collection" reduction under §2K2.1(b)(1).

8. For the purposes of calculating the offense level adjustment under the Firearms Table, include only firearms that were unlawfully possessed, distributed, or otherwise disposed of. If the number of firearms exceeded fifty, an upward departure may be warranted. An upward departure especially may be warranted in the case of [large numbers of] [multiple] National Firearms Act firearms (e.g., machineguns, destructive

devices) or military type assault rifles.

9. The term "identified by a serial number" includes identification by a serial number, as required by 26 U.S.C. § 5842(a), and such other identification as the Secretary may by regulations prescribe, pursuant to 26 U.S.C. § 5842(a) and (c).

10. The term "violent conduct" means any actual, attempted, or agreed upon conduct that involves the use, attempted use, or threatened use, of physical force against the person or property of another, whether or not a criminal charge was brought, or conviction obtained.

11. The term "drug-related conduct" means any actual, attempted, or agreed upon conduct that involves the use, possession, distribution, manufacture, import, or export, of any controlled substance, whether or not a criminal charge was brought, or conviction obtained. The term "any felony offense" means "an offense punishable by imprisonment for a term exceeding one year," as provided in 18 U.S.C. § 924(b).

12. The term "federal court facility" means the courtroom, judges' chambers, witness rooms, jury deliberation rooms, attorney conference rooms, prisoner holding cells, offices of the court clerks, the United States attorney, and the United States marshal, probation and parole offices, and adjoining corridors of any court of the United States.

13. The term "school zone" is defined at 18 U.S.C. § 922(q). Under 18 U.S.C. § 922(q), a sentence of imprisonment must be imposed in addition to the sentence for the underlying offense, and the sentence of imprisonment imposed under 18 U.S.C. § 922(q) must run consecutively to any other sentence of imprisonment. Therefore, the court, in order to comply with the statute, should divide the sentence on the judgment form between the sentence attributable to the underlying offense and the sentence attributable to the enhancement. The court will have to ensure that the "total punishment" (i.e., the sentence for the underlying offense and the sentence of imprisonment imposed under 18 U.S.C. § 922(q)) is in accord with the guideline range for the offense committed while on release, as adjusted by the relevant specific offense characteristic. For example, if the applicable adjusted guideline range is 30-37 months and the court determines "total punishment" of 36 months is appropriate, a sentence of 30 months for the underlying offense, plus 6 months under 18 U.S.C. § 922(q) would satisfy this requirement.

14. The term "underlying offense" includes a conspiracy or attempt to commit an offense. The Commission anticipates that, where applicable, the underlying offense most often

involved will be: §2A1.1 (First Degree Murder); §2A1.2 (Second Degree Murder); §2A1.3 (Voluntary Manslaughter); §2A1.5 (Conspiracy to Commit Murder); §2A2.1 (Assault with Intent to Commit Murder; Attempted Murder); §2A2.2 (Aggravated Assault); §2B3.1 (Robbery); §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage); §2D1.1 (Unlawful Manufacturing, Importing, Exporting or Trafficking); or §2D1.4 (Attempts and Conspiracies). This list is merely illustrative and is not intended to be exclusive.

15. A defendant who is subject to an enhanced sentence under the provisions of 18 U.S.C. § 924(e) is an Armed Career Criminal, and §4B1.4 shall be applied.

Background: [Existing text]

§2B1.1. Larceny, Embezzlement, and Other Forms of Theft

...

(b) Specific Offense Characteristics

...

~~(2) If a firearm, destructive device, or controlled substance was taken, increase by 1 level; but if the resulting offense level is less than 7, increase to level 7.~~

(c) Cross Reference

(1) If the offense involved a firearm, destructive device, controlled substance, or explosive materials, apply the relevant guideline.

...

§2B1.2. Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property

...

(b) Specific Offense Characteristics

...

~~(2) If a firearm, destructive device, or controlled substance was taken, increase by 1 level; but if the resulting offense level is less than 7, increase to level 7.~~

(c) Cross Reference

(1) If the offense involved a firearm, destructive device, controlled substance, or explosive materials, apply the relevant guideline.

Present Guidelines

The guidelines as currently drafted provide for a 1 level enhancement, or minimum resulting offense level 7, where the property involved in the larceny, theft, etc. was a firearm, destructive device, or controlled substance. No enhancement applies for similar conduct involving explosive materials.

Proposed Guidelines

Proposes the deletion of the enhancement or minimum offense level, and the addition of a cross reference to the firearms, explosive materials, or controlled substance guidelines.

Discussion

The current guidelines are subject to plea bargaining abuse, and may result in considerable sentencing disparity for firearms offenses sentenced under the firearms guidelines (both the current guidelines, and the proposed § 2K2.1).

Of course, the present guideline (§ 2B1.2) and the firearms guidelines would treat certain offenders similarly. For example, a person not prohibited from possessing a firearm, who unlawfully possessed a stolen handgun owned by the federal government, would receive a level 7 under the present guideline, and a level 8 under both the current and proposed firearms guidelines.

Other cases would differ more drastically. For example, a prohibited person who possesses a stolen rifle owned by the federal government, would receive considerably different offense levels under § 2B1.2 (level 7), current § 2K2.1 (level 14), and proposed § 2K2.1 (level 14). A non-prohibited person who possesses a stolen machinegun owned by the federal government would receive level 7 under § 2B1.2, and level 20 under the current and proposed firearms guidelines.

§ 1B1.1 Application Instructions

...

Application Notes:

1. The following are definitions of terms that are used frequently in the guidelines:

...

(e) ~~"Firearm" means any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive.~~ "Firearm" means: (A) any weapon (including a starter gun, handgun, rifle, shotgun, short barreled rifle or shotgun, or machinegun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or silencer; or (D) any destructive device. A weapon, commonly known as a "BB" or pellet gun, that uses air or carbon dioxide pressure to expel a projectile is a dangerous weapon but not a firearm.

Present Guideline

Defines "firearm" to include only one [subsection (A)] of the four categories of firearm provided by statute (18 U.S.C. § 922).

Proposed Guideline

Defines "firearm" to track the statutory definition, which includes four categories of firearms [subsections (A)-(D)].

Discussion

The current guideline definition of "firearm" excludes destructive devices (pipebombs and grenades), the frame or receiver of a weapon, and silencers. These non-included weapons are included in the statute, and may be used or possessed during the commission of certain crimes.

The working group proposes the guideline in order to make the definition consistent with the statute, and to make the definition consistent throughout the guidelines.

The absence of "destructive devices" from the definition of "firearm" has little practical effect, since most guidelines enhance for the possession or use of a "dangerous weapon (including a firearm)" or for the possession or use of a "firearm or destructive device," some consistency in definition and application might be gained.

EXPLOSIVES MATERIALS GUIDELINE 2K1.3 (1987)

CORRELATION OF FACTORS WITH SENTENCE AND LEVEL

	NUMBER OF CASES	UPWARD DEPART	UPPER RANGE	MIDDLE RANGE	LOWER RANGE	DOWN DEPART	AVG TERM	AVG LEVEL
OVERALL	22	--	4(18%)	13(22%)	13(59%)	3(14%)	9.8	Base 6 Adj 9
DRUGS	2	--	--	--	2(100%)	--	15 days	6 4
PRIORS	13	--	4(36%)	2(9%)	4(36%)	3(27%)	15.7mos	6 11.7
CRIMINAL USE	3	--	--	--	3(100%)	--	2.67mos	6 6
SALE	14	--	3(21%)	1 (7%)	6(42%)	3(21%)	12 mos	6 10
POSSESSN	6	--	--	1(17%)	5(83%)	--	7.67mos	6 8
STOLEN	10	--	3(30%)	2(20%)	35(30%)	2(20%)	19.7	12.6

EXPLOSIVES GUIDELINE §2K1.3 SENTENCE AND OFFENSE LEVEL ANALYSIS	
	§2K1.3
number of cases	22
statutes of conviction	842, 659, 1716 836
sentence range	probation to 57 months
average sentence	9.8 months
offense level range	level 4 to level 22
average offense level	base 6, adj. 9
offense level frequency	level 4 (9) level 8 (3) level 10 (3) level 14 (5) level 16 (1)
departures upward	0
departures downward	3 (14%)
average upward departure	n/a
average downward departure	11 months
top sentence range	4 (18%)
middle sentence range	2 (9%)
bottom sentence range	13 (59%)

EXPLOSIVES MATERIALS GUIDELINE 2K1.6 (1987)

CORRELATION OF FACTORS WITH SENTENCE AND LEVEL

	NUMBER OF CASES	UPWARD DEPART	UPPER RANGE	MIDDLE RANGE	LOWER RANGE	DOWN DEPART	AVG TERM	AVG LEVEL
OVERALL	7	2(29%)	3(43%)	--	2(29%)	--	64 mos*	Base 18 Adj 19.3
DRUGS	--	--	--	--	--	--	--	--
PRIORS	3	--	1(33%)	1(33%)	1(33%)	--	51 mos	10
CRIMINAL USE	7	2(29%)	3(43%)	--	2(29%)	--	*64 mos	19.3
STOLEN	3	1(33%)	--	1(33%)	1(33%)	--	*47 mos	18

* Does not include one 30 year sentence.

EXPLOSIVES GUIDELINE §2K1.6 SENTENCE AND OFFENSE LEVEL ANALYSIS	
	§2K1.6
number of cases	7
statutes of conviction	842, 641, 876 26:5681
sentence range	probation to 30 years
average sentence	64 months (excludes 30 year sentence)
offense level range	level 18 to level 24
average offense level	base 18, adj. 19.3
offense level frequency	level 16 (1) level 18 (4) level 23 (1) level 24 (1)
departures upward	2 (29%)
departures downward	0
average upward departure	1 - 33 months 1 - 27 months
average downward departure	n/a
top sentence range	3 (43%)
middle sentence range	0
bottom sentence range	2 (29%)

APPENDIX

SUMMARY OF MODEL FIREARMS GUIDELINE §2K2.1 (1991): BASE OFFENSE LEVELS, OFFENSE CHARACTERISTICS, OPTIONS

Following is a brief summary of the proposed firearms guideline, §2K2.1 (1991), as recommended by the working group. Use this summary only as a quick reference when reviewing the summary tables that follow. This summary should not be used for substantive analysis of the provisions of the guideline.

BASE OFFENSE LEVELS:

a(1): level **24** for prohibited persons with **two or more prior** felony convictions for a crime of violence or controlled substance offense, and level **26** if that person also possessed an N.F.A. firearm.

a(2): level **20** for prohibited persons with **one prior** felony conviction for a crime of violence or controlled substance offense, and level **22** if that person also possessed an N.F.A. firearm.

a(3): level **18**, for **National Firearms Act** (N.F.A.) firearms, and level **20** for **destructive devices** (bombs).

a(4): level **14** for **prohibited persons** with no prior felony convictions for a crime of violence or controlled substance offense, and level **20** if that person also possessed an N.F.A. firearm.

a(5)(A): level **12** if the defendant is convicted of 18 U.S.C. § 922(a)(1) (**engaging in the business** of importing, manufacturing, or dealing in ammunition or firearms).

a(5)(B): level **12** if the defendant is convicted of 18 U.S.C. § 922(d) (**selling to a prohibited person**).

a(5)(C): level **12** if the defendant is convicted of 18 U.S.C. § 922(h) (receiving, possessing, or transporting ammunition or firearms while **employed by a prohibited person**).

a(5)(D): level **12** for offenses involving "**non-detectable**" **firearms**.

a(5)(E): level **12** for offenses involving **armor piercing ammunition**.

a(5)(F): level **12** if the defendant unlawfully transported firearms into his **State of residence**.

a(5)(G): level **12** if the defendant unlawfully transported firearms to a **non-resident**.

a(6): level **6** for **miscellaneous** offenses.

SPECIFIC OFFENSE CHARACTERISTICS

b(1): Reduce base offense level to level **6-8** if the firearms were solely for **sporting purposes**.

APPENDIX

SUMMARY OF PUBLISHED FIREARMS GUIDELINE §2K2.1 (1991): BASE OFFENSE LEVELS, OFFENSE CHARACTERISTICS, OPTIONS

Following is a brief summary of the proposed firearms guideline, §2K2.1 (1991) as published in the Federal Register. Use this summary only as a quick reference when reviewing the summary tables that follow. This summary should not be used for substantive analysis of the provisions of the guideline.

BASE OFFENSE LEVELS:

a(1): level [18-20], for **National Firearms Act** (N.F.A.) firearms, and level [20-22] for **destructive devices** (bombs).

a(2): level [24] for prohibited persons with **two or more** prior felony convictions for a crime of violence or controlled substance offense, and level [26] if that person also possessed an N.F.A. firearm.

a(3): level [20] for prohibited persons with **one prior** felony conviction for a crime of violence or controlled substance offense, and level [22] if that person also possessed an N.F.A. firearm.

a(4): level [14-16] for **prohibited persons** with no prior felony convictions for a crime of violence or controlled substance offense, and level [20] if that person also possessed an N.F.A. firearm.

a(5)(A): level [12] if the defendant is convicted of 18 U.S.C. § 922(a)(1) (**engaging in the business** of importing, manufacturing, or dealing in ammunition or firearms).

a(5)(B): level [12] if the defendant is convicted of 18 U.S.C. § 922(h) (receiving, possessing, or transporting ammunition or firearms while **employed by a prohibited person**).

a(5)(C): level [12] for offenses involving **armor piercing ammunition.**

a(5)(D): level [12] for offenses involving **"non-detectable" firearms.**

a(5)(E): level [12] if the defendant unlawfully transported firearms to a **non-resident.**

a(5)(F): level [12] if the defendant unlawfully transported firearms into his **State of residence.**

a(6): level [6-8] for miscellaneous offenses.

SPECIFIC OFFENSE CHARACTERISTICS

b(1): Reduce base offense level to level [6-8] if the firearms were solely for **sporting purposes.**

b(2): For **multiple firearms,** increase by the following:

	Number of Firearms	Increase in Level
(A)	3-4	add 1
(B)	5-7	add 2
(C)	8-12	add 3
(D)	13-24	add 4
(E)	25-49	add 5
(F)	50 or more	add 6.

b(3): For **stolen** firearms, or firearms with **obliterated serial numbers**, increase by [2] levels.

b(4): For defendants convicted under 18 U.S.C. §922(d) (**selling to a prohibited person**), increase by [6] levels.

b(5): For selling to an **underage** person, increase by [1-3] level(s).

b(6): For dealers selling in **violation of State law** or public ordinance, increase by [1] level.

b(7): For using in relation to **violent or drug-related conduct**, or any felony offense, increase by [2-4] levels.

b(8): For **sale by a prohibited person**, increase by [1-2] level(s).]

b(9): For possession in a **federal court facility**, increase by [2-4] levels.

b(10): For possession in a **school zone**, increase by [2-4] levels.

CROSS REFERENCE

c(1) Apply the guideline for the underlying offense if the resulting offense level is greater than that determined above.

OPTIONS

The working group applied five different versions of the proposed guideline to all of the case files reviewed, in order to determine how the proposed guideline would apply to actual cases. The options were selected to show the full range of options that could occur with the proposed guideline.

All five options were applied as if the court was using that guideline to sentence the defendant. Thus, if the defendant actually received a reduction for acceptance of responsibility, we calculated the proposed guideline with acceptance. If the defendant received an enhancement for role, or for obstruction, we calculated the proposed guideline with the same enhancement.

The options used are described below:

Option 1: Takes all of the lowest base offense levels, (with no enhancement for N.F.A. firearms).
Takes all lowest offense characteristic levels.

Option 2: Takes lowest base offense levels.
Takes lowest offense characteristic levels.

Option 3: Takes lowest base offense levels.
Takes highest offense characteristic levels.

Option 4: Takes highest base offense levels.
Takes lowest offense characteristic levels.

Option 5: Takes highest base offense levels.
Takes highest offense characteristic levels.

b(2): For multiple firearms, increase by the following:

	Number of Firearms	Increase in Level
(A)	3-4	add 1
(B)	5-7	add 2
(C)	8-12	add 3
(D)	13-24	add 4
(E)	25-49	add 5
(F)	50 or more	add 6.

b(3): For stolen firearms, or firearms with obliterated serial numbers, increase by 2 levels.

b(4): For selling to an underage person, increase by 1 level.

b(5): For dealers selling in violation of State law or public ordinance, increase by 1 level.

b(6): The greatest of:

(A): For sale by a prohibited person, increase by 2 level(s).

(B): For using in relation to violent or drug-related conduct, or any felony offense, increase by 4 levels, or level 12.

CROSS REFERENCE

c(1) Apply the guideline for the underlying offense if the resulting offense level is greater than that determined above.

SUMMARY OF MODEL GUIDELINE §2K2.5

BASE OFFENSE LEVEL:

a(1): Level 6.

SPECIFIC OFFENSE CHARACTERISTICS:

b(1): For possession in a federal court facility, increase by 2 levels.

b(2): For possession or discharge in a school zone, increase by 2 levels.

CROSS REFERENCE:

c(1): Apply the guideline for the other offense, if the firearm was used in another offense.

SUMMARY OF FIREARMS STATUTES

National Firearms Act
26 U.S.C. § 5801, et seq.

§5801: **Imposition of Tax:** assesses annual occupational tax on importers and dealers;

§5802: **Registration:** requires annual registration by importers and dealers;

§5811: **Transfer Tax:** assesses transfer tax on transfer of any firearm;

§5812: **Transfer Application:** requires application prior to transfer and prior Secretary approval of transfers;

§5821: **Making Tax:** assesses tax on making of firearm by any person;

§5822: **Making Restrictions:** requires application and prior approval by Secretary prior to any making of firearm;

§5841: **Registration:** requires registration of each firearm and compiling of central registry;

§5842: **Identification:** requires identification by serial number of all firearms except destructive devices, which devices shall be identified as prescribed by the Secretary;

§5843: **Records and Returns:** requires importers, manufacturers, dealers to keep records and returns as required by the Secretary;

§5844: **Importation:** prohibits the importation of firearms, except for certain lawful purposes (research, government use, etc.);

§5845: **Definitions**

§5846-5849: **Miscellaneous Provisions**

§5851-5854: **Exemptions**

§5861: **Prohibited Acts**

(a): prohibits **engaging in business** without paying special tax and registering;

(b): prohibits receipt or **possession of unlawfully transferred** firearm;

(c): prohibits receipt or **possession of unlawfully manufactured** firearm;

(d): prohibits receipt or **possession of unregistered** firearm;

(e): prohibits **unlawful transfer** of firearm;

(f): prohibits **unlawful making** of firearm;

(g): prohibits **alteration of serial number** of firearm;

(h): prohibits receipt or **possession** of firearm with **altered serial number;**

(i): prohibits receipt or **possession** of firearm **without a serial number** (usually a pipebomb or other homemade firearm);

(j): prohibits transport, delivery, **receipt in interstate commerce** of any **unregistered** firearm;

(k): prohibits receipt or **possession of unlawfully imported** firearm;

(l): prohibits making **false entries** or records.

§5871: **Penalties:** provides for ten year statutory maximum for any violation of the Act;

§5872: **Forfeitures:** provides for forfeiture of firearms involved in any violation of the Act.

Gun Control Act
18 U.S.C. § 921, et seq.

§921: **Definitions**

§922: **Unlawful Acts**

(a): (five year penalty)

(a)(1): prohibits **any unlicensed person** from **engaging in the business** of importing, manufacturing, dealing, shipping, transporting, receiving firearms or ammunition;

(a)(2): prohibits **any dealer** from **shipping or transporting** to any unlicensed person, except in certain circumstances;

(a)(3): prohibits **any unlicensed person** from **transporting or receiving** firearms obtained outside the State of residence;

(a)(4): prohibits **any unlicensed person** from **transporting** any **N.F.A. firearm;**

(a)(5): prohibits **any unlicensed person** from transferring, selling, trading, giving, transporting, **delivering** any firearm to **any unlicensed, non-State resident;**

(a)(6): prohibits **any person** from making **false statement** to dealer during acquisition of a firearm or ammunition;

(a)(7): prohibits **any person** from **manufacturing or importing armor piercing ammunition;**

(a)(8): prohibits **any dealer** from **selling or delivering armor piercing ammunition;**

(b): (five year penalty)

(b)(1): prohibits **any dealer** from selling or **delivering** firearm or ammunition to any **underage person;**

(b)(2): prohibits **any dealer** from selling or **delivering** firearm in violation of **State law;**

(b)(3): prohibits **any dealer** from selling or **delivering** firearm to **non-State resident;**

(b)(4): prohibits **any dealer** from selling or **delivering** **N.F.A. firearm;**

(b)(5): prohibits **any dealer** from selling or **delivering armor piercing ammunition** without recording certain buyer information;

(c): prohibits **any dealer** from **selling** firearm to any person not appearing in person, except in certain conditions (five year penalty);

(d): prohibits **any person** from **selling** firearm or ammunition to a **prohibited person** under § 922(g) (five year penalty);

(e): prohibits **any person** from **delivering** firearm or ammunition to **common carrier** (five year penalty);

(f): prohibits **common carrier** from **transporting** firearm or ammunition (five year penalty);

(g): prohibits certain persons, including **felons, fugitives, aliens, drug users, incompetents, dishonorably discharged members of the armed services, and persons renouncing their citizenship** from **possessing**, receiving, or shipping firearm or ammunition (ten year penalty);

(h): prohibits person in course of **employment by prohibited person** to receive, transport, **possess** firearm or ammunition (ten year penalty);

(i): prohibits **any person** from transporting or **shipping stolen** firearm or ammunition (ten year penalty);

(j): prohibits **any person** from **receiving**, concealing, selling, storing **stolen** firearm or ammunition (ten year penalty);

(k): prohibits **any person** from transporting, **shipping, or receiving**, firearm with obliterated, removed, or **altered serial number** (five year penalty);

(l): prohibits **any person** from **importing or receiving** imported firearm or ammunition (five year penalty);

(m): **prohibits any dealer** from making **false entries or records or failing** to make required records (one year penalty);

(n): **prohibits any person indicted** of felony from shipping, **transporting**, or receiving firearm or ammunition (five year penalty);

(o): prohibits **any person** from transferring or possessing a **machinegun** (ten year penalty);

(p): prohibits **any person** from manufacturing, importing, selling, shipping, delivering, possessing, transferring, or receiving any firearm not detectable by **metal**

detectors (five year penalty);

(q): **prohibits any person** from possessing or discharging **firearm in school zone**; prohibits **any person** from **assembling** parts of non-importable **semi-automatic rifles** (five year penalty);

§923: **Dealer Licensing Requirements** (five year penalty)

§924: **Penalties**

(a): provides **penalties** for above offenses;

(b): prohibits **any person** from committing **felony with firearm** or ammunition, or shipping firearm or ammunition knowing or having reasonable cause to believe that it will be used to commit felony (ten year penalty);

(c): prohibits **any person** from **using or carrying** firearm **during crime of violence or drug trafficking crime** (five year consecutive penalty; thirty years if machinegun);

(d): provides for **seizure and forfeiture** of firearm and ammunition involved in violation of the Act;

(e): provides for **fifteen-year mandatory minimum** for violation of **§922(g)**, where offender has **three prior convictions** for violent felonies or serious drug offenses;

(f): provides five-year **penalty** for violation of **§922(p)**;

(g): prohibits **any person** from transferring firearm knowing that it will be used to commit crime of violence or drug trafficking crime (ten-year penalty);

§925: **Relief From Disabilities**

§926: **Rule-making Authority**

§926A: **Interstate Transportation:** permits lawful **transportation of lawfully held, unloaded, inaccessible firearm;**

§927: **Preemption of State Law**

§928: **Separability**

§929: **Armor-Piercing Ammunition:** prohibits using or **carrying** firearm that fires **armor-piercing ammunition** during **crime of violence or drug trafficking crime** (consecutive five year mandatory minimum);

§930: **Possession in Federal Facility:** prohibits **possession** of firearm or weapon **in Federal facility** (one, two, or five year penalty).

SUMMARY OF PRESIDENT'S CRIME BILL OF 1991

TITLE IV -- FIREARMS

Sec. 401. **924(c)** mandatory consecutive five year penalty extended to **semi-automatic firearms.**

Sec. 402. **924(c)** and **844(h)** **(explosives)** extended to **mere possession** during crime of violence or drug trafficking.

Sec. 407. **Firearm and explosive theft offenses** subject to **two-year mandatory minimum** and ten year statutory maximum.

Current Guideline:	Base offense level 6 plus 2-level enhancement for stolen firearms, plus 6-level enhancement for stolen explosive materials.
Firearms Proposal:	Base offense level 6 plus 2-level enhancement for stolen firearms.
Explosives Proposal:	Base offense level 12 plus 2-level enhancement for stolen explosive materials.

Sec. 408. Mandatory revocation of supervised release for possession of a firearm.

Sec. 409. Increase statutory maximum for **false statement in acquisition of firearm** to **ten-year maximum.**

Current Guideline:	Base offense level 6 for firearms, level 10 for explosive materials.
Firearms Proposal:	No change.
Explosive Proposal:	Base offense level 12.

Sec. 411. Extension of **felon-in-possession** restrictions to **mere possession.**

Sec. 416. Extension of **stolen firearm** offenses to **mere possession.**

Sec. 417. **924(c)** offenses extended to **counterfeiting and forgery** offenses.

Sec. 418. **Mandatory minimum of five years for felon with one violent prior.**

Current Guideline:	Base offense level 12 for possession of firearms, total offense level 16 for possession of explosive materials with average range of 10 to 30 months.
Firearms Proposal:	Base offense level 20, with average range of 3-6 years depending on nature of offense.
Explosive Proposal:	Base offense level 20, with average range of 3-6 years depending on nature of offense.

Sec. 420. Extension of **stolen explosive materials** offenses to **mere possession.**

Sec. 421. Prohibition on **non-residents** to receive any firearm.

TITLE IV -- FIREARMS

SUBTITLE A -- FIREARMS AND RELATED AMENDMENTS

SEC. 401. ENHANCED PENALTY FOR USE OF SEMIAUTOMATIC FIREARM DURING A CRIME OF VIOLENCE OR DRUG TRAFFICKING OFFENSE.

(a) Section 924(c) of title 18, United States Code, is amended by inserting ", or semiautomatic firearm," after "short barreled shotgun".

(b) Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

"(26) the term 'semiautomatic firearm' means any repeating firearm which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.".

SEC. 402. POSSESSION OF A FIREARM OR AN EXPLOSIVE DURING THE COMMISSION OF A FELONY. (a) Section 924(c) of title 18, United States Code, is amended by striking "uses or carries a firearm" and inserting in lieu thereof "uses, carries, or otherwise possesses a firearm", and by striking "used or carried" and inserting in lieu thereof "used, carried, or possessed".

(b) Section 844(h) of title 18, United States Code, is amended by striking "carries an explosive during" and inserting in lieu thereof "uses, carries, or otherwise possesses an explosive during", and by striking "used or carried" and inserting in lieu therof "used, carried or possessed".

SEC. 403. CONFORMING AMENDMENT PROVIDING INCREASED PENALTY

FOR SECOND OFFENSE OF USING AN EXPLOSIVE TO COMMIT A FELONY. Section 844(h) of title 18, United States Code, is amended by striking out "ten years" and inserting in lieu thereof "twenty years".

SEC. 404. CLARIFICATION OF DEFINITION OF CONVICTION. Section 921(a)(20) of title 18, United States Code, is amended by adding at the end the following:

"Notwithstanding the previous sentence, if the conviction was for a violent felony involving the threatened or actual use of a firearm or explosive or was for a serious drug offense, as defined in section 924(e) of this title, the person shall be considered convicted for purposes of this chapter irrespective of any pardon, setting aside, expunction or restoration of civil rights."

SEC. 405. PERMITTING CONSIDERATION OF PRETRIAL DETENTION FOR CERTAIN FIREARMS AND EXPLOSIVES OFFENSES. Section 3142(f)(1) of title 18, United States Code, is amended by --

(1) striking "or" before subparagraph (D);

(2) redesignating subparagraph (D) as subparagraph (E); and

(3) inserting a new subparagraph (D) as follows:

"(D) an offense under 18 U.S.C. 844(a) that is a violation of 18 U.S.C. 842(d), (h), or (i), or an offense under 18 U.S.C. 924(a) that is a violation of 18 U.S.C. 922(d), (g), (h), (i), (j) or (o), or an offense under section 844(d), or 924(b), (g), (h), or (i) (as added by this Act) of this title; or".

SEC. 406. [redacted].

Section 924 of title 18, United States Code, is amended by adding at the end thereof the following:

"(i) Whoever, with the intent to engage in or to promote conduct which --

"(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.);

"(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802); or

"(3) constitutes a crime of violence (as defined in subsection (c)(3);

smuggles or knowingly brings into the United States a firearm, or attempts to so, shall be imprisoned for not more than ~~ten years~~, fined under this title, or both.".

SEC. 407. THEFT OF FIREARMS AND EXPLOSIVES. (a) Section 924 of title 18, United States Code, is amended by adding at the end the following:

"(j) ~~Whoever steals any firearm which is moving as, or is a part of,~~ or which has moved in, interstate or foreign commerce shall be imprisoned for ~~not less than two or more than ten years~~, and may be fined under this title.".

(b) Section 844 of title 18, United States Code, is amended by adding at the end the following:

"(k) Whoever steals any explosive materials which are moving

as, or are a part of, or which have moved in, interstate or foreign commerce shall be imprisoned for not less than two or more than ten years, and may be fined under this title.".

SEC. 408. CONFORMING AMENDMENT PROVIDING MANDATORY REVOCATION OF SUPERVISED RELEASE FOR POSSESSION OF A FIREARM. Section 3583 of title 18, United States Code is amended by adding at the end thereof the following new subsection:

"(h) Mandatory revocation for possession of a firearm. -- If the court has provided, as a condition of supervised release, that the defendant refrain from possessing a firearm, and if the defendant is in actual possession of a firearm, as that term is defined in section 921 of this title, at any time prior to the expiration or termination of the term of supervised release, the court shall, after a hearing pursuant to the provisions of the Federal Rules of Criminal Procedure that are applicable to probation revocation, revoke the term of supervised release and, subject to the limitations of paragraph (e)(3) of this section, require the defendant to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision.".

SEC. 409. INCREASED PENALTY FOR SHOPLIFT FELS; MATERIAL STATEMENT IN CONNECTION WITH THE ACQUISITION OF A FIREARM FROM A LICENSED DEALER. Section 924(a) of title 18, United States Code, is amended -- (1) in paragraph (a)(1)(B), by striking out "(a)(6),"; and

(2) in subsection (a)(2), by inserting "(a)(6)," after "subsections".

SEC. 410. STATUTE OF LIMITATIONS FOR CERTAIN GANGSTER WEAPON OFFENSES. Section 6531 of the Internal Revenue Code of 1986 (26 U.S.C. 6531, relating to periods of limitation of criminal prosecutions) is amended by striking "except that the period of limitation shall be 6 years" and inserting in lieu thereof "except that the period of limitation shall be five years for offenses described in section 5861 (relating to firearms) and the period of limitation shall be 6 years".

SEC. 411. POSSESSION OF EXPLOSIVES BY FELONS AND OTHERS. Section 842(i) of title 18, United States Code, is amended by inserting "or possess" after "to receive".

SEC. 412. SUMMARY DESTRUCTION OF EXPLOSIVES SUBJECT TO FORFEITURE. Section 844(c) of title 18, United States Code, is amended by redesignating subsection (c) as subsection (c)(1) and by adding paragraphs (2) and (3) as follows:

"(2) Notwithstanding the provisions of paragraph (1), in the case of the seizure of any explosive materials for any offense for which the materials would be subject to forfeiture where it is impracticable or unsafe to remove the materials to a place of storage, or where it is unsafe to store them, the seizing officer is authorized to destroy the explosive materials forthwith. Any destruction under this paragraph shall be in the presence of at least one credible witness. The seizing officer shall make a report of the seizure and take samples as the

Secretary may by regulation prescribe.

"(3) Within 60 days after any destruction made pursuant to paragraph (2), the owner of, including any person having an interest in, the property so destroyed may make application to the Secretary for reimbursement of the value of the property. If the claimant establishes to the satisfaction of the Secretary that--

(A) the property has not been used or involved in a violation of law; or

(B) any unlawful involvement or use of the property was without the claimant's knowledge, consent, or willful blindness,

the Secretary shall make an allowance to the claimant not exceeding the value of the property destroyed.".

SEC. 413. ~~SUMMARY FORFEITURE OF UNREGISTERED NATIONAL FIREARMS ACT WEAPONS.~~ Section 5872 of title 26, United States Code, is amended by redesignating subsection (a) as subsection (a)(1) and by adding paragraphs (2) and (3) to read as follows:

"(2) Unregistered National Firearms Act weapons. -- Notwithstanding the provisions of paragraph (1), the provisions of sections 7323 and 7325 shall not apply to any firearm which is not registered in the National Firearms Registration and Transfer Record pursuant to section 5841. No property rights shall exist in any such unregistered firearm and it shall be summarily forfeited to the United States.

"(3) Rights of innocent owners. -- Within one year after the summary forfeiture made pursuant to paragraph (2) the owner of, including any person having an interest in, the property seized may make application to the Secretary for reimbursement of the value of such property. If the claimant establishes to the satisfaction of the Secretary that --

(A) such property has not been involved or used in a violation of law; or

(B) any unlawful involvement or use of such property had been without the claimant's consent, knowledge, or willful blindness,

the Secretary shall make an allowance to such claimant not exceeding the value of the property so forfeited.".

SEC. 414. ~~DISPOSITION OF FORFEITED FIREARMS.~~ Subsection 5872(b) of title 26, United States Code, is amended to read as follows:

"(b) Disposal. -- In the case of the forfeiture of any firearm, where there is no remission or mitigation of forfeiture thereof --

"(1) The Secretary may retain the firearm for official use of the Department of the Treasury or, if not so retained, offer to transfer the weapon without charge to any other executive department or independent establishment of the Government for official use by it and, if the offer is accepted, so transfer the firearm;

"(2) If the firearm is not disposed of pursuant to paragraph (1), is a firearm other than a machinegun or a firearm forfeited for a violation of this chapter, is a firearm that in the opinion of the Secretary is not so defective that its disposition pursuant to this paragraph would created an unreasonable risk of a malfunction likely to result in death or bodily injury, and is a firearm which (in the judgment of the Secretary, taking into consideration evidence of present value and evidence that like firearms are not available except as collector's items, or that the value of like firearms available in ordinary commercial channels is substantially less) derives a substantial part of its monetary value from the fact that it is novel, rare, or because of its association with some historical figure, period, or event the Secretary may sell such firearm, after public notice, at public sale to a dealer licensed under the provisions of chapter 44 of title 18, United States Code;

"(3) If the firearm has not been disposed of pursuant to paragraphs (1) or (2), the Secretary shall transfer the firearm to the Administrator of General Services, General Services Administration, who shall destroy or provide for the destruction of such firearm; and

"(4) No decision or action of the Secretary pursuant to this subsection shall be subject to judicial review.".

SEC. 415. ELIMINATION OF OUTMODED LANGUAGE RELATING TO [redacted] (a) Section 924(e)(1) of title 18, United States Code, is amended by striking ", and such person shall not be eligible

for parole with respect to the sentence imposed under this subsection".

(b) Section 924(c)(1) of title 18, United States Code is amended by striking "No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.".

SEC. 416. ~~POSSESSION OF STOLEN FIREARMS~~. Section ~~922(j)~~ of title 18, United States Code, is amended by inserting "possess," before "receive,".

SEC. 417. USING A FIREARM IN THE COMMISSION OF COUNTERFEITING OR FORGERY. Section ~~924(c)(1)~~ of title 18, United States Code, is amended by inserting ~~"or during and in relation to any felony punishable under chapter 25 (relating to counterfeiting and forgery)~~ of this title" after "for which he may be prosecuted in a court of the United States,".

SEC. 418. MANDATORY PENALTY FOR FIREARMS POSSESSION BY VIOLENT FELONS AND SERIOUS DRUG OFFENDERS.

Section 924(a)(2) of title 18, United States Code, is amended by inserting a comma before "or both" and by inserting before the period at the end thereof the following: ", and if the violation is a violation of subsection (g)(1) of section 922 by a person who has a ~~previous conviction for a violent felony or a serious drug offense as defined in subsection (e)(2) of this~~ section, a sentence imposed under this paragraph shall include a term of imprisonment of ~~not less than five years~~.

SEC. 419. ~~REPORTING OF MULTIPLE FIREARMS SALES~~

Subsection 923(g)(1)(D)(3) of title 18, United States Code, is amended --

(1) by deleting the phrase "five consecutive business days" and inserting in lieu thereof "thirty consecutive days"; and

(2) by adding a new sentence at the end thereof as follows:

"Each licensee shall forward a copy of the report to the chief law enforcement officer of the place of residence of the unlicensed person not later than the close of business on the day that the multiple sale or disposition occurs.".

SEC. 420. POSSESSION OF STOLEN FIREARMS AND EXPLOSIVES

(a) FIREARMS. -- Section 922(j) of title 18, United States Code, is amended by inserting "possess," before "conceal";

(b) EXPLOSIVES. -- Section 842(h) of title 18, United States Code, is amended by inserting "possess," before "conceal".

SEC. 421. RECEIPT OF FIREARMS BY NONRESIDENTS

Section 922(a) of title 18, United States Code, is amended --

(1) in paragraph (7) by striking "and" at the end thereof;

(2) in paragraph (8) by striking the period at the end thereof and inserting "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearm.".

SEC. 422. FIREARMS AND EXPLOSIVES CONSPIRACY

(a) FIREARMS. -- Section 924 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(j) Whoever conspires to commit any offense defined in this chapter shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy."

(b) EXPLOSIVES. -- Section 844 of title 18, Unied States Code, is amended by adding at the end thereof the following new subsection:

"(1) Whoever conspires to commit any offense defined in this chapter shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy."

SEC. 423. ~~THEFT OF FIREARMS OR EXPLOSIVES FROM LICENSEE~~

(a) FIREARMS. -- Section 924 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(k) Whoever steals any firearm from a licensed importer, licensed manufacturer, licensed dealer or licensed collector shall be fined in accordance with this title, imprisoned not more ~~than ten years~~, or both.".

(b) EXPLOSIVES. -- Section 844 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(m) Whoever steals any explosive material from a licensed

importer, licensed manufacturer or licensed dealer, or from any permittee shall be fined in accordance with this title, imprisoned not more than ten years, or both.".

SEC. 424. ~~DISPOSING OF EXPLOSIVES TO PROHIBITED PERSONS~~

Section 842(d) of title 18, United States Code, is amended by striking "licensee" and ~~inserting in lieu thereof "person"~~.

SUBTITLE B -- ~~PROHIBITED GUN CLIPS AND MAGAZINES~~

SEC. 431. FINDINGS.

The Congress finds that --

(1) Offenses involving firearms equipped with magazines, belts, drums, feed strips, and other similar devices that enable such firearms to fire more than ~~fifteen rounds~~ without reloading, and particularly drug offenses, with their attendant loss of life and the generation of illegal profits, affect interstate and foreign commerce; and

(2) Such devices are themselves sold in interstate and foreign commerce, and are moved in commerce for the purpose of use in violent crimes.

SEC. 432. CERTAIN AMMUNITION CLIPS AND MAGAZINES DEFINED AS FIREARMS.

Section 921(a)(3) of title 18, United States Code, is amended by striking out "or" before "(D)", and by striking out the period after the word "device" and inserting in lieu thereof "; or (E) any ammunition feeding device.".

SEC. 433. DEFINITION OF ~~AMMUNITION FEEDING DEVICE~~.

Section 921(a) of title 18, United States Code, is amended

by adding a new paragraph at the end thereof as follows:

"(27) The term "ammunition feeding device" means a detachable magazine, belt, drum, feed strip, or similar device which has a capacity of, or which can be readily restored or converted to accept, more than 15 rounds of ammunition. The term also includes any combination of parts from which such a device can be assembled. Notwithstanding the foregoing, such term shall not include any attached tubular device deigned to accept and capable of operating with only .22 rim-fire caliber ammunition."

SEC. 434. PROHIBITIONS APPLICABLE TO AMMUNITION FEEDING DEVICES.

Section 922 of title 18, United States Code, is amended by adding new subsections (t), (u), and (v), as follows:

"(t) It shall be unlawful for any person to import, manufacture, transport, ship, transfer, receive, or possess an ammunition feeding device, except that this subsection shall not apply to --

"(1) any importation or manufacture of such a device for sale or distribution by a licensed importer or licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof;

"(2) any possession, shipment, transportation of or transfer (in accordance with the provisions of subsections (u) and (v)) of such a device that was lawfully possessed before this subsection takes effect; or

"(3) any manufacture of such a device for the purpose

of exportation.

"(u) The Secretary shall maintain a central registry of all ammunition feeding devices transferred after the effective date of this subsection which, after such transfer, are not in the possession or under the control of the United States, or any department or agency thereof or any department, agency, or political subdivision thereof. This registry shall be known as the National Ammunition Feeding Device Registry. The registry shall include --

"(1) identification of the device;

"(2) date of registration;

"(3) identification and address of the person entitled to possess the device; and

"(4) such other information as may be required by regulations promulgated by the Secretary.

"(v) Each transferor of an ammunition feeding device that was lawfully possessed before the effective date of subsection (t) shall (except in the case of a transfer to the United States, or any department or agency thereof or any State or any department, agency, or political subdivision thereof) register the device to the transferee in accordance with regulations promulgated by the Secretary. Any information or evidence required to be provided in the course of such registration by a natural person shall be subject to the use-restriction provisions of section 5848 of title 26, United States Code. The transferor shall, contemporaneously with the

registration of the device, pay a fee of $25 to the Secretary. A transferee of an ammunition feeding device required to be registered as required by this subsection shall retain proof of such registration which shall be made available to the Secretary upon request.".

SEC. 435. IDENTIFICATION MARKINGS FOR AMMUNITION FEEDING DEVICES.

Section 923(i) of title 18, United States Code, is amended by adding at the end thereof a new sentence as follows: "An ammunition feeding device shall be identified by a serial number and such other identification as the Secretary may by regulations prescribe.".

SEC. 436. CRIMINAL PENALTIES.

Subsection 924(a)(2) of title 18, United States Code, is amended by striking out "or (o)" and inserting in lieu thereof "(o), or (t)".

SEC. 437. NONINTERRUPTION OF BUSINESS FOR PERSONS IN THE BUSINESS OF IMPORTING OR MANUFACTURING AMMUNITION FEEDING DEVICES.

Any person engaging in the business of manufacturing or importing ammunition feeding devices requiring a license under the provisions of chapter 44 of title 18, United States Code, who was engaged in such business on the date of enactment of this Act, and who files an application for a license under the provisions of section 923 of title 18, United States Code, within 30 days after the date of enactment, may continue such business pending final action on the application. All provisions of

chapter 44 of title 18, United States Code, shall apply to such applicant in the same manner and to the same extent as if the applicant were a holder of a license under chapter 44.

102D CONGRESS
1ST SESSION

S. 618

To control and reduce violent crime.

IN THE SENATE OF THE UNITED STATES

MARCH 12 (legislative day, FEBRUARY 6), 1991

Mr. BIDEN (for himself and Mr. DECONCINI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To control and reduce violent crime.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Violent Crime Control Act of 1991".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—SAFER STREETS AND NEIGHBORHOODS

Sec. 101. Short title.
Sec. 102. Grants to State and local agencies.

TITLE II—DEATH PENALTY

Sec. 201. Short title.

TAB D

TITLE VI—DRIVE-BY-SHOOTING ACT

SEC. 601. SHORT TITLE.

This title may be cited as the "Drive-By-Shooting Prevention Act of 1991".

SEC. 602. NEW OFFENSE FOR THE INDISCRIMINATE USE OF WEAPONS TO FURTHER DRUG CONSPIRACIES.

(a) IN GENERAL.—Chapter 2 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 36. Drive-by-shooting

"(a) OFFENSE AND PENALTIES.—

"(1) Whoever, in furtherance or to escape detection of a major drug offense listed in subsection (b) and, with the intent to intimidate, harass, injure, or maim, fires a weapon into a group of two or more persons causing grave risk to human life shall be punished by a term of no more than 25 years, or by fine as provided under this title, or both.

"(2) Whoever, in furtherance or to escape detection of a major drug offense listed in subsection (b) and, with the intent to intimidate, harass, injure, or maim, fires a weapon into a group of two or more persons and who kills one of those persons shall be

sentenced according to the terms of section 1111 of this title, including a sentence of death or life imprisonment without release.

"(b) MAJOR DRUG OFFENSE DEFINED.—A major drug offense within the meaning of subsection (a) is one of the following:

"(1) a continuing criminal enterprise, punishable under section 403(c) of the Controlled Substances Act (21 U.S.C. 848(c));

"(2) a conspiracy to distribute controlled substances punishable under section 406 of the Controlled Substances Act (21 U.S.C. 846) or punishable under section 1013 of the Controlled Substances Import and Export Control Act (21 U.S.C. 963); or

"(3) an offense involving major quantities of drugs and punishable under section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)), or section 1010(b)(1) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)).".

(b) TABLE OF SECTIONS.—The table of sections for chapter 2 of title 18, United States Code, is amended by adding at the end thereof the following:

"36. Drive-by-shooting."

TITLE VII—ASSAULT WEAPONS

SEC. 701. SHORT TITLE.

This title may be cited as the "Antidrug, Assault Weapons Limitation Act of 1991".

SEC. 702. UNLAWFUL ACTS.

Section 922 of title 18, United States Code, is amended by adding at the end thereof the following:

"(q)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer, import, transport, ship, receive, or possess any assault weapon.

"(2) This subsection does not apply with respect to—

"(A) transferring, importing, transporting, shipping, and receiving to or by, or possession by or under, authority of the United States or any department or agency thereof, or of any State or any department, agency, or political subdivision thereof, of such an assault weapon, or

"(B) any lawful transferring, transporting, shipping, receiving, or possession of such a weapon that was lawfully possessed before the effective date of this subsection.

"(r)(1) It shall be unlawful for any person to sell, ship, or deliver an assault weapon to any person who does not fill out a form 4473 (pursuant to 27 CFR 178.124), or equivalent, in the purchase of such assault weapon.

"(2) It shall be unlawful for any person to purchase, possess, or accept delivery of an assault weapon unless such person has filled out such a form 4473, or equivalent, in the purchase of such assault weapon.

"(3) If a person purchases an assault weapon from anyone other than a licensed dealer, both the purchaser and the seller shall maintain a record of the sale on the seller's original copy of such form 4473, or equivalent.

"(4) Any current owner of an assault weapon that requires retention of form 4473, or equivalent, pursuant to the provisions of this subsection who, prior to the effective date of this subsection purchased such a weapon, shall, within 90 days after the issuing of regulations by the Secretary pursuant to paragraph (5), request a copy of such form from any licensed dealer, as defined in this title, in accordance with such regulations.

"(5) The Secretary shall, within 90 days after the date of enactment of this subsection, prescribe regulations for the request and delivery of such form 4473, or equivalent."

SEC. 703. DEFINITIONS.

Section 921(a) of title 18, United States Code, is amended by adding at the end thereof the following:

"(25) The term 'assault weapon' means any firearm designated as an assault weapon in this paragraph, including:

"(A) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models),

"(B) Action Arms Israeli Military Industries UZI and Galil,

"(C) Beretta AR–70 (SC–70),

"(D) Colt AR–15 and CAR–15,

"(E) Fabrique Nationale FN/FAL, FN/LAR, and FNC,

"(F) MAC 10 and MAC 11,

"(G) Steyr AUG,

"(H) INTRATEC TEC–9, and

"(I) Street Sweeper and Striker 12.".

SEC. 704. SECRETARY TO RECOMMEND DESIGNATION AS ASSAULT WEAPON.

Chapter 44 of title 18, United States Code, is amended—

(1) by adding at the end thereof the following new section:

"§ 931. Additional assault weapons

"The Secretary, in consultation with the Attorney General, may, when appropriate, recommend to the Congress the addition or deletion of firearms to be designated as assault weapons."; and

(2) in the table of sections by adding at the end thereof the following new item:

"931. Additional assault weapons."

SEC. 705. ENHANCED PENALTIES.

Section 924(c) of title 18, United States Code, is amended by inserting "and if the firearm is an assault weapon, to imprisonment for 10 years," after "sentenced to imprisonment for five years,".

SEC. 706. DISABILITY.

Section 922(g)(1) of title 18, United States Code, is amended by inserting before the semicolon at the end thereof the following: "or a violation of section 924(i) of this chapter".

SEC. 707. STUDY BY ATTORNEY GENERAL.

(a) IN GENERAL.—The Attorney General is authorized and directed to investigate and study the effect of the provisions of this title and the amendments made by this title and any impact therefrom on violent and drug trafficking crime. Such study shall be done over a period of 18 months, commencing 12 months after the date of enactment of this title.

(b) REPORT.—No later than 30 months after the date of enactment of this title, the Attorney General shall prepare and submit to the Senate of the United States,

a report setting forth in detail the findings and determinations made pursuant to subsection (a).

SEC. 708. SUNSET PROVISION.

Unless otherwise provided, this title and the amendments made by this title shall become effective 30 days after the date of enactment of this title. This title, except for section 407, shall be effective for a period of 3 years. At the end of such 3-year period this title and the amendments made by this title, except for section 407, shall be repealed.

TITLE VIII—POLICE CORPS AND LAW ENFORCEMENT TRAINING AND EDUCATION ACT

SEC. 801. SHORT TITLE.

This title may be cited as the "Police Corps and Law Enforcement Training and Education Act".

SEC. 802. PURPOSES.

The purposes of this title are to—

(1) address violent crime by increasing the number of police with advanced education and training on community patrol;

(2) provide educational assistance to law enforcement personnel and to students who possess a

sincere interest in public service in the form of law enforcement; and

(3) assist State and local law enforcement efforts to enhance the educational status of law enforcement personnel both through increasing the educational level of existing officers and by recruiting more highly educated officers.

SEC. 803. ESTABLISHMENT OF OFFICE OF THE POLICE CORPS AND LAW ENFORCEMENT EDUCATION.

(a) ESTABLISHMENT.—There is established in the Department of Justice, under the general authority of the Attorney General, an Office of the Police Corps and Law Enforcement Education.

(b) APPOINTMENT OF DIRECTOR.—The Office of the Police Corps and Law Enforcement Education shall be headed by a Director (referred to in this title as the "Director") who shall be appointed by the President, by and with the advice and consent of the Senate.

(c) RESPONSIBILITIES OF DIRECTOR.—The Director shall be responsible for the administration of the Police Corps program established in subtitle A and the Law Enforcement Scholarship program established in subtitle B and shall have authority to promulgate regulations to implement this title.

the law existing on the date the court determines the claim.

"(b) In determining whether to apply a new rule, the court shall consider—

"(1) the purpose to be served by the new rule;

"(2) the extent of the reliance by law enforcement authorities on a different rule; and

"(3) the effect on the administration of justice of the application of the new rule.

"(c) For purposes of this section, the term 'new rule' means a sharp break from precedent announced by the Supreme court of the United States that explicitly and substantially changes the law from that governing at the time the claimant's sentence became final. A rule is not new merely because, based on precedent existing before the rule's announcement, it was susceptible to debate among reasonable minds.".

(b) CHAPTER ANALYSIS.—The chapter analysis of chapter 153 of title 28, United States Code, is amended by adding at the end thereof the following:

"2255A. Law applicable.".

TITLE XI—PUNISHMENT OF GUN CRIMINALS

SEC. 1101. SHORT TITLE.

This title may be cited as the "Gun Criminals Punishment Act of 1991".

SEC. 1102. DEATH PENALTY FOR GUN MURDERS.

Section 924(c) of title 18, United States Code, amended by—

(1) inserting "(A)" after "(1)";

(2) designating the second sentence as subparagraph (B);

(3) designating the third and fourth sentence as subparagraph (D); and

(4) inserting before subparagraph (D) the following:

"(C) Whoever violates the terms of subparagraph (A) and, with the intent to kill, discharges a firearm that kills another person, shall be sentenced to death or life imprisonment without release.".

SEC. 1103. INCREASED PENALTIES FOR VIOLENT GUN CRIMES.

(a) IN GENERAL.—Section 924(c)(1) of title 18, United States Code, is amended by—

(1) striking subparagraph (A) and inserting the following:

"(A) Whoever, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States—

"(i) carries, possesses, or discharges a firearm, with the intent to injure another person, shall, in addition to the penalties already provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for a term from 5 to 10 years;

"(ii) carries, possesses or discharges a firearm that is an assault weapon, shall, in addition to the penalties already provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for a term from 10 to 15 years; or

"(iii) carries, possesses or discharges a firearm that is a machine gun, an explosive device, or is equipped with a firearm silencer or firearm muffler, shall be sentenced to imprisonment for 30 years."; and

(2) striking subparagraph (B), as designated by section 1102 of this Act, and inserting the following:

"(B) In the case of a second conviction under this subsection, such person shall be sentenced to imprisonment for 20 years and, if the firearm is an assault weapon, a machinegun, an explosive device, or is equipped with a firearm silencer or firearm muffler, to life imprisonment.".

(b) SENTENCING GUIDELINES FOR NEW PENALTIES.—Pursuant to its authority under section 994(p)

of title 28, United States Code, the United States Sentencing Commission, shall promulgate guidelines or amend existing guidelines to provide for a sentencing enhancement in accord with the provisions of subsection (c)(1)(A) of section 924 of title 18, United States Code.".

SEC. 1104. POSSESSION OF AN EXPLOSIVE DURING THE COMMISSION OF A FELONY.

(a) POSSESSION OF EXPLOSIVES.—Section 844(h) of title 18, United States Code, is amended by striking "carries an explosive during" and inserting "carries or otherwise possesses an explosive during".

(b) PENALTY.—Section 844(h) of title 18, United States Code, is amended by striking "ten years" and inserting "twenty years".

SEC. 1105. INCREASED PENALTY FOR KNOWINGLY FALSE, MATERIAL STATEMENT IN CONNECTION WITH THE ACQUISITION OF A FIREARM FROM A LICENSED DEALER.

Section 924(a) of title 18, United States Code, is amended—

(1) in subsection (a)(1)(B), by striking "(a)(6),"; and

(2) in subsection (a)(2), by inserting "(a)(6)," after "subsections".

than 6 months (it is a bar to a prosecution section that the conviction for a section

SEC. 1106. CLARIFICATION OF PENALTY ENHANCEMENT.

Section 924(c)(1)(D) of title 18, United States Code, is amended by striking "convicted of a violation of" and inserting "sentenced pursuant to".

SEC. 1107. PENALTIES FOR IMPROPER TRANSFER, STEALING FIREARMS, OR SMUGGLING A FIREARM IN DRUG-RELATED OFFENSE.

Section 924 of title 18, United States Code, is amended by adding at the end thereof the following:

"(i) Whoever knowingly fails to acquire form 4473, or equivalent (pursuant to 27 CFR 178.124), with respect to the lawful transferring, transporting, shipping, receiving, or possessing of any assault weapon, as required by the provisions of this chapter, shall be fined not more than $1,000 (in accordance with section 3571(e) of this title), imprisoned for not more than 6 months, or both.".

SEC. 1108. THEFT OF FIREARMS AND EXPLOSIVES.

Section 844 of title 18, United States Code, is amended by adding at the end the following:

"(k) Whoever steals any explosives materials which are moving as, or are a part of, or which have moved in, interstate or foreign commerce shall be imprisoned for not more than 20 years, or fined under this title, or both.".

SEC. 1109. BAR ON SALE OF FIREARMS AND EXPLOSIVES TO OR POSSESSION OF FIREARMS AND EXPLOSIVES BY PERSONS CONVICTED OF A VIOLENT OR SERIOUS DRUG MISDEMEANOR.

(a) FIREARMS.—Sections 842(d)(2) and 922(d)(1) of title 18, United States Code, are each amended by inserting ", or has been convicted in any court of any crime of violence involving use of a firearm or destructive device or misdemeanor drug or narcotic offense (as defined in section 404(c) of the Controlled Substances Act, 21 U.S.C. 844(c)) for which the penalty imposed was greater than 6 months (it is a bar to a prosecution under this paragraph that the conviction for a misdemeanor drug or narcotic offense occurred prior to the date of enactment of the Violent Crime Control Act of 1991)" after "crime punishable by imprisonment for a term exceeding one year";

(b) EXPLOSIVES.—Sections 842(i)(1) and 922(g)(1) of title 18, United States Code, are each amended by inserting "or has been convicted in any court of any crime of violence involving use of a firearm or destructive device or misdemeanor drug or narcotic offense (as defined in section 404(c) of the Controlled Substances Act, 21 U.S.C. 844(c)) for which the maximum penalty is greater than 6 months (it is a bar to a prosecution under this section that the conviction for a serious misdemeanor drug

or narcotic offense occurred prior to the date of enactment of the Violent Crime Control Act of 1991)" after "crime punishable by imprisonment for a term exceeding one year";

SEC. 1110. PERMITTING CONSIDERATION OF PRETRIAL DETENTION FOR CERTAIN FIREARMS AND EXPLOSIVES OFFENSES.

Section 3142(f)(1) of title 18, United States Code, is amended by—

(1) striking "or" after the semicolon in subparagraph (C);

(2) redesignating subparagraph (D) as subparagraph (E); and

(3) inserting after subparagraph (C) the following:

"(D) an offense under section 844(a) that is a violation of subsection (d), (h), or (i) of section 842 or an offense under section 924(a) that is a violation of subsection (d), (g), (h), (i), (j), (o), (q), or (s) of section 922; or".

SEC. 1111. DISPOSITION OF FORFEITED FIREARMS.

Subsection 5872(b) of the Internal Revenue Code of 1986 (26 U.S.C. 5872(b)), is amended to read as follows:

"(b) DISPOSAL.—In the case of the forfeiture of any firearm, where there is no remission or mitigation of forfeiture thereof—

"(1) The Secretary may retain the firearm for official use of the Department of the Treasury or, if not so retained, offer to transfer the weapon without charge to any other executive department or independent establishment of the Government for official use by it and, if the offer is accepted, so transfer the firearm;

"(2) If the firearm is not disposed of pursuant to paragraph (1), is a firearm other than a machinegun or a firearm forfeited for a violation of this chapter, is a firearm that in the opinion of the Secretary is not so defective that its disposition pursuant to this paragraph would create an unreasonable risk of a malfunction likely to result in death or bodily injury, and is a firearm which (in the judgment of the Secretary, taking into consideration evidence of present value and evidence that like firearms are not available except as collector's items, or that the value of like firearms available in ordinary commercial channels is substantially less) derives a substantial part of its monetary value from the fact that it is novel, rare, or because of its association with some

historical figure, period, or event the Secretary may sell such firearm, after public notice, at public sale to a dealer licensed under the provisions of chapter 44 of title 18, United States Code;

"(3) If the firearm has not been disposed of pursuant to paragraphs (1) or (2), the Secretary shall transfer the firearm to the Administrator of General Services, General Services Administration, who shall destroy or provide for the destruction of such firearm; and

"(4) No decision or action of the Secretary pursuant to this subsection shall be subject to judicial review.".

SEC. 1112. CLARIFICATION OF "BURGLARY" UNDER THE ARMED CAREER CRIMINAL STATUTE.

Section 924(e)(2) of title 18, United States Code, is amended by adding at the end thereof the following:

"(D) the term 'burglary' means any crime punishable by a term of imprisonment exceeding one year and consisting of entering or remaining surreptitiously within a building that is the property of another with intent to engage in conduct constituting a Federal or State offense.".

SEC. 1113. CLARIFICATION OF DEFINITION OF CONVICTION.

Section 921(a)(20) of title 18, United States Code, is amended by adding at the end the following: "Notwithstanding the previous sentence, if the conviction was for a violent felony involving the threatened or actual use of a firearm or explosive or was for a serious drug offense, as defined in section 924(e) of this title, the person shall be considered convicted for purposes of this chapter irrespective of any pardon, setting aside, or expunction of the original conviction.".

TITLE XII—PRISON FOR VIOLENT DRUG OFFENDERS

SEC. 1201. REGIONAL PRISONS.

(a) FINDINGS.—The Congress makes the following findings:

(1) The total population of Federal, State, and local prisons and jails increased by 84 percent between 1980 and 1988 and currently numbers more than 900,000 people.

(2) More than 60 percent of all prisoners have a history of drug abuse or are regularly using drugs while in prison, but only 11 percent of State prison inmates and 7 percent of Federal prisoners are enrolled in drug treatment programs. Hundreds of thousands of prisoners are not receiving needed drug

TABLE -- COMPARIS TOTAL OFFENSE LEVELS
APPLYING FIREARMS GUIDELINE §2K2.1 (1991) AND ALL PREVIOUS FIREARMS GUIDELINES

BASE OFFENSE LEVEL (BY SECTION)	NUMBER OF CASES	1990 AVERAGE TOTAL OFFENSE LEVEL	1991 AVERAGE TOTAL OFFENSE LEVEL MODEL	1991 AVERAGE TOTAL OFFENSE LEVEL OPTION 1	1991 AVERAGE TOTAL OFFENSE LEVEL OPTION 3	1991 AVERAGE TOTAL OFFENSE LEVEL OPTION 5	CASES WITH ONE OR MORE OFFENSE CHARAC.	CASES WITH OFFENSE CHARAC. b(1) (SPORTING REDUCTN)	CASES WITH OFFENSE CHARAC. b(2) (MULTIPLE FIREARM)	CASES WITH OFFENSE CHARAC. b(3) (STOLEN FIREARM)	CASES WITH OFFENSE CHARAC. b(7) (CRIMINAL CONDUCT)	CASES WITH OFFENSE CHARAC. b(8) (SALE BY FELON)	CASES WITH OFFENSE CHARAC. b(9) (COURT HOUSE)
§a(1) (NFA firearms)	72	17.10	19.11	18.45	19.62	21.18	55	0	31	27	32	4	1
§a(2) (2 prior convictn)	52	12.49	24.37	24.43	25.69	25.85	36	0	15	9	17	10	0
§a(3) (1 prior convictn)	70	12.26	21.53	20.32	21.64	21.81	55	0	26	16	24	9	0
§a(4) (felon)	38	10.34	15.03	14.42	15.35	17.01	33	3	16	11	11	11	1
§a(5)(A) (engage in bus.)	7	7.14	13.43	13.43	13.43	13.43	7	0	6	2	0	0	0
§a(5)(E) §a(5)(F) (inter-state)	10	6.90	14.70	14.20	14.70	14.70	10	0	8	0	2	1	0
§a(6) (misc.)	40	5.35	6.33	6.07	6.62	8.62	25	0	7	7	6	3	5
OVERALL	289	10.74	18.04	17.46	18.51	19.47	221	3	109	72	92	38	7

Note: offense characteristics b(4) occurred in one case, b(5) in no cases, and b(6) in two cases.

TABLE -- COMPARISON OF TOTAL OFFENSE LEVELS
APPLYING FIREARMS GUIDELINE §2K2.1 (1991) AND §2K2.1 (1989) (POSSESSION OFFENSES)

BASE OFFENSE LEVEL (BY SECTION)	NUMBER OF CASES	1989 AVERAGE TOTAL OFFENSE LEVEL	1990 AVERAGE TOTAL OFFENSE LEVEL PROJECTED	1991 AVERAGE TOTAL OFFENSE LEVEL OPTION 1	1991 AVERAGE TOTAL OFFENSE LEVEL OPTION 3	1991 AVERAGE TOTAL OFFENSE LEVEL OPTION 5	CASES WITH ONE OR MORE OFFENSE CHARAC.	CASES WITH NFA FIREARM a(1)	CASES WITH OFFENSE CHARAC. b(1) (SPORTING REDUCTN)	CASES WITH OFFENSE CHARAC. b(2) (MULTIPLE FIREARM)	CASES WITH OFFENSE CHARAC. b(3) (STOLEN FIREARM)	CASES WITH OFFENSE CHARAC. b(7) (CRIMINAL CONDUCT)	CASES WITH OFFENSE CHARAC. b(8) (SALE BY FELON)
§a(1) (NFA firearms)	32	11.25	16.78	18.19	19.56	20.81	23	23	0	13	14	10	1
§a(2) (2 prior convictn)	48	11.10	--	24.19	25.23	25.40	32	10	0	14	8	14	10
§a(3) (1 prior convictn)	55	10.45	--	20.29	21.42	21.42	42	11	0	19	13	18	6
§a(4) (felon)	37	10.52	--	14.43	15.33	16.98	32	0	3	16	11	11	11
§a(5)(E) §a(5)(F) (inter-state)	6	6.33	--	13.50	13.50	13.50	6	0	0	6	0	0	0
§a(6) (misc.)	7	4.00	--	4.57	5.14	7.14	2	0	0	0	0	2	0
OVERALL	185	10.39	--	18.95	20.00	20.66	137	44	3	68	46	55	28

TABLE -- COMPARISON OF TOTAL OFFENSE LEVELS
APPLYING FIREARMS GUIDELINE §2K2.1 (1991) AND §2K2.2 (1989) (DEALING OFFENSES)

BASE OFFENSE LEVEL (BY SECTION)	NUMBER OF CASES	1989 AVERAGE TOTAL OFFENSE LEVEL	1990 AVERAGE TOTAL OFFENSE LEVEL (EST.)	1991 AVERAGE TOTAL OFFENSE LEVEL OPTION 1	1991 AVERAGE TOTAL OFFENSE LEVEL OPTION 3	1991 AVERAGE TOTAL OFFENSE LEVEL OPTION 5	CASES WITH ONE OR MORE OFFENSE CHARAC.	CASES WITH OFFENSE CHARAC. b(2) (MULTIPLE FIREARMS)	CASES WITH OFFENSE CHARAC. b(3) (STOLEN FIREARM)	CASES WITH OFFENSE CHARAC. b(6) (ST. LAW VIOLATN)	CASES WITH OFFENSE CHARAC. b(7) (CRIMINAL CONDUCT)	CASES WITH OFFENSE CHARAC. b(8) (SALE BY FELON)
§a(1) (NFA firearms)	16	12.94	17.38	18.56	19.31	21.31	10	4	7	1	5	0
§a(2) (2 prior convictn)	1	14.00	16.00	24.00	28.00	28.00	1	0	0	0	0	0
§a(3) (1 prior convictn)	3	7.67	--	20.33	22.33	22.33	2	2	0	0	1	2
§a(4) (felon)	0	--	--	--	--	--	--	--	--	--	--	--
§a(5)A (engaged in bus.)	7	7.14	--	13.43	13.43	13.43	7	6	2	0	0	0
§a(5)E (inter-state)	2	9.00	--	17.50	20.00	20.00	2	2	0	0	2	1
§a(6) (misc.)	8	5.88	--	6.25	6.50	8.25	6	6	1	1	1	0
OVERALL	37	9.70	--	15.16	15.95	17.19	28	20	10	2	16	3

TABLE -- COMPARISON OF TOTAL OFFENSE LEVELS
APPLYING FIREARMS GUIDELINE §2K2.1 (1991) AND §2K2.2 (1987) (N.F.A. FIREARMS)

BASE OFFENSE LEVEL (BY SECTION)	NUMBER OF CASES	1987 AVERAGE TOTAL OFFENSE LEVEL	1989 AVERAGE TOTAL OFFENSE LEVEL	1990 AVERAGE TOTAL OFFENSE LEVEL PROJECTED	1991 AVERAGE TOTAL OFFENSE LEVEL OPTION 1	1991 AVERAGE TOTAL OFFENSE LEVEL OPTION 3	1991 AVERAGE TOTAL OFFENSE LEVEL OPTION 5	CASES WITH ONE OR MORE OFFENSE CHARAC.	CASES WITH OFFENSE CHARAC. b(2) (MULT. FIREARM)	CASES WITH OFFENSE CHARAC. b(3) (STOLEN FIREARM)	CASES WITH OFFENSE CHARAC. b(7) (CRIMINAL CONDUCT)	CASES WITH OFFENSE CHARAC. b(8) (SALE BY FELON)
§a(1) (NFA firearms)	20	9.30	13.25	17.25	18.50	19.55	21.25	17	10	6	7	1
§a(2) (2 prior convictn)	3	13.33	17.67	19.67	28.33	32.33	32.33	3	1	1	3	0
§a(3) (1 prior convictn)	10	10.50	15.30	17.30	20.20	22.50	23.70	10	4	2	5	1
§a(4) (felon)	0	--	--	--	--	--	--	--	--	--	--	--
§a(5)(E) (inter-state)	0	--	--	--	--	--	--	--	--	--	--	--
§a(6) (other offense)	0	--	--	--	--	--	--	--	--	--	--	--
OVERALL	33	10.03	14.27	17.64	19.91	21.61	23.00	30	15	9	15	2

TABLE -- COMPARISON TOTAL OFFENSE LEVELS
APPLYING FIREARMS GUIDELINE §2K2.1 (1991) AND §2K2.3 (1987) (PROHIBITED TRANSACTIONS)

BASE OFFENSE LEVEL (BY SECTION)	NUMBER OF CASES	1987 AVERAGE TOTAL OFFENSE LEVEL	1989 AVERAGE TOTAL OFFENSE LEVEL	1990 AVERAGE TOTAL OFFENSE LEVEL PROJECTED	1991 AVERAGE TOTAL OFFENSE LEVEL OPTION 1	1991 AVERAGE TOTAL OFFENSE LEVEL OPTION 3	1991 AVERAGE TOTAL OFFENSE LEVEL OPTION 5	CASES WITH ONE OR MORE OFFENSE CHARAC.	CASES WITH OFFENSE CHARAC. b(2) (MULT. FIREARM)	CASES WITH OFFENSE CHARAC. b(3) (STOLEN FIREARM)	CASES WITH OFFENSE CHARAC. b(4) (FIREARM TO FELON)	CASES WITH OFFENSE CHARAC. b(8) (SALE BY FELON)	CASES WITH CROSS REFERENCE c(1)
§a(1) (NFA firearms)	4	8.50	11.50	18.50	20.00	21.50	23.00	4	4	0	0	2	0
§a(2) (2 prior convictn)	0	0	0	--	0	0	0	0	0	0	0	0	0
§a(3) (1 prior convictn)	1	6.00	9.00	--	23.00	23.00	23.00	1	1	1	0	0	0
§a(4) (felon)	0	0	0	--	0	0	0	0	0	0	0	0	0
§a(5)(E) (inter-state)	2	6.50	6.50	--	13.50	13.50	13.50	2	2	0	0	0	0
§a(6) (other offense)	10	6.90	7.70	--	7.90	8.10	10.10	9	6	5	1	3	2
OVERALL	17	7.18	8.53	--	12.29	12.76	14.29	16	13	6	1	5	2

TABLE -- COMPARISON OF TOTAL OFFENSE LEVELS
APPLYING FIREARMS GUIDELINE §2K2.1 (1991) AND §2K2.5 (1989) (FEDERAL FACILITIES)

BASE OFFENSE LEVEL (BY SECTION)	NUMBER OF CASES	1989 AVERAGE TOTAL OFFENSE LEVEL	1990 AVERAGE TOTAL OFFENSE LEVEL (EST.)	1991 AVERAGE TOTAL OFFENSE LEVEL OPTION 1	1991 AVERAGE TOTAL OFFENSE LEVEL OPTION 3	1991 AVERAGE TOTAL OFFENSE LEVEL OPTION 5	CASES WITH ONE OR MORE OFFENSE CHARAC.	CASES WITH OFFENSE CHARAC. b(2) (MULTIPLE FIREARMS)	CASES WITH OFFENSE CHARAC. b(7) (CRIMINAL CONDUCT)	CASES WITH OFFENSE CHARAC. b(9) (COURT HOUSE)
§a(1) (NFA firearms)	1	4.00	14.00	18.00	20.00	22.00	1	0	0	1
§a(2) (2 prior convictn)	0	--	--	--	--	--	--	--	--	--
§a(3) (1 prior convictn)	0	--	--	--	--	--	--	--	--	--
§a(4) (felon)	1	4.00	--	14.00	16.00	18.00	1	0	0	1
§a(6) (misc.)	15	4.13	--	5.47	6.40	8.53	8	1	3	5
OVERALL	17	4.11	--	6.70	7.76	9.88	10	1	3	7

TABLE X -- COMPARISON OF FIREARMS GUIDELINE §2K2.1 (1989) (FIREARMS POSSESSION)
WITH PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)

CASE	1989	1990	#1	#2	#3	#4	#5	BASE	SOC
192	10(6-12)	16(21-27)++	16(21-27)	16(21-27)	16(21-27)	18(27-33)	18(27-33)	a(1)	
1000	14(15-21)	16(21-27)	16(21-27)	18(27-33)				a(1)	
1002	14(15-21)	16(21-27)	16(21-27)	18(27-33)				a(1)	
181	14(15-21)	16(21-27)	16(21-27)	16(21-27)	16(21-27)	18(27-33)	18(27-33)	a(1)	
174	14(18-24)	16(24-30)	16(24-30)	16(24-30)	16(24-30)	18(30-37)	18(30-37)	a(1)	
1001	4(0-6)	16(21-27)	16(21-27)	18(27-33)				a(1)	
155	4(0-6)	16(21-27)	16(21-27)	16(21-27)	16(21-27)	18(27-33)	18(27-33)	a(1)	
180	4(0-6)	16(21-27)	16(21-27)	16(21-27)	16(21-27)	18(27-33)	18(27-33)	a(1)	
156	6(1-7)	18(30-37)	18(30-37)	20(37-46)				a(1)	
173	16(21-27)	18(27-33)	20(33-41)	20(33-41)	20(33-41)	22(41-51)	22(41-51)	a(1)	b(2)
075	4(0-6)	16(21-27)++	17(24-30)	19(30-37)				a(1)	b(2)
096	14(15-21)	18(27-33)	21(37-46)	23(46-57)				a(1)	b(2)b(3)
149	14(15-21)	18(27-33)	20(33-41)	20(33-41)	20(33-41)	22(41-51)	22(41-51)	a(1)	b(2),b(3)
1005	16(21-27)	18(27-33)	20(33-41)					a(1)	b(2)b(3)
[illegible]	16(21-27)	18(30-37)	22(46-57)	24(57-71)	26(70-87)	24(57-71)	26(70-87)	a(1)	b(2)b(3)b(7)
	19(37-46)	18(33-41)	22(51-63)	22(51-63)	24(63-78)	24(63-78)	26(78-97)	a(1)	b(2)b(3)b(7)
111	10(15-21)	16(33-41)++	20(51-63)	22(63-78)	24(77-96)	24(77-96)	26(92-115)	a(1)	b(2),b(7)
157	11(8-14)	13(12-18)	16(21-27)	16(21-27)	18(27-33)	18(27-33)	20(33-41)	a(1)	b(2),b(7)
177	12(10-16)	14(15-21)	17(24-30)	17(24-30)	19(30-37)	19(30-37)	21(37-46)	a(1)	b(2),b(7)
158	14(15-21)	16(21-27)	19(30-37)	19(30-37)	21(37-46)	21(37-46)	23(46-57)	a(1)	b(2),b(7)
049	10(8-14)	16(24-30)++	18(30-37)	18(30-37)	19(33-41)	20(37-46)	21(41-51)	a(1)	b(2),b(8)
185+	24(63-78)+	24(63-78)+	24(63-78)+	25(70-87)	27(87-108)	25(70-87)	27(87-108)	a(1)	b(2,3,7)c(1)
186	12(12-18)	14(18-24)	16(24-30)	18(30-37)				a(1)	b(3)
032	12(21-27)	18(41-51)++	18(41-51)	18(41-51)	18(41-51)	20(51-63)	20(51-63)	a(1)	b(3)
184	16(27-33)	18(33-41)	18(33-41)	18(33-41)	18(33-41)	20(41-51)	20(41-51)	a(1)	b(3)
178	4(0-6)	16(21-27)	18(27-33)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	a(1)	b(3)
176	4(0-6)	16(21-27)	18(27-33)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	a(1)	b(3)
179	6(0-6)	18(27-33)	18(27-33)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	a(1)	b(3)
182+	20(33-41)+	20(33-41)+	20(33-41)+	20(33-41)+	22(41-51)	22(41-51)	24(51-63)	a(1)	b(3)b(7)c(1)
098	4(0-6)	16(21-27)	18(27-33)	20(33-41)	22(41-51)	20(33-41)	22(41-51)	a(1)	b(7)
142	4(0-6)	16(27-33)	18(33-41)	18(33-41)	20(41-51)	20(41-51)	22(51-63)	a(1)	b(7)
1008*	14(15-21)	16(21-27)	18(27-33)					a(1)	[b(3)]

TABLE X -- COMPARISON OF FIREARMS GUIDELINE §2K2.1 (1989) (FIREARMS POSSESSION)
WITH PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)

CASE	1989	1990	#1	#2	#3	#4	#5	BASE	SOC
100	10(10-16)		22(51-63)					a(2)	
122	10(10-16)		22(51-63)					a(2)	
045	10(21-27)		22(77-96)					a(2)	
012	10(21-27)		22(77-96)					a(2)	
006	10(21-27)		22(77-96)					a(2)	
019	10(24-30)		22(84-105)					a(2)	
110	10(24-30)		22(84-105)					a(2)	
033	10(24-30)		22(84-105)					a(2)	
132	10(24-30)		22(84-105)					a(2)	
003	10(24-30)		22(84-105)					a(2)	
048	12(15-21)		22(51-63)					a(2)	
046	12(30-37)		24(100-125					a(2)	
108	14(37-46)		26(120-150					a(2)	
146	4(0-6)		22(46-57)					a(2)	
[illegible]	4(2-8)		24(77-96)					a(2)	
	4(6-12)		22(84-105)					a(2)	
1004	14(27-33)	16(41-51)	22(63-78)	24(78-97)				a(2)	a(1)
151	14(37-46	16(46-57)	22(84-105)	24(100-125				a(2)	a(1)
097	14(27-33)	18(41-51)	23(70-87)	25(87-108)	27(100-125	25(87-108)	27(100-125	a(2)	a(1)b(2)b(7)
119	10(6-12)	18(27-33)++	25(57-71)	27(70-87)	28(78-97)	27(70-87)	28(78-97)	a(2)	a(1)b(2)b(8)
150	13(12-18)	15(21-27)	26(70-87)	28(87-108)	29(97-121)	28(87-108)	29(97-121)	a(2)	a(1)b(2)b(8)
153	18(33-41)	20(41-51	32(151-188	34(188-235	35(210-262	34(188-235	35(210-262	a(2)	a(1)b(2)b(8)
124	10(6-12)	20(33-41)	27(70-87)	29(87-108)	27(70-87)	29(87-108)	30(97-121)	a(2)	a(1)b(2,3,8)
152	16(27-33)	18(33-41)	24(63-78)	26(78-97)				a(2)	a(1)b(3)
183	14(33-41)	16(41-51)	24(92-115)	26(110-137	28(135-168	26(110-137	28(135-168	a(2)	a(1),b(7)
175*	6(12-18)	16(46-57)	22(84-105)	24(100-125				a(2)	a(1)[b(3)]
063	10(24-30)		24(100-125					a(2)	b(2)
116	10(8-14)		23(46-57)					a(2)	b(2)
135	12(12-18)		25(63-78)					a(2)	b(2)
079	12(12-18)		28(87-108)	28(87-108)	30(108-135	28(87-108)	30(108-135	a(2)	b(2),b(7)
126	10(10-16)		28(97-121)	28(97-121)	31(135-168	28(97-121)	31(135-168	a(2)	b(2)b(7)b(8)
129	10(24-30)		25(110-137	25(110-137	28(140-175	25(110-137	28(140-175	a(2)	b(2)b(7)b(8)

TABLE X -- COMPARISON OF FIREARMS GUIDELINE §2K2.1 (1989) (FIREARMS POSSESSION)
WITH PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)

CASE	1989	1990	#1	#2	#3	#4	#5	BASE	SOC
028	10(24-30)		25(110-137	25(110-137	26(120-150	25(110-137	26(120-150	a(2)	b(2),b(8)
134	16(41-51)		30(151-188	30(151-188	31(168-210	30(151-188	31(168-210	a(2)	b(2),b(8)
035*	12(15-21)		26(92-115)					a(2)	b(2)[b(3)]
109	12(27-33)		24(92-115)					a(2)	b(3)
030	12(30-37)		22(84-105)					a(2)	b(3)
120	12(27-33)		26(110-137	26(110-137	28(130-162	26(110-137	28(130-162	a(2)	b(3),b(7)
007	10(10-16)		24(63-78)	24(63-78)	26(78-97)	24(63-78)	26(78-97)	a(2)	b(7)
090	10(15-21)		26(78-97)	26(78-97)	28(97-121)	26(78-97)	28(97-121)	a(2)	b(7)
051	10(21-27)		24(92-115)	24(92-115)	26(110-137	24(92-115)	26(110-137	a(2)	b(7)
024	10(24-30)		24(100-125	24(100-125	26(120-150	24(100-125	26(120-150	a(2)	b(7)
055	10(24-30)		24(100-125	24(100-125	26(120-150	24(100-125	26(120-150	a(2)	b(7)
023	14(37-46)		28(140-175	28(140-175	30(168-210	28(140-175	30(168-210	a(2)	b(7)
038+	22(84-105)+		26(120-150	26(120-150	28(140-175	269120-150	28(140-175	a(2)	b(7)
064	10(6-12)		24(51-63)	24(51-63)	26(63-78)	24(51-63)	26(63-78)	a(2)	b(7),[b(3)]
[illegible]	10(24-30)		23(92-115)	23(92-115)	24(100-125	23(92-115)	24(100-125	a(2)	b(8)
	10(24-30)		25(110-137	25(110-137	26(120-150	25(110-137	26(120-150	a(2)	b(8)
078	10(10-16)		18(33-41)					a(3)	
047	10(10-16)		18(33-41)					a(3)	
107	10(10-16)		18(33-41)					a(3)	
121	10(10-16)		18(33-41)					a(3)	
043	10(21-27)		18(51-63)					a(3)	
067	10(24-30)		18(57-71)					a(3)	
114	10(24-30)		18(57-71)					a(3)	
113	10(6-12)		18(27-33)					a(3)	
020	10(6-12)		18(27-33)					a(3)	
123	10(8-14)		18(30-37)					a(3)	
115	10(8-14)		18(30-37)					a(3)	
017	12(27-33)		18(51-63)					a(3)	
061	4(0-6)		18(27-33)					a(3)	
015	10(8-14)	16(24-30)++	18(30-37)	20(37-46)				a(3)	a(1)
193	12(30-37)	18(57-71)++	20(70-87)	22(84-105)				a(3)	a(1)
171	4(0-6)	16(24-30)	18(30-37)	20(37-46)				a(3)	a(1)

TABLE X -- COMPARISON OF FIREARMS GUIDELINE §2K2.1 (1989) (FIREARMS POSSESSION) WITH PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)

CASE	1989	1990	#1	#2	#3	#4	#5	BASE	SOC
159	14(18-24)	16(24-30)	19(33-41)	21(41-51)				a(3)	a(1),b(2)
073	4(0-6)	16(27-33)++	21(46-57)	23(57-71)				a(3)	a(1),b(2)
1003	14(18-24)	16(24-30)	22(46-57)	24(57-71)	26(70-87)	24(57-71)	26(70-87)	a(3)	a(1)b(2)b(7)
099*	4(0-6)	16(21-27)	21(37-46)	23(46-57)				a(3)	a(1)b(2)[b3]
128	12(10-16)		24(51-63)	26(63-78)	28(78-97)	26(63-78)	28(78-97)	a(3)	a(1)b(2,3,7)
187	16(24-30)	18(30-37)	25(63-78)	27(78-97)	29(97-121)	27(78-97)	29(97-121)	a(3)	a(1)b(2,3,7)
1007	16(24-30)	18(30-37)	22(46-57)	24(57-71)	26(70-87)	24(57-71)	26(70-87)	a(3)	a(1)b(7)
1006	16(24-30)	18(30-37)	20(37-46)	22(46-57)	24(57-71)	22(46-57)	24(57-71)	a(3)	a(1)b(7)
016	10(15-21)		19(46-57)					a(3)	b(2)
044	10(21-27)		19(57-71)					a(3)	b(2)
034	10(24-30)		20(70-87)					a(3)	b(2)
101	12(15-21)		22(51-63)					a(3)	b(2)
102	12(15-21)		22(51-63)					a(3)	b(2)
188	4(0-6)		22(46-57)					a(3)	b(2)
	4(0-6)		21(37-46)					a(3)	b(2)
	12(15-21)		21(77-96)					a(3)	b(2),b(3)
095	12(12-18)		24(57-71)	24(57-71)	26(70-87)	24(57-71)	26(70-87)	a(3)	b(2)b(3)b(7)
117	10(8-14)		22(46-57)	22(46-57)	24(57-71)	22(46-57)	24(57-71)	a(3)	b(2),b(7)
056	12(30-37)		27(130-162	27(130-162	30(168-210	27(130-162	30(168-210	a(3)	b(2)b(7)b(8)
133	10(15-21)		21(57-71)	21(57-71)	22(63-78)	21(57-71)	22(63-78)	a(3)	b(2),b(8)
093	12(12-18)		26(70-87)	26(70-87)	27(78-97)	26(70-87)	27(78-97)	a(3)	b(2),b(8)
105	12(15-21)		20(41-51)					a(3)	b(3)
008	12(15-21)		20(41-51)					a(3)	b(3)
190	12(15-21)		20(41-51)					a(3)	b(3)
018	12(27-33)		20(63-78)					a(3)	b(3)
031	14(21-27)		20(41-51)					a(3)	b(3)
197	14(37-46)		24(100-125	24(100-125	26(120-150	24(100-125	26(120-150	a(3)	b(3),b(7)
040	10(10-16)		20(41-51)	20(41-51)	22(51-63)	20(41-51)	22(51-63)	a(3)	b(7)
094	10(10-16)		20(41-51)	20(41-51)	22(51-63)	20(41-51)	22(51-63)	a(3)	b(7)
082	10(24-30)		20(70-87)	20(70-87)	22(84-105)	20(70-87)	22(84-105)	a(3)	b(7)
039	10(24-30)		20(70-87)	20(78-87)	22(84-105)	20(70-87)	22(84-105)	a(3)	b(7)
025	10(6-12)		20(33-41)	20(33-41)	22(41-51)	20(33-41)	22(41-51)	a(3)	b(7)

TABLE X -- COMPARISON OF FIREARMS GUIDELINE §2K2.1 (1989) (FIREARMS POSSESSION)
WITH PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)

CASE	1989	1990	#1	#2	#3	#4	#5	BASE	SOC
054	10(8-14)		20(37-46)	20(37-46)	22(46-57)	20(27-46)	22(46-57)	a(3)	b(7)
069	13(24-30)		23(70-87)	23(70-87)	25(87-108)	23(70-87)	25(87-108)	a(3)	b(7)
062	12(15-21)		21(46-57)	21(46-57)	24(63-78)	21(46-57)	24(63-78)	a(3)	b(7),b(8)
085	10(10-16)		19(37-46)	19(37-46)	20(41-51)	19(37-46)	20(41-51)	a(3)	b(8)
083	4(0-6)		19(33-41)	19(33-41)	20(37-46)	19(33-41)	20(37-46)	a(3)	b(8)
050*	12(15-21)		18(33-41)					a(3)	[b(3)]
037	10(10-16)		20(41-51)	20(41-51)	22(51-63)	20(41-51)	22(51-63)	a(3)	[b(3)],b(7)
091	10(10-16)		12(15-21)	12(15-21)	12(15-21)	14(21-27)	14(21-27)	a(4)	
010	10(21-27)		12(27-33)	12(27-33)	12(27-33)	14(33-41)	14(33-41)	a(4)	
191	10(8-14)		12(12-18)	12(12-18)	12(12-18)	14(18-24)	14(18-24)	a(4)	
127	10(8-14)		12(12-18)	12(12-18)	12(12-18)	14(18-24)	14(18-24)	a(4)	
092	12(15-21)		14(21-27)	14(21-27)	14(21-27)	16(27-33)	16(27-33)	a(4)	
136	4(2-8)		4(2-8)	4(2-8)	4(2-8)	6(6-12)	6(6-12)	a(4)	b(1)
070	4(2-8)		4(2-8)					a(4)	b(1)
[illegible]	4(0-6)		9(6-12)	9(6-12)	10(8-14)	12(12-18)	13(15-21)	a(4)	b(1)b(2)b(8)
	10(6-12)		13(12-18)	13(12-18)	13(12-18)	15(18-24)	15(18-24)	a(4)	b(2)
080	10(6-12)		16(21-27)	16(21-27)	16(21-27)	18(27-33)	18(27-33)	a(4)	b(2)
147	4(0-6)		14(18-24)	14(18-24)	14(18-24)	16(24-30)	16(24-30)	a(4)	b(2)
077	12(12-18)		16(24-30)	16(24-30)	16(24-30)	18(30-37)	18(30-37)	a(4)	b(2),b(3)
042	14(18-24)		17(27-33)	17(27-33)	17(27-33)	19(33-41)	19(33-41)	a(4)	b(2),b(3)
059	10(10-16)		15(24-30)	15(24-30)	17(30-37)	17(30-37)	19(37-46)	a(4)	b(2),b(7)
118	10(8-14)		15(21-27)	15(21-27)	17(27-33)	17(27-33)	19(33-41)	a(4)	b(2),b(7)
137	10(8-14)		17(27-33)	17(27-33)	19(33-41)	19(33-41)	21(41-51)	a(4)	b(2),b(7)
103	10(6-12)		19(30-37)	19(30-37)	23(46-57)	21(37-46)	25(57-71)	a(4)	b(2)b(7)b(8)
104	10(10-16)		16(27-33)	16(27-33)	17(30-37)	18(33-41)	19(37-46)	a(4)	b(2),b(8)
138	12(12-18)		14(18-24)	14(18-24)	15(21-27)	16(24-30)	17(27-33)	a(4)	b(2),b(8)
027	12(15-21)		18(33-41)	18(33-41)	19(37-46)	20(41-51)	21(46-57)	a(4)	b(2),b(8)
060	10(6-12)		18(27-33)	18(27-33)	19(30-37)	20(33-41)	21(37-46)	a(4)	b(2)b(8)[b3]
084*	10(21-27)		14(33-41)	14(33-41)	14(33-41)	16(41-51)	16(41-51)	a(4)	b(2)[b(3)]
086	12(30-37)		17(51-63)	17(51-63)	18(57-71)	19(63-78)	20(70-87)	a(4)	b(2)[b3]b(8)
088*	12(12-18)		14(18-24)	14(18-24)	14(18-24)	16(24-30)	16(24-30)	a(4)	b(3)
000	12(21-27)		14(27-33)	14(27-33)	14(27-33)	16(33-41)	16(33-41)	a(4)	b(3)

TABLE X -- COMPARISON OF FIREARMS GUIDELINE §2K2.1 (1989) (FIREARMS POSSESSION)
WITH PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)

CASE	1989	1990	#1	#2	#3	#4	#5	BASE	SOC
076	12(12-18)		16(24-30)	16(24-30)	18(30-37)	18(30-37)	20(37-46)	a(4)	b(3),b(7)
001	12(27-33)		16(41-51)	16(41-51)	18(51-63)	18(51-63)	20(63-78)	a(4)	b(3),b(7)
052	12(30-37)		15(41-51)	15(41-51)	16(46-57)	17(51-63)	18(57-71)	a(4)	b(3),b(8)
005	10(10-16)		14(21-27)	14(21-27)	16(27-33)	16(27-33)	18(33-41)	a(4)	b(7)
196	12(10-16)		16(21-27)	16(21-27)	18(27-33)	18(27-33)	20(33-41)	a(4)	b(7)
112	12(12-18)		16(24-30)	16(24-30)	18(30-37)	18(30-37)	20(37-46)	a(4)	b(7)
011	12(27-33)		14(33-41)	14(33-41)	16(41-51)	16(41-51)	18(51-63)	a(4)	b(7)
066	21(77-97)+		21(77-97)+	21(77-97)+	21(77-97)+	21(77-97)+	21(77-97)+	a(4)	b(7),c(1)
002	10(24-30)		13(33-41)	13(33-41)	14(37-46)	15(41-51)	16(46-57)	a(4)	b(8)
089	10(8-14)		13(15-21)	13(15-21)	14(18-24)	15(21-27)	16(24-30)	a(4)	b(8)
065	12(10-16)		13(12-18)	13(12-18)	14(15-21)	15(18-24)	16(21-27)	a(4)	b(8)
036*	10(10-16)		12(15-21)	12(15-21)	12(15-21)	14(21-27)	14(21-27)	a(4)	[b(3)]
072	4(0-6)		14(21-27)					a(5)E	b(2)
074	4(0-6)		11(8-14)					a(5)E	b(2)
[illegible]	4(0-6)		12(10-16)					a(5)E	b(2)
	8(2-8)		14(15-21)					a(5)F	b(2)
145	9(4-10)		15(18-24)					a(5)F	b(2)
144	9(4-10)		15(18-24)					a(5)F	b(2)
168	4(0-4)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	
166	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	
170	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	
140	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	
172	4(2-8)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	
141	4(0-6)		6(0-6)	6(0-6)	8(2-8)	8(2-8)	10(6-12)	a(6)	b(7)
139	4(6-12)		6(12-18)	6(12-18)	8(18-24)	8(18-24)	10(24-30)	a(6)	b(7)

Case numbers 160-165, 189, 194, 195, 198, 199, 004, 009, 013, 014, 021; 022, 029, 041, 053, 068, 071, 081, 087, all involvec armed career criminal or career offender provisions, which would vitiate the application of §2K2.1 (1991), and that guidelin has not been applied in this table to those cases.

- Shaded figures represent the offense level and range that would receive under the model guideline (version effective 3-27-91).

- All references to base offense level and specific offense characteristic relate to published guideline section numbers.

* These cases apparently should have applied the enhancement for stolen firearms or firearms with obliterated serial numbers, but, for various reasons, did not. Accordingly, the enhancement has not been included in the application of §2K2.1 (1991).

\+ These cases and guideline ranges were determined by applying the cross reference to the guideline for the underlying conduct.

++ While §2K2.1 (1989) technically does not apply where the statute of conviction is not 26 U.S.C. § 5861, the guideline range has been calculated for comparative purposes.

TABLE -- COMPARISON OF FIREARMS GUIDELINE §2K2.2 (1989) (FIREARMS DEALING) WITH PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)

CASE	1989	1990	#1	#2	#3	#4	#5	BASE	SOC
209	14(15-21)	16(21-27)	16(21-27)	16(21-27)	16(21-27)	18(27-33)	18(27-33)	a(1)	
215	14(18-24)	16(24-30)	16(24-30)	16(24-30)	16(24-30)	18(30-37)	18(30-37)	a(1)	
213	14(18-24)	16(24-30)	16(24-30)	16(24-30)	16(24-30)	18(30-37)	18(30-37)	a(1)	
210	16(21-27)	18(27-33)	18(27-33)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	a(1)	
216	17(24-30)	19(30-37)	19(30-37)	19(30-37)	19(30-37)	21(37-46)	21(37-46)	a(1)	
203	4(0-6)	16(21-27)+	16(21-27)	16(21-27)	16(21-27)	18(27-33)	18(27-33)	a(1)	
231	18(27-33)	20(33-41)	20(33-41)	20(33-41)	20(33-41)	22(41-51)	22(41-51)	a(1)	b(2)
223	5(0-5)	17(24-30)+	17(24-30)	17(24-30)	17(24-30)	19(30-37)	19(30-37)	a(1)	b(2)
211	14(15-21)	18(27-33)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	20(33-41)	a(1)	b(2)
214	14(15-21)	16(21-27)	18(27-33)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	a(1)	b(3)
232	16(21-27)	18(27-33)	18(27-33)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	a(1)	b(3)
217	12(10-16)	24(51-63)+	26(63-78)	26(63-78)	28(78-97)	28(78-97)	30(97-121	a(1)	b(3)b(4)b(7)
235	14(15-21)	16(21-27)	20(33-41)	22(41-51)	24(51-63)	24(51-63)	26(63-78)	a(1)	b(3),b(7)
233	14(18-24)	16(24-30)	20(37-46)	20(37-46)	22(46-57)	22(46-57)	24(57-71)	a(1)	b(3)b(7)
	16(21-27)	18(27-33)	22(41-51)	24(51-63)	26(63-78)	26(63-78)	28(78-97)	a(1)	b(3),b(7)
228*	5(1-7)	16(27-33)	19(37-46)	19(37-46)	19(37-46)	21(46-57)	21(46-57)	a(1)	[b(2)]b(3,6)
234	14(37-46)	16(46-57)	24(100-125	26(120-150	28(140-175	26(120-150	28(140-175	a(2)	a(1),b(7)
221	4(0-6)		18(27-33)					a(3)	
212	15(41-51)	17(51-63)	22(84-105)	24(100-125	27(130-162	24(100-125	27(130-162	a(3)	a(1)b(2,7,8)
204	4(0-6)	70(46-87)	21(46-57)	21(46-57)	22(51-63)	21(46-57)	22(51-63)	a(3)	b(2),b(8)
218	11(8-14)		17(24-30)	17(24-30)	17(24-30)	17(24-30)	17(24-30)	a(5)A	b(2)
225	8(2-8)		14(15-21)					a(5)A	b(2)
230	8(2-8)		14(15-21)					a(5)A	b(2)
224	8(2-8)		14(15-21)					a(5)A	b(2)
200	7(1-7)		13(12-18)	13(12-18)	13(12-18)	13(12-18)	13(12-18)	a(5)A	b(2),b(3)
201	4(0-4)		12(10-16)	12(10-16)	12(10-16)	12(10-16)	12(10-16)	a(5)A	b(3)
220*	4(0-6)		10(6-12)	10(6-12)	10(6-12)	10(6-12)	10(6-12)	a(5)A	[b(2)]
226	9(4-10)		17(24-30)	17(24-30)	19(30-37)	17(24-30)	19(30-37)	a(5)E	b(2),b(7)
227	9(18-24)		18(51-63)	18(51-63)	21(70-87)	18(51-63)	21(70-87)	a(5)E	b(2)b(7)b(8)
208	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	
207	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	

TABLE -- COMPARISON OF FIREARMS GUIDELINE §2K2.2 (1989) (FIREARMS DEALING) WITH PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)

CASE	1989	1990	#1	#2	#3	#4	#5	BASE	SOC
206	5(0-6)		5(0-6)	5(0-6)	5(0-6)	7(1-7)	7(1-7)	a(6)	b(2)
205	5(0-6)		5(0-6)	5(0-6)	5(0-6)	7(1-7)	7(1-7)	a(6)	b(2)
222	8(2-8)		8(2-8)	8(2-8)	8(2-8)	10(6-12)	10(6-12)	a(6)	b(2)
202	12(10-16)		15(18-24)	15(18-24)	17(24-30)	17(24-30)	19(30-37)	a(6)	b(2)b(6)b(7)
219	5(0-6)		5(0-6)	5(0-6)	5(0-6)	5(0-6)	5(0-6)	a(6)	[b(2),b(3)]
229*	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	[b(2)]

Notes:

- Redlined figures represent the offense level and range that would have resulted under the model guideline (version effective 3-27-91).

- All references to base offense level and specific offense characteristic refer to the published guideline.

* These cases involved multiple firearms, but the relevant enhancement was not applied under the 1989 version, and has not been applied here.

\+ These cases involved N.F.A. firearms, but defendants were not convicted under 26:5861. The 1990 estimate, then, is shown solely for purposes of comparison.

TABLE -- COMPARISON OF FIREARMS GUIDELINE §2K2.2 (1987) (N.F.A. FIREARMS OFFENSES) WITH PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)

SE	1987	1989	1990	#1	#2	#3	#4	#5	BASE	SOC
..	14(15-21)	18(27-33)	20(33-41)	20(33-41)	20(33-41)	20(33-41)	22(41-51)	22(41-51)	a(1)	
220	4(0-4)	4(0-4)	16(21-27)	16(21-27)	16(21-27)	16(21-27)	18(27-33)	18(27-33)	a(1)	
300	10(6-12)	15(18-24)	17(24-30)	17(24-30)	17(24-30)	17(24-30)	19(30-37)	19(30-37)	a(1)	b(2)
307	4(0-6)	4(0-6)	17(24-30)	17(24-30)	17(24-30)	17(24-30)	19(30-37)	19(30-37)	a(1)	b(2)
314	4(0-4)	4(0-4)	17(24-30)	17(24-30)	17(24-30)	17(24-30)	19(30-37)	19(30-37)	a(1)	b(2)
321	10(6-12)	15(18-24)	17(24-30)	17(24-30)	17(24-30)	17(24-30)	19(30-37)	19(30-37)	a(1)	b(2)
323*	10(6-12)	14(15-21)	18(27-33)	18(27-33)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	a(1)	b(2) [b(3)]
306	11(8-14)	18(27-33)	20(33-41)	20(33-41)	20(33-41)	20(33-41)	22(41-51)	22(41-51)	a(1)	b(2,3)
317	14(15-21)	19(30-37)	21(37-46)	23(46-57)	25(57-71)	25(57-71)	25(57-71)	25(57-71)	a(1)	b(2,3)
318	10(6-12)	16(21-27)	18(27-33)	20(33-41)	20(33-41)	20(33-41)	22(41-51)	22(41-51)	a(1)	b(2,3)
327	11(8-16)	20(33-41)	22(41-51)	22(41-51)	22(41-51)	22(41-51)	24(51-63)	24(51-63)	a(1)	b(2,3)
329	10(6-12)	18(27-33)	20(33-41)	22(41-51)	24(51-63)	26(63-78)	24(51-63)	26(63-78)	a(1)	b(2,3, 7)
301	10(6-12)	14(15-21)	16(21-27)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	22(41-51)	a(1)	b(7)
303	10(6-12)	14(15-21)	16(21-27)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	22(41-51)	a(1)	b(7)
315	10(8-14)	14(18-24)	16(24-30)	18(30-37)	18(30-37)	20(37-46)	20(37-46)	22(46-57)	a(1)	b(7)
319	4(0-4)	4(0-4)	16(21-27)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	22(41-51)	a(1)	b(7)
325	10(6-12)	14(15-21)	16(21-27)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	22(41-51)	a(1)	b(7)
	10(6-12)	14(15-21)	16(21-27)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	22(41-51)	a(1)	b(7)
30	10(10-16)	14(21-27)	16(27-33)	17(30-37)	17(30-37)	18(33-41)	19(37-46)	20(41-51)	a(1)	b(8)
302	14(27-33)	18(41-51)	20(51-63)	30(135-168	32(168-210	34(210-262	32(168-210	34(210-262	a(2)	a(1) b(3,7)
305	16(27-33)	21(46-57)	23(57-71)	31(135-168	33(168-210	35(210-262	33(168-210	35(210-262	a(2)	a(1) b(2,7)
333	10(15-21)	14(33-41)	16(41-51)	24(92-115	26(110-137	28(130-162	26(110-137	28(130-162	a(2)	a(1)b7
304	10(6-12)	14(15-21)	16(21-27)	18(27-33)	20(33-41)	20(33-41)	20(33-41)	20(33-41)	a(3)	a(1)
313	10(6-12)	14(15-21)	16(21-27)	18(27-33)	20(33-41)	20(33-41)	20(33-41)	20(33-41)	a(3)	a(1)
316	10(8-14)	14(18-24)	16(24-30)	18(30-37)	20(37-46)	20(37-46)	20(37-46)	20(37-46)	a(3)	a(1)
322	10(10-16)	14(21-27)	16(27-33)	18(33-41)	20(41-51)	20(41-51)	20(41-51)	20(41-51)	a(3)	a(1)
328	12(15-21)	19(37-46)	21(46-57)	25(70-87)	27(87-108	29(108-135	27(87-108	29(108-135	a(3)	a(1)b(2,3,7)
309	13(18-24)	20(41-51)	22(51-63)	27(87-108	29(108-135	32(151-188	29(108-135	32(151-188	a(3)	a(1)b(2,3,7, 8)
310	10(21-27)	14(33-41)	16(41-51)	22(77-96)	24(92-115	24(92-115	24(92-115	24(92-115	a(3)	a(1)b2
324	10(8-14)	16(24-30)	18(30-37)	18(30-37)	18(30-37)	18(30-37)	20(37-46)	20(37-46)	a(3)	a(1)b2
311	10(15-21)	14(27-33)	16(33-41)	20(51-63)	22(63-78)	24(77-96)	22(63-78)	24(77-96)	a(3)	a(1)b7
312	10(8-14)	14(18-24)	16(24-30)	20(37-46)	22(46-57)	24(37-46)	22(46-57)	24(57-71)	a(3)	a(1)b7
	10(8-14)	14(18-24)	16(24-30)	20(37-46)	22(46-57)	24(57-71)	22(46-57)	24(57-71)	a(3)	a(1)b7

* This defendant should apparently have received an enhancement under §2K2.2(b)(1) (stolen firearm). Since the defendant did not receive such an enhancement under the 1987 guideline, it has not been added here.

USSG CASE	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	NTENT/ USE
§2K2.1 59325 16	§922(g)(1)	none	1989	12 base 10(15-21)	15 mos	IV 9 pts	Y	N	2 rifles (loaded) 1 shotgun	not known

Defendant was arrested for DUI. One rifle was on the console, and the other two firearms were in the trunk. One gun had been purchased at a store, and one had been borrowed from his brother, apparently to shoot deer. However, the defendant initially indicated his brother had willed them to defendant. The difficulty in discerning truth from among defendant's statements led the court to reject a sporting reduction. Reduction for acceptance (-2). Priors include murder and felon with a pistol.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	016	10(15-21)		19(46-57)	19(46-57)	19(46-57)	19(46-57)	19(46-57)	a(3)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 59718 17	§924(a)(2) §922(g)(1)	none	1989	12 base 12(27-33)	30 mos	V 10pts	Y	N	1 rifle 1 shotgun both loaded	possessn

Defendant was arrested for DWI, and a rifle was found in the front seat, as well as a shotgun. Defendant resisted arrest. The guns were allegedly used for protection and for hunting, and for protecting farm animals from a fox. However, the P.O. refused to give a reduction for possession of the firearm "solely for lawful purposes" since a felon can never possess a firearm lawfully. No reduction for acceptance. Priors include possession of hashish, DWI, burglary (not apparent what type of building), DWI, assault with bodily injury, DWI, DWI, DWLS.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	017	12(27-33)		18(51-63)	18(51-63)	18(51-63)	18(51-63)	18(51-63)	a(3)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 59813 18	§922(k) §924(a)(1)	2 counts 922(g)(1)	1989	12 base 12(27-33)	30 mos	V 10pts	Y	Y	2 pistols and ammunition	possessn

Defendant and another person reentered the United States from Mexico, and, after lying about the contents of their luggage, were referred to secondary inspection where they were discovered to be carrying ammunition, two firearms (one with a serial number obliterated). Additional searches discovered trace amounts of marijuana on the floor of their vehicle, and 1.1 grams of marijuana in defendant's pocket. Defendant said he had borrowed the firearms from friends for protection. However, the other person indicated the firearms had been purchased on the street in exchange for marijuana. Enhancement for obliterated serial numbers (+2), and reduction for acceptance (-2). Priors include felony theft, attempted murder.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	018	12(27-33)		29(63-78)	29(63-78)	29(63-78)	29(63-78)	29(63-78)	a(3)	b(3)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 59971 19	§922(g)(1)	none	1989	12 base 10 (24-30)*	*	VI 18pts	Y	N	1 pistol	not known

Defendant was stopped for driving without his headlights and was found to be in possession of a firearm.Priors include armed robbery as a juvenile, and as an adult,larceny, escape,receiving and concealing stolen property (two convictions), attempted grand larceny, public drunk, unlawfully using electric power, second degree burglary (not apparent if residential), attempted burglary of residence, felonious possession of burglary tools, petit larceny, public drunk, aggravated assault, criminal trespass, robbery; armed robbery. Reduction for acceptance (-2).

* no Judgment and Conviction document was in the files, so this information could not be confirmed or provided.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	019	10(24-30)		22(84-105)	22(84-105)	22(84-105)	22(84-105)	22(84-105)	a(2)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 60018 20	§922(g)(1)	none	1989	12 base 10(6-12)	probatn	I 0 pts	Y	N	1 .357 revolver 1 12g. shotgun (loaded)	possessn

Defendant purchased each gun on a separate occasion from a licensed dealer. Reduction for acceptance (-2). Priors (both stale for criminal history purposes) include shooting into an inhabited dwelling and possession of controlled substance.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	020	10(6-12)		18(27-33)	18(27-33)	18(27-33)	18(27-33)	18(27-33)	a(3)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 60193 21	§922(g)(1) §924(e)(1)	none	1989	12 base 12(27-33)	180 mos	V 11pts	Y	N	1 handgun	not known

Defendant was seen running through an alley, when police followed him. Defendant threw the revolver down, and later denied it was his. Reduction for acceptance denied, no enhancements. Priors include burglary of storehouse, armed bank robbery. Another prior involved robbery, but this was a conviction as an adult after he was arrested at age 16.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	021	12(27-33)	180 mos+	24(92-115)	24(92-115)	24(92-115)	24(92-115)	24(92-115)	a(2)	

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 60220 22	922(g)(1)	§5861(d)	1989	12 base 14(27-33)	180 mos	IV 8 pts	Y	N	1 short barrel shotgun 1 shotgun 1 revolver and ammunition	not known

Defendant was found to possess three firearms at his home. One of the firearms had a serial number that was missing. Enhancement for missing serial number (-2), and no acceptance reduction. Priors include burglary and theft of a storehouse, burglary and grand larceny (not clear if residential), burglary of a store, possession of cocaine, delivery of a controlled substance (two convictions).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	22	14(27-33)		27(100-125)	27(100-125)	27(100-125)	27(100-125)	27(100-125)	a(2)	b(2),b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 60228 23	§922(g)(1) §924(e)(1)	none	1989	12 base 14(37-46)	46 mos	VI 14pts	Y	N	1 .25 handgun	criminal

Defendant was involved in a domestic disturbance, and after police were called, he fled in a stolen vehicle with firearm in hand. He was pursued by officers for two miles until he ended up at the apartment building again, and exited the still moving vehicle, gun in hand. He pointed the gun in the direction of the police officers, but fled into some nearby woods when the officers drew their guns. He emerged later with the gun concealed, but finally dropped it at the officers' request. During defendant's jury trial he remained so intoxicated that a mistrial was ordered and a second jury impaneled. Enhancement for obstruction of justice (+2), and no reductions. Priors include armed robbery, forge and utter, burglary of a storehouse, unauthorized use of a vehicle/breaking and entering a residence, DUI, attempting to elude police officer, failure to appear, contempt.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	023	14(37-46)		28(140-175	28(140-175	30(168-210	28(140-175	30(168-210	a(2)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 60272 24	§922(g)(1) §924(a)(2)	none	1989	12 base 10(24-30)	24 mos	VI 17pts	Y	N	1 .22 handgun	criminal

Defendant fired twice while sitting in a bar. Reduction for acceptance (-2). Priors include conspiracy to commit arson, assault, assault, felon in possession, felon in possession, possession of drugs (2 counts)/possession of marijuana with intent to distribute, assault with intent to rape, and 25 misdemeanors.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	024	10(24-30)		24(100-125	24(100-125	26(120-150	24(100-125	26(120-150	a(2)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ISON ERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	ITENT/ USE
§2K2.1 60383 25	§922(g)(1)	none	1989	12 base 10(6-12)	6 mos	I 1 pt	Y	N	1 .25 caliber automatic pistol	criminal
Defendant was believed to be running a large-scale gambling operation, and when police raided his residence, they discovered gambling records, the firearm, marijuana, and drug paraphernalia. Defendant was also found to be in possession of what were believed to be stolen articles of clothing. Reduction for acceptance (-2). Priors include discharging a firearm, conspiracy to promote bookmaking, assault and battery.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	025	10(6-12)		20(33-41)	20(33-41)	22(41-51)	20(33-41)	22(41-51)	a(3)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 60491 26	§922(g)(1) §924(a)(2)	none	1989	12 base 10(6-12)	9 mos	I 0 pts	N	N	3 handguns	not known
Defendant was found to be in possession of three handguns, when postal inspectors investigated him for credit card fraud. He defrauded various credit card companies of $24,000, and, as president of a tenant association, defrauded tenants of $10,000 in rent strike escrow funds. Priors include numerous obscenity and sex offenses, oral sodomy with a minor, lewd (homosexual) act, attempted grand larceny, lewd acts, grand larceny III, forgery II, petit larceny, mail fraud, and attempted promotion of prison contraband.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	026	10(6-12)		13(12-18)	13(12-18)	13(12-18)	15(18-24)	15(18-24)	a(4)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 60516 27	§922(g)(1)	none	1989	12 base 12(15-21)	18 mos	III 6 pts	N	N	12 handguns	sale
Defendant went to Virginia on at least four occasions over a three month period and purchased at least twelve handguns, which he then transported to New York City for resale on the street. Defendant indicated the guns were also used (or were solely used) for protection, since he had recently been robbed at gunpoint. No enhancements, no reduction for acceptance (since while on bail for the instant offense he was charged with attempted murder of a police officer). Priors include attempted possession of a forged instrument, criminal possession of a loaded firearm.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	027	12(15-21)		18(33-41)	18(33-41)	19(37-46)	20(41-51)	21(46-57)	a(4)	b(2),b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	SON ERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	TENT/ USE
§2K2.1 60562 28	§924(a)(1) §922(a)(6)	922(a)(1)	1989	12 base 10(24-30)	30 mos	VI 17pts	Y	N	1 .45 pistol and at least 5 other handguns	sale\ protectn

Defendant was stopped for driving a car that had been known to transport illegal aliens across the border, and which had been abandoned a week earlier. Defendant refused to provide his name or citizenship, but the police officers found in his possession a receipt for the purchase of the pistol. The receipt contained his name. Defendant later admitted to purchasing the pistol, and at least five other handguns, and selling them to Mexicans in Mexico. Reduction for acceptance (-2), no enhancements. Priors include drunk driving, battery/carrying a loaded firearm/brandishing, resisting arrest/drunk driving, battery, reckless driving, concealed weapon, threat with a knife, accident involving property, reckless driving, driving with a suspended license (five convictions), felon in possession, failure to appear, attempted rape, unlawfully carrying a weapon (two convictions), murder.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	028	10(24-30)		25(110-137	25(110-137	26(120-150	25(110-137	26(120-150	a(2)	b(2),b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 60631 29	§922(g)(1)	none	1989	12 base 22 (84-105) car.offend	84 mos	VI 15pts	Y	N	1 shotgun	criminal

Defendant was one of three persons who fired shots into a crowd of about 40 or 50 persons involved in a gang fight after midnight one night. Defendant used a shotgun (three spent shells were found), and the other two used handguns. The fight was between hispanics and african-americans. When police responded to the gunfire, defendant fled and threw the shotgun into a neighbor's yard. The defendant was linked to the gun through gunshot residue analysis. The gun was an old firearm, and shells had to be removed manually, explaining the heavy level of residue on defendant's person. The gun antedated legislation requiring serial numbers on all firearms, and so lacked a serial number. No injuries were reported as a result of the defendant's actions. No enhancements, reduction for acceptance (-2). Priors include selling cocaine, robbery, felon in possession, possession of cocaine. No statement of reasons was available, but the defendant may have been sentenced under the career offender provision.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	029	10(24-30)	84 mos*	24(100-125	24(100-125	26(120-150	24(100-125	26(120-150	a(2)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 60646 30	§922(g)(1)	none	1989	12 base 12(30-37)	27 mos*	VI 15pts	Y	N	1 shotgun 1 rifle	protectn

Defendant, a current or recent CRIPS gang member, possessed the two firearms and ammunition in his residence, as police discovered while executing a narcotics related search warrant. At least one of the firearms was stolen. Defendant apparently has a considerably reduced mental capacity evidenced by mental retardation and psychological problems. Priors include battery, burglary of a residence, petty theft, receiving stolen property, ADW, sale of substance falsely represented as narcotics, possession for sale of cocaine base, possession of controlled substance (two convictions), felon in possession (state charge related to this charge). Enhancement for stolen firearm. Reduction for acceptance (-2).

* concurrent to state narcotics conviction and sentence of 60 months that was the object of the search warrant leading to his arrest on federal firearms charges.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	030	12(30-37)		22(84-105)	22(84-105)	22(84-105)	22(84-105)	22(84-105)	a(2)	b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 60718 31	§922(g)(1)	none	1989	12 base 14(21-27)	23 mos	III 6 pts	Y	N	1 .357 revolver	not known

Defendant was found in possession of the firearm during a search of his residence. He denied the firearm was his, saying it was his girlfriend's, and she needed it for protection. The firearm was stolen. Enhancement for stolen firearm (+2), no reduction for acceptance. Priors include affray, evading arrest, unlawfully carrying a weapon (two convictions), possession of cocaine, possession of a prohibited firearm, conspiracy to possess cocaine with intent to distribute, and possession of a prohibited weapon.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	031	14(21-27)		20(41-51)	20(41-51)	20(41-51)	20(41-51)	20(41-51)	a(3)	b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 51847 32	§922(g)(1)	none	1989	12 base 12(21-27)	27 mos	IV 7 pts	N	Y	1 9mm automatic weapon	not known
Defendant was arrested by police when they observed him battering his girlfriend while the couple sat in their car parked along I-95. Defendant also had on his person 1.3 grams of cocaine in a bag, .2 grams of cocaine in a vial, and a dollar bill with heroin residue on it. The firearm was fully automatic, and stolen. Defendant indicated that at the time he was beating his girlfriend he was high on heroin, cocaine, and valium, and may have blacked out. Enhancement for stolen firearm (+2), and reduction for acceptance (-2). Priors include possession of tussinex with intent to distribute/possession of heroin, failure to appear, grand larceny-auto, assault and battery (related to the instant offense).										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	032	12(21-27)	18(41-51)++	18(41-51)	18(41-51)	18(41-51)	20(51-63)	20(51-63)	a(1)	b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 51959 33	§922(g)(1)	none	1989	12 base 10(24-30)	24 mos	VI 16pts	Y	N	1 9mm pistol	criminal
Defendant apparently fired shots in a residential area, and fled police as they arrived on the scene. He escaped, after attempting to force the firearm into a sewer drain. No injuries resulted from the gun shots. Defendant indicated he was firing at a rival gang member who had fired at him earlier that week, and he later stated that he had "missed the guy." (The court struck the remark regarding the "missed" shot from the PSI saying it was "belated.") Reduction for acceptance. Priors include larceny, assault and battery on a police officer (two counts), shoplifting, possession of burglary tools, receiving a stolen motor vehicle, attempted larceny, disorderly person/assault on a police officer, receiving stolen property.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	033	10(24-30)		22(84-105)	22(84-105)	22(84-105)	22(84-105)	22(84-105)	a(2)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 52291 34	§922(g)(1)	924(e)(1)	1989	12 base 10(24-30)	30 mos	VI 14pts	Y	N	1 9mm pistol 2 shotguns 2 .22 rifles 1 .22 pistol	not known

Defendant was believed to have purchased from a licensed dealer the 9mm pistol with the aid of a relative, representing that she, and not he, was to own and possess the firearm. In addition, defendant sought to have a magazine extension added to his shotgun. Defendant also attempted to purchase 500 rounds of 9mm ammunition, but the store did not carry that much ammunition. Defendant claimed to use the firearm for protection from bikers and for sporting purposes. A search of defendant's residence showed the pistol, and five other firearms. Priors include burglary of a vehicle, burglary of a store building, and burglary of a residence. No enhancements, but reduction for acceptance (-2).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	034	10(24-30)		20(70-87)	20(70-87)	20(70-87)	20(70-87)	20(70-87)	a(3)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 52292 35	§922(g)(1)	none	1989	12 base 12(15-21)	18 mos	IV 8 pts	Y	N	1 .22 shotgun 2 rifles 1 .22 handgun (loaded) ammunition	not known

Defendant solicited with the defendant in the case above to secure a magazine extension to his shotgun. Defendant also bought three boxes of shotgun shells. A search of the defendant's residence revealed the shotgun, which lacked a serial number. No enhancements, no reduction. Priors include burglary of a habitation/criminal mischief, burglary of a habitation.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	035*	12(15-21)		26(92-115)	26(92-115)	26(92-115)	26(92-115)	26(92-115)	a(2)	b(2)[b(3)]

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 52358 36	§922(g)(1) §924(a)(2)	none	1989	12 base 10(10-16)	16 mos	III 4 pts	N	N	1 pistol (loaded)	not known

Defendant possessed a pistol that was stolen, which was found after defendant had an accident while DUI. Defendant claimed he had borrowed the gun from a person (whose name he did not know) at a bar in order to go hunting. He later stated he had bought it from the person to give to defendant's father for his birthday. Reduction for acceptance. Plea agreement stipulates that no stolen firearm enhancement will apply. Priors include DUI, burglary of storehouse (two counts).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	036*	10(10-16)		12(15-21)	12(15-21)	12(15-21)	14(21-27)	14(21-27)	a(4)	[b(3)]

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 52481 37	§922(g)(1)	§924(c) §841(a)	1989	12 base 10(10-16)	20 mos*	III 5 pts	Y	N	2 handguns	criminal

Defendant was involved in a significant drug distribution scheme with eight others. His residence contained a revolver, and a stolen handgun. The conspiracy involved the robbery of marijuana and cocaine from persons with these substances in their homes, with the robbers posing as narcotics officials. The drugs were to be resold. The firearms were carried to protect the conspirators, and to lend credibility to the deception. 180 pounds of marijuana was acquired in this way. Defendant apparently carried a gun during at least one of these raids. Reduction for acceptance. Priors for burglary of a residence, and indecency with a child.

* no statement of reasons was available, so this apparent departure is not justified.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	037	10(10-16)		20(41-51)	20(41-51)	22(51-63)	20(41-51)	22(51-63)	a(3)	[b(3)],b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	NTENT/ USE
§2K2.1 52550 38	§922(g)(1) §924(a)(2)	none	1989	12 base 22 (84-105)	105 mos	VI 21pts	Y	N	1 revolver	criminal

Defendant shot in the leg a person with whom defendant was playing cards after that person called him "some bad names." Both parties were drunk. Defendant then drove to a home and threatened the occupant, and returned to his truck. Police were at the home investigating a burglary and when the officer went toward the truck, defendant reached for a loaded .22 revolver. The officer ordered defendant out of the truck, and defendant fled. He was later found by other officers. Base offense level determined by way of cross reference to 2A2.2 (level 15), firearm discharged (+5), bodily injury (+2), no reductions. Priors include DUI, assault with intent to rape, unlawfully carrying a weapon, escape, UCW, attempt to commit robbery, assault, unauthorized use of a motor vehicle, UCW/evading detention. Conviction by jury.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	038+	22(84-105)+		26(120-150	26(120-150	28(140-175	269120-150	28(140-175	a(2)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 52578 39	§924(a)(1) §922(g)(1)	none	1989	12 base 10(24-30)	30 mos	VI 17pts	Y	N	1 .357 handgun (loaded)	not known
Defendant was seen speeding through town in a stolen vehicle, but officers were not able to catch him. Later that evening, defendant was found in the wrecked car. A revolver was found on the front floorboard. Reduction for acceptance (-2). Priors include grand larceny, aggravated arson burglary and larceny, DWI/resisting arrest, theft of property, receiving and concealing, theft of property.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	039	10(24-30)		20(70-87)	20(78-87)	22(84-105)	20(70-87)	22(84-105)	a(3)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 52609 40	§922(g)(5)	§924(c) §841(a)	1989	12 base 10(10-16)	16 mos	III 5 pts	Y	Y	ammunition	criminal
This case involves the drugs and firearms conspiracy referred to in case #37. Defendant, an illegal alien, was hired to store the 180 pounds of marijuana, and he transported the marijuana to a house. He received $1,000 for his efforts. Defendant carried a firearm during some of these activities, and at his residence were found various ammunition. Defendant also provided information to gang members regarding the locations of homes that were housing illegal drugs. Reduction for acceptance. Priors include DWI, possession with intent to distribute 14 kilos of marijuana.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	040	10(10-16)		20(41-51)	20(41-51)	22(51-63)	20(41-51)	22(51-63)	a(3)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 52640 41	§922(g)(1)	§371/ 922(a)(6)	1989	12 base 12(30-37)	180 mos (ACC)	VI 20pts	Y	N	1 SKS7.62 assault rifle	possessn

Defendant purchased a gun and ammunition at a licensed dealer, reportedly for his son, by having another person fill out the necessary paperwork. Defendant left the store and shot the ammunition outside his mother's trailer. Defendant later said he picked out the firearm for a female friend who was having domestic problems. No enhancements, no reduction for acceptance. Priors for offensive touching, felon in possession, escape, burglary, escape, offense touching, criminal mischief, burglary (two counts -- an unfinished residence and a barn).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	041	12(30-37)		20(100-125)	20(100-125)	20(100-125)	20(100-125)	20(100-125)	a(2)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 52698 42	§922(n)	none	1989	12 base 14(18-24)	24 mos	II 3 pts	N	N	4 9mm pistols	not known

Defendant was caught on an AMTRAK train with the firearms. The serial numbers on the guns were filed off. Defendant indicated he found the firearms in the woods and intended to keep them. Enhancement for obliterated serial number (+2), no reductions. Priors for shoplifting and possession of heroin.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	042	14(18-24)		17(27-33)	17(27-33)	17(27-33)	19(33-41)	19(33-41)	a(4)	b(2),b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 52863 43	§922(g)(1)	none	1989	12 base 10(21-27)	27 mos	V 10pts	Y	N	1 rifle	not known

Defendant escaped from prison and fled across state lines to his parents' home where he recovered a rifle he had buried in their basement. He was caught by surveillance on the home of an acquaintance. The gun had been bored and threaded with inside threads, apparently to attach a silencer. Reduction for acceptance (-2). Priors for unlawful use of firearms (two convictions), theft/transfer of ammunition, false statement in acquisition of firearm, false id in acquisition of firearm, possession with intent to distribute cocaine/possession of unregistered firearm.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	043	10(21-27)		18(51-63)	18(51-63)	18(51-63)	18(51-63)	18(51-63)	a(3)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ISON ERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	ITENT/ USE
§2K2.1 52868 44	§922(g)(1) §924(a)(2)	five unstated counts	1989	12 base 10(21-27)	23 mos	V 10pts	Y	N	3 handguns	not known

Defendant purchased three firearms on three separate occasions over a period of five days from two different licensed dealers. Defendant had attempted to purchase two at once from one dealer, but was told the transaction would be reported to ATF. Defendant declined to purchase the second firearm, and said he would return in five days, the period during which the purchase of two guns must be reported to ATF. Upon apprehension on that fifth day, defendant fled, and remained at large for an hour before he was captured. Reduction for acceptance (-2), no enhancements. Priors include larceny from a building, forgery, criminal mischief, defrauding an innkeeper, burglary of a dwelling, possession of cocaine.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	044	10(21-27)		19(57-71[illegible])	19(57-71)	19(57-71)	19(57-71)	19(57-71)	a(3)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 53235 45	§922(g)(1)	none	1989	12 base 10(21-27)	27 mos	V 11pts	Y	N	1 .357 revolver (loaded)	not known

Defendant was riding in a vehicle when he was stopped on an outstanding warrant. A loaded revolver was at his feet. Priors include uttering a forged instrument (2 counts), breaking and entering and larceny, and assault with a deadly weapon. Reduction for acceptance (-2).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	045	10(21-27)		22(77-96)	22(77-96)	22(77-96)	22(77-96)	22(77-96)	a(2)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 53337 46	§922(g)(1)	one count	1989	12 base 12(30-37)	180 mos	VI 16pts	Y	N	1 .380 pistol ammunition	not known

Defendant was spotted at a telephone booth with a handgun, and he fled on seeing police. He was caught, and the woman who spotted defendant identified him as the person who had robbed her over two weeks earlier. The defendant then stated that he would "have someone kill the bitch." Defendant later indicated that he needed the firearm to protect himself from people the woman had instigated to shoot defendant. No reduction for acceptance. Priors include armed burglary, aggravated battery of law enforcement officer, assault with a deadly weapon/robbery, robbery/assault with a deadly weapon/resisting public officer, grand theft vehicle/carrying concealed weapon. Defendant was sentenced pursuant to §924(e)(1).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	046	12(30-37)		24(100-125	24(100-125	24(100-125	24(100-125	24(100-125	a(2)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ON /M	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	ENT/ USE
§2K2.1 53480 47	§922(g)(1)	none	1989	12 base 10(10-16)	13 mos	III 6 pts	Y	N	1 .38 revolver	not known
Defendant had a gun while he was a passenger in a car that was stopped for suspicion of DUI. Reduction for acceptance (-2). Priors include rape, simple possession of marijuana, illegal discharge of firearms, resisting an officer, possession of quaaludes.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	047	10(10-16)		18(33-41)	18(33-41)	18(33-41)	18(33-41)	18(33-41)	a(3)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 53742 48	§922(g)(1)	none	1989	12 base 12(15-21)	15 mos	III 5 pts	Y	N	1 .25 pistol	not known
Defendant was stopped for driving a truck with stolen license plates. A search of the truck revealed drug residue and partially burned cigarettes, the gun, and a dagger knife. No reduction for acceptance, no enhancements. Priors include assault and battery/reckless driving, sale and delivery of cocaine/possession of cocaine, possession of marijuana/carrying concealed weapon.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	048	12(15-21)		22(51-63)	22(51-63)	22(51-63)	22(51-63)	22(51-63)	a(2)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 53777 49	§922(g)(1)	922(g)(1) §5861(c)	1989	12 base 10(8-14)	4 mos*	II 3 pts	N	N	1 9mm pistol 1 shotgun 1 rifle 1 silencer	sale/ possessn
Defendant advertised a gun in the paper saying he was employed by a licensed dealer who had docked his pay for misordering the gun. When an ATF agent met with defendant, defendant indicated he was prepared to sell additional firearms wholesale. Reduction for acceptance. Prior for property damage by explosives. *CTC; no justification provided for downward departure										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	049	10(8-14)	16(24-30)++	18(30-37)	18(30-37)	19(33-41)	20(37-46)	21(41-51)	a(1)	b(2),b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	SON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	ENT/ USE
§2K2.1 53789 50	§922(g)(1)	none	1989	12 base 12(15-21)	21 mos	III 4 pts	Y	Y	1 shotgun (loaded)	not known
Agents searched defendant's apartment and found a shotgun, ammunition, and drugs. The shotgun lacked a serial number, and had been purchased in exchange for heroin. No reduction for acceptance. Priors include marijuana use, gambling, assault and battery/malicious destruction of property, attempted carrying concealed weapon.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	050*	12(15-21)		18(33-41)	18(33-41)	18(33-41)	18(33-41)	18(33-41)	a(3)	[b(3)]

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 53807 51	§922(g)(1)	none	1989	12 base 10(21-27)	21 mos	V 10pts	Y	Y	1 .25 pistol	not known
Defendant's residence was searched as part of a continuing investigation of drug sales. The search uncovered a firearm, and four bags of drugs, one of methamphetamine and three of phenethylamine (no weight given). The items were found in defendant's bedroom. Other persons in the house also possessed methamphetamine. Reduction for acceptance (-2). Priors include driving without a license, unlawful taking of vehicle, aiding in distribution of cocaine, sale of cocaine, possession of marijuana (felony). Sentence was in violation of Rule 11(e)(1)(C) plea agreement that sentence be limited to top of guideline range.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	051	10(21-27)		24(92-115)	24(92-115)	26(110-137	24(92-115)	26(110-137	a(2)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 54086 52	§922(g)(1)	none	1989	12 base 12(30-37)	37 mos	VI 17pts	N	N	1 revolver 1 shotgun 2 bows; 1 knife ammunition	sale
Defendant and a codefendant broke into a hunting lodge and stole a number of items, including the firearms, and then set fire to the lodge to cover the theft. The lodge was completely destroyed. The defendant then agreed to sell the items to an ATF agent. Enhancement for stolen firearms (+2), reduction for acceptance (-2). Priors include injury to personal property (20 counts), DWI, breaking and entering a building, driving while license revoked, driving related offenses, breaking and entering/larceny/arson (instant offense).										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	052	12(30-37)		15(41-51)	15(41-51)	16(46-57)	17(51-63)	18(57-71)	a(4)	b(3),b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ON M	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	ENT/ USE
§2K2.1 54087 53	§922(g)(1) §924(e)(1)	none	1989	12 base 37 (360-life	360 mos	VI 17pts	Y	Y	1 .38 revolver	not known

Defendant was a passenger in a car stopped for a traffic violation, and a gun was found under his seat, as well as heroin (small amount not specified) and drug paraphernalia in his pocket. The firearm may have been stolen. No enhancement for stolen firearm, no reduction for acceptance. Priors include felonious possession of firearm by convicted felon. Guideline range calculated by applying career offender provision to armed career criminal provision. Qualifying priors for ACC were two counts of armed robbery, felonious breaking and entering/robbery, and felonious assault -- all of which took place when defendant was 16 years old. Another qualifying prior is listed as felonious assault in one section of the PSI, and misdemeanor assault in another section.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	053	12(30-37)	360 mos++	26(120-150	26(120-150	28(140-175	26(120-150	28(140-175	a(2)	b(7)[b(3)]

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 54361 54	§922(g)(1)	none	1989	12 base 10(8-14)	8 mos	II 3 pts	Y	N	1 .38 revolver	criminal

Defendant ended in an argument with a woman and fired a shot into the floor of the lounge. He then discarded the pistol into the men's room. Reduction for acceptance. Priors include felonious assault, and DUI.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	054	10(8-14)		20(37-46)	20(37-46)	22(46-57)	20(27-46)	22(46-57)	a(3)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 54370 55	§922(g)(1)	none	1989	12 base 10(24-30)	28 mos	VI 14pts	Y	N	1 shotgun	criminal

Defendant threatened with a sawed-off shotgun (though within legal limits) a person who had irritated him at a gas station. Defendant threatened to "kill that nigger," but the warden convinced him to drop the shotgun before uniformed police could arrive. The gun lacked a serial number, but was distributed that way. Reduction for acceptance (-2). No enhancements. Priors include assault on law enforcement officer, simple assault/larceny, damage to personal property, trespass, worthless checks (2 convictions, 15 counts), obstruction of justice by force (threatened police officers with gun). The court noted that "there is no legitimate reason to own or to possess a sawed-off shotgun."

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	055	10(24-30)		24(100-125	24(100-125	26(120-150	24(100-125	26(120-150	a(2)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	SON ERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	ENT/ USE
§2K2.1 55164 56	§922(g)(1)	§371/ 922(g)(1) 922(g)(1)	1989	12 base 12(30-37)	30 mos	VI 14pts	Y	Y	bought 3 pistols ordered 6 machine guns and 2 silencers possessed 1 shotgun and 1 revolver and ammunition	sale/ criminal

Defendant agreed to trade marijuana for six machineguns, three pistols and two silencers. He agreed to provide nine pounds of marijuana. However, the following day, he had only been able to secure a pound of marijuana, so he only purchased the three pistols. He was then arrested, and a search revealed a revolver and a shotgun, and 250 rounds of ammunition. Defendant had been suspected of selling guns to Mexican federal police. No reductions, no enhancements. Priors include DWI, voluntary manslaughter, DWI, carrying a weapon, possession of marijuana (two convictions).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	056	12(30-37)		27(130-162	27(130-162	30(168-210	27(130-162	30(168-210	a(3)	b(2)b(7)b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 55313 57	§922(g)(1)	none	1989	12 base 10(24-30)	33 mos upward depart	VI 13pts	Y	N	1 rifle	sale

Defendant sold a rifle to an undercover agent. Priors include theft, aggravated battery, delivery of controlled substance, gambling (three convictions), deceptive practice (two convictions), unlawful use of weapons, criminal damage to property, DUI, and numerous additional violent and non-violent felonies which were not listed in detail since he appeared pro se or since they were consolidated. Reduction for acceptance (-2). No enhancements. Departure based on inadequate criminal history, resulting in increase in total offense level to level 11 (27-33 months). Sentence at upper end of that range.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	057	10(24-30)		25(110-137	25(110-137	26(120-150	25(110-137	26(120-150	a(2)	b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	ENT/ USE
§2K2.1 55448 58	§922(g)(1)	§5861(d)	1989	12 base 12(15-21)	5 mos	III 4 pts	Y	Y	3 handguns (loaded)	protectn

Defendant was suspected of money laundering and drug trafficking crimes. A search of his residence uncovered three loaded firearms in his bedroom, including a stolen pistol. Enhancement for stolen firearm (+2), and reduction for acceptance. Priors include theft, delivery of cocaine, carrying a weapon.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	058	12(15-21)		21(77-96)	21(77-96)	21(77-96)	21(77-96)	21(77-96)	a(3)	b(2),b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 54492 59	§922(g)(1)	1 count not stated	1989	12 base 10(10-16)	41 mos upward depart	III 6 pts	N	Y	1 Uzi 9mm rifle 1 9mm pistol 1 shotgun	criminal

Defendant, a CRIPS gang member, distributed cocaine with the aid of firearms. Defendant used the firearms to collect monies owed him, intimidate his competitors, and "encourage" potential gang recruits to join his gang and distribute crack cocaine. The firearms were used on at least eight persons, none of whom would testify in court against defendant. Defendant reportedly used the firearm to shoot two victims in the chest, and another in the leg, and to shoot at intended victims on three other occasions. Another time, he chased a person on foot with a .25 caliber handgun, in an effort to collect a debt. He apparently fired a shotgun into the home of a police officer. One of the above-mentioned offenses, included defendant threatening his uncle with a .44 caliber handgun when the uncle complained about defendant's sale of crack in front of the uncle's home. The uncle later called the police, and defendant returned with the Uzi and fired several shots into the shed behind the uncle's home. One of the shots struck a victim in the chest. Court departed upward on basis of unlawful use of the firearms, resulting in physical injury to eight individuals. Court increased offense level by eight levels to account for this offense characteristic. Reduction for acceptance (-2), no enhancements. Priors include possession of knife on school grounds, violation of court order to prevent domestic violence, burglary (object building unknown).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	059	10(10-16)		15(24-30)	15(24-30)	17(30-37)	17(30-37)	19(37-46)	a(4)	b(2),b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	.SON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	.TENT/ USE
§2K2.1 54609 60	§922(g)(1)	none	1989	12 base 10(6-12)	6 mos*	I 1 pt	N	N	37 firearms primarily handguns ammunition	sale

Defendant purchased firearms on at least four occasions from an informant who stole them during house burglaries. On a final occasion, defendant purchased an additional ten handguns from the informant, and was arrested. Police later discovered an additional 27 guns in defendant's home, and 3,500 rounds of ammunition. Defendant claimed he was a collector of guns. Reduction for acceptance (-2), no enhancement for stolen firearms. Priors include petit larceny (two convictions, unlawful possession of a weapon.

* CTC and home confinement

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	060	10(6-12)		18(27-33)	18(27-33)	19(30-37)	20(33-41)	21(37-46)	a(4)	b(2)b(8)[b3]

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 54676 61	060	10(6-12)		18(27-33)	18(27-33)	19(30-37)	20(33-41)	21(37-46)	a(4)	b(2)b(8)[b3]

Defendant purchased a shotgun from a licensed dealer, after giving false information about his status as a felon. He had purchased at least two other shotguns from dealers. Defendant purchased the guns for his three children whom he had taught to enjoy hunting. Reduction for sporting purpose (-6) and for acceptance (-2). Priors include aggravated assault and battery, DUI.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	061	4(0-6)		18(27-33)	18(27-33)	18(27-33)	18(27-33)	18(27-33)	a(3)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 54696 62	§922(g)(1)	none	1989	12 base 12(15-21)	21 mos	III 6 pts	Y	Y	1 .22 pistol	criminal sale

Defendant ran a drug ring that sold drugs and guns. Defendant sold an agent a two-gram rock of crack which he had processed from cocaine. He offered to sell the agent an Uzi or other guns for protection. Later, the defendant sold the agent a .22 caliber pistol. Priors include possession with intent to distribute cocaine and heroin, and obstruction of a public officer.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	062	12(15-21)		21(46-57)	21(46-57)	24(63-78)	21(46-57)	24(63-78)	a(3)	b(7),b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ON RM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	ENT/ USE
§2K2.1 54704 63	§924(a)(2) §922(g)(1)	none	1989	12 base 10(24-30)	27 mos	VI 13pts	Y	N	3 handguns 2 rifles	not known

Defendant was found with five firearms in the residence he shared with his mother. He claimed the firearm was "primarily" for his mother's protection. Priors include possession of marijuana (two convictions), DUI, burglary of habitation, possession of marijuana, manufacturing a controlled substance, possession of marijuana, DWI, possession of controlled substance. Reduction for acceptance (-2).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	063	10(24-30)		24(100-125)	24(100-125)	24(100-125)	24(100-125)	24(100-125)	a(2)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 54873 64	§922(g)(1)	none	1989	12 base 10(6-12)	10 mos	I 1 pt	Y	Y	1 .38 revolver	criminal

Defendant was observed selling crack cocaine one night, and was arrested. Agents discovered 7 plastic bags of crack, and one marijuana cigarette in the car, as well as a loaded revolver, which was in the trunk. The gun was stolen. Reduction for acceptance (-2). Priors include larceny, assault on female/larceny, possession with intent to sell heroin/sale and delivery of heroin.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	064	10(6-12)		24(51-63)	24(51-63)	26(63-78)	24(51-63)	26(63-78)	a(2)	b(7),[b(3)]

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 54992 65	§924(a)(1) §922(g)(1)	none	1989	12 base 12(10-16)	10 mos*	I 1 pt	N	N	1 .44 handgun	not known

Defendant purchased the firearm from a pawn shop after falsifying a form with respect to his felon status. Defendant later sold the firearm to a patron in a bar. Enhancement for obstruction (+2), and reduction for acceptance (-2). Priors include possession of heroin, and forgery.

* 5 mos BOP, 5 mos CTC

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	065	12(10-16)		13(12-18)	13(12-18)	14(15-21)	15(18-24)	16(21-27)	a(4)	b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 55066 66	§924(a)(1) §922(g)(1)	none	1989	12 base 21(77-97)	88 mos	VI 13pts	N	Y	2 handguns	criminal

Defendant, the leader of a street gang, and another person, assaulted two persons by pistol-whipping them, hitting them on the head with the butt of his gun. As one victim fled, defendant pointed the gun at him, but did not fire. The assault was in response to an argument one of the victims had with the sister of the defendant earlier that day. A SWAT raid on defendant's residence turned up two handguns in defendant's bedroom, one of them lying on a notice from the Department of Corrections advising defendant that he could not possess a firearm. Drugs were also found in the residence. Priors include 2nd degree burglary (of storehouse), taking vehicle (two convictions), burglary of storehouse, driving offenses, 3d degree assault -- all as a juvenile. Adult convictions include simple assault, theft under $250 (two convictions), simple assault, 2nd degree assault, simple assault, obstructing a public servant, unlawful use of weapons, possession of marijuana (four convictions), unlawful possession of handgun. Cross reference to assault (level 15), with enhancements for use of a firearm (+4), and bodily injury (+2).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	066	21(77-97)+		21(77-97)+	21(77-97)+	21(77-97)+	21(77-97)+	21(77-97)+	a(4)	b(7),c(1)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 55187 67	§922(1)(6)	2 counts 922(a)(6) 1 count 922(g)(1)	1989	12 base 10(24-30)	30 mos	VI 12pts	Y	N	2 .25 handguns	not known

Defendant purchased and redeemed two pistols on three occasions from a pawn broker, after providing false statements to the licensed dealer. Reduction for acceptance (-2). Priors include auto burglary (two convictions), unauthorized use of a motor vehicle, burglary of a habitation.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	067	10(24-30)		18(57-71)	18(47-71)	18(47-71)	18(47-71)	18(47-71)	a(3)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 55421 68	§922(g)(1)	none	1989	12 base 12(21-27)	180 mos (ACC)	IV 9 pts	Y	N	1 .32 revolver ammunition	not known
Defendant was stopped for speeding, and was handcuffed. Agents then found the firearm in defendant's waistband, and bullets in his pocket. Priors include unarmed robbery, armed robbery (two counts), assault on a prison employee. No reduction for acceptance. Adjudged armed career criminal, and sentenced to 180 months.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	068	12(21-27)	180 mos+	24(77-96)	24(77-96)	24(77-96)	24(77-96)	24(77-96)	a(2)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 55426 69	§922(g)(1)	none	1989	12 base 13(24-30)	24 mos	IV 7 pts	Y	N	1 .32 revolver	criminal
Defendant placed a gun into the stomach of a police officer, and pulled the trigger. Incredibly, the bullet was not expelled. The officer had earlier observed defendant on a corner. Since defendant was known to have an outstanding warrant, defendant was asked to stop. Defendant fled through a residence, and through backyards until the officer eventually caught the defendant. At this point the defendant turned around, placed the gun, pulled the trigger, and again fled. The officer was stunned and checked for injuries, then fired two shots, hitting the defendant in the rectum and the leg, eventually causing the defendant to drop his gun. The defendant then retrieved his gun, fled further, then discarded the gun into a nearby tree. The gun had five bullets in it, one of which had an indentation indicating the firing pin had hit the bullet without firing it. State charges against defendant (assault with intent to kill, carrying a firearm in commission of a felony) resulted in a not guilty finding by the judge. Priors include resisting arrest, unlawful use of marijuana, felonious assault/felony firearm. Enhancement for assault on law enforcement officer (+3), reduction for acceptance (-2).										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	069	13(24-30)		23(70-87)	23(70-87)	25(87-108)	23(70-87)	25(87-108)	a(3)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	SON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	/ENT/ USE
§2K2.1 59148 70	§922(g)(1)	3 counts 922(a)(6)	1989	12 base 4(2-8)	6 mos	IV 7 pts	N	N	1 rifle 1 shotgun	not known

Defendant pawned a 30-06 caliber rifle and FIE shotgun to a licensed dealer, and later redeemed the shotgun, after making a false statement with respect to his status as a felon. The rifle was later redeemed, pawned, and redeemed, after the defendant each time falsely represented his status as a felon. The firearms were apparently used by defendant's parents to go hunting. Reduction for sporting purposes (-6) and for acceptance (-2). Priors include felony possession of narcotics, resisting police officer, felon in possession.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	070	4(2-8)		4(2-8)	4(2-8)	4(2-8)	4(2-8)	4(2-8)	a(4)	b(1)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 59415 71	§922(g)(1)	922(g)(1) 371/473 18:473 21:841(a)	1989	12 base 10(18-24)	180 mos (ACC)	VI 16pts	Y	N	1 .22 rifle 1 .25 pistol	not known

Defendant was stopped for speeding, and found to have a stolen rifle, and a pistol in the vehicle. Reduction for acceptance (-2), no enhancements. Adjudged to be an armed career criminal, and sentenced to mandatory minimum of 180 months. Priors include breaking and entering building, possession of illegal firearm, robbery, theft/resisting officer/possession of marijuana and paraphernalia/parole violation, possession of cannabis, reckless driving, battery of police officer while possessing firearm, battery of police officer.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	071	10(18-24)		22(84-105)	22(84-105)	22(84-105)	22(84-105)	22(84-105)	a(2)	b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 54420 72	§922(a)(6)	none	1989	6 base 4(0-6)	probatn	III 4 pts	N	N	19 handguns	sale

Defendant purchased 19 handguns from a licensed dealer on behalf of a Mexican citizen he knew was going to resell them in Mexico. Priors for DWI (three convictions). Reduction for acceptance (-2).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	072	4(0-6)		14(21-27)	14(21-27)	14(21-27)	14(21-27)	14(21-25)	a(5)E	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	N A	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	NT/ USE
§2K2.1 54703 73	§922(a)(6)	5 counts not stated	1989	6 base 4(0-6)	6 mos	III 4 pts	Y	Y	2 machineguns 2 rifles 1 9mm pistol 23 assault rifles	pawn
Defendant pawned all the firearms, except apparently the machineguns, at one time or another, and redeemed some of them. The money from the pawned firearms was used to buy drugs. The guns were purchased from gun shows and gun stores. Reduction for acceptance (-2). Priors include criminal mischief, possession of marijuana (two convictions), deliver of amphetamine.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	073	4(0-6)	16(27-33)++	21(46-57)	23(57-71)	23(57-71)	23(57-71)	23(57-71)	a(3)	a(1),b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 54872 74	§922(a)(6)	none	1989	6 base 4(0-6)	probatn	I 0 pts	N	N	3 handguns	sale
Defendant, a citizen of Mexico and legal resident alien, purchased three handguns on behalf of his cousin, a citizen of Mexico, who was going to transport the firearms back to Mexico. No priors. Reduction for acceptance (-2).										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	074	4(0-6)		11(8-14)	11(8-14)	11(8-14)	11(8-14)	11(8-14)	a(5)E	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 55596 75	§1716	§922(l) 22:2778 18:1001 18:545	1989	6 base 4 (0-6)	probatn	I 0 pts	N	N	2 military M-67 fragmentation grenades 1 M-16	not known
Defendant was a Marine stationed in Panama who mailed two live fragmentation grenades and machinegun parts back to the United States. Defendant later stated he knew how to package them so they would not explode, and he would "clean them out" when he returned so that they would not explode. He sent them as "great souvenirs." The dissembled rifle was to be reassembled on his return. The intended recipient of the package, defendant's cousin, had been told not to open the package. No priors. Reduction for sporting would have been applied if it made any difference. Reduction for acceptance (-2).										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	075	4(0-6)	16(21-27)++	17(24-30)	19(30-37)	19(30-37)	19(30-37)	19(30-37)	a(1)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 55481 76	§924(a)(1) §922(n)	none	1989	12 base 12(12-18)	18 mos	II 3 pts	N	Y	1 pistol (9mm) (loaded)	criminal
Defendant, was found in possession of a stolen firearm and ten packages of cocaine (weight not stated). Enhancement for stolen firearm (+2), reduction for acceptance (-2). Priors for shoplifting, receiving stolen property, disorderly, and shoplifting.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	076	12(12-18)		16(24-30)	16(24-30)	18(30-37)	18(30-37)	20(37-46)	a(4)	b(3),b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 55491 77	§922(g)(1)	922(a)(6)	1989	12 base 12(12-18)	15 mos	II 3 pts	N	N	1 .25 pistol at least 6 other firearms	not known
The defendant and a codefendant went to a gun shop across state lines where they purchased seven guns using the address of the codefendant. The defendant later returned to the gun shop with a stolen handgun he wished to repair. The defendant brought a total of two guns in for repair. Enhancement for stolen firearm (+2) and reduction for acceptance (-2). Priors for possession of a firearm without a license, and retail theft (two counts).										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	077	12(12-18)		16(24-30)	16(24-30)	16(24-30)	18(30-37)	18(30-37)	a(4)	b(2),b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 55533 78	§922(g)(1)	none	1989	12 base 10(10-16)	16 mos	III 6 pts	Y	N	1 9mm pistol	criminal
The defendant was arrested when police responded to a radio call of a fight in progress. The defendant was observed running from the area carrying a firearm. No enhancements, reduction for acceptance (-2). Priors include burglary of a habitation.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	078	10(10-16)		18(33-41)	18(33-41)	18(33-41)	18(33-41)	18(33-41)	a(3)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	ATENT/ USE
§2K2.1 55669 79	§922(g)(1)	none	1989	12 base 12(12-18)	14 mos	II 3 pts	Y	Y	2 12 g. shotguns 1 7.65 pistol 1 9mm pistol 1 30/30 rifle	possessn
The defendant was under investigation for trafficking in cocaine. During sales to agents, firearms were seen in the possession of the defendant. It was later learned that the defendant had purchased a rifle and had falsified ATF forms with respect to his felony status. A warrant was obtained and five firearms were seized. No enhancements or reductions. Priors for unarmed robbery, delivery of cocaine, and DUI.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	079	12(12-18)		28(87-108)	28(87-108)	30(108-135	28(87-108)	30(108-135	a(2)	b(2),b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 55686 80	§924(a)(2) §922(g)(5)	none	1989	12 base 10(6-12)	6 mos	I 0 pts	N	N	1 9mm pistol 22 firearms	sale
The defendant, an illegal alien, purchased two firearms by falsifying ATF forms and transferred them to others. Investigations revealed that the defendant had purchased 22 semiautomatic pistols with a year period, receiving $100 per handgun. Reductions for acceptance (-2). No priors.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	080	10(6-12)		16(21-27)	16(21-27)	16(21-27)	18(27-33)	18(27-33)	a(4)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 55690 81	§924(e) §922(g)(1)	yes -- not stated	1989	12 base 26(180 mos)	180 mos (ACC)	IV 8 pts	Y	Y	1 .380 caliber	criminal
The defendant was stopped for a traffic violation and the officer observed a firearm. The defendant was arrested for DWS and an inventory search of the vehicle revealed a firearm and several bags of crack cocaine (5.2 grams). Reduction for acceptance (-2). Priors for retail theft, obstruction, petty theft, possession of marijuana, burglary of a dwelling (two counts), grand theft, carrying a concealed weapon, cocaine trafficking. Additionally, five felony convictions were consolidated for sentencing purposes and were not included in criminal history calculations.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	081	10(15-21)	180 mos+	24(77-96)	24(77-96)	26(92-115)	24(77-96)	26(92-115)	a(2)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 55591 82	§924(a) §922(g)(1)	none	1989	12 base 10(24-30)	30 mos	VI 16pts	Y	Y	1 .25 caliber handgun (loaded)	criminal
Police received information that the defendant was in possession of a gun, jewelry from a residential burglary and a quantity of drugs (meth.) and was driving in a truck with another man traveling to a specified location to sell the jewelry. Police observed the truck and made the arrest finding the items reported. Reduction for acceptance (-20. Priors include burglary of habitation (two counts), attempted theft, retaliation, and unauthorized use of a motor vehicle.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	082	10(24-30)		20(70-87)	20(70-87)	22(84-105)	20(70-87)	22(84-105)	a(3)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 55614 83	§922(g)(1)	922(g)(1)	1989	12 base 4(0-6)	probatn	II 2 pts	Y	N	2 rifles 1 shotgun 3 handguns	sporting
The defendant was involved in the transfer of firearms while on probation. The defendant exchanged a 12 gauge shotgun for a .45 caliber revolver and transferred five guns to an individual as repayment of a debt. The five guns included a .44 caliber revolver, a .45 caliber revolver, a .45 caliber semi-automatic pistol, a .223 caliber semi-automatic rifle and a .300 caliber bolt action rifle. Reduction for acceptance (-2), and for sporting reduction (-6). Priors for delivery of cocaine (two counts); possession of cocaine, and theft.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	083	4(0-6)		19(33-41)	19(33-41)	20(37-46)	19(33-41)	20(37-46)	a(3)	b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 55627 84	§924(a)(2) §922(g)(1)	none	1989	12 base 10(21-27)	27 mos	V 10pts	N	Y	1 .45pistol several firearms (loaded)	possessn
The police executed a search warrant and seized several firearms (one of which was stolen), narcotic paraphernalia and found the defendant in possession of the firearm. Reduction for acceptance (-2). Priors for possession of a controlled substance (two counts), DWI (two counts).										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	084*	10(21-27)		14(33-41)	14(33-41)	14(33-41)	16(41-51)	16(41-51)	a(4)	b(2)[b(3)]

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	RISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 55722 85	§922(g)(1)	none	1989	12 base 10(10-16)	5 mos* downward depart	III 6 pts	Y	N	1 .32 pistol (loaded)	sale

The defendant was reported to be attempting to sell a firearm. The defendant was spotted at a rest area, and was approached by police who asked defendant to identify himself. A stop and frisk search revealed bullets in the defendant's pants pocket. The defendant then showed the officers where the gun was hidden (in a wheel well of his car). Reduction for acceptance (-2). Prior for armed bank robbery. The court departed downward based on USSG §5K1.1 (substantial assistance). * time served

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	085	10(10-16)		19(37-46)	19(37-46)	20(41-51)	19(37-46)	20(41-51)	a(3)	b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 55786 86	§924(a) §922(g)(1)	§924(e)	1989	12 base 12(30-37)	33 mos	VI 15pts	N	N	7 various firearms	sale

The police set up a fictitious pawn shop and the defendant came in with seven firearms to sell, including 5 rifles and 2 shotguns. At least two lacked serial numbers. No enhancements or reductions. Priors for forgery (three counts), burglary, theft and resisting arrest, burglary of a building, theft, attempted burglary of a building.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	086	12(30-37)		17(51-63)	17(51-63)	18(57-71)	19(63-78)	20(70-87)	a(4)	b(2)[b3]b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 55789 87	§924(e) §922(g)(1)	none	1989	12 base 12(180 mos)	180 mos (ACC)	VI 13pts	Y	N	1 .22 pistol (Loaded)	criminal

The defendant shot another man during an altercation and was later apprehended by police. No enhancement or reductions. Priors include grand larceny (two counts), attempted breaking and entering (two counts), attempted breaking and entering occupied dwelling, breaking and entering occupied dwelling (three counts), and a controlled substance violation.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	087	12(30-37)	180 mos+	26(120-150	26(120-150	28(140-175	26(120-150	28(140-175	a(2)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	JN TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INT/ USE
§2K2.1 55829 88	§922(g)(1)	none	1989	12 base 12(12-18)	probatn downward depart	II 2 pts	N	N	1 .22 pistol (loaded)	possessn
The defendant was found in possession of a stolen firearm which had originally been given to his wife by the defendant's brother-in-law. Enhancement for stolen firearm (+2). Reduction for acceptance (-2). Priors for false statements, contributing to the delinquency of a minor, leaving the scene of an accident, trespass and public intoxication (11 counts).										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	088*	12(12-18)		14(18-24)	14(18-24)	14(18-24)	16(24-30)	16(24-30)	a(4)	b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 55833 89	§922(g)(1)	none	1989	12 base 10(8-14)	8 mos	II 2 pts	N	Y	1 12 g. shotgun 1 pistol (.45)	criminal/sal e
Police, during an investigation concerning the defendant's involvement in drug trafficking, discovered that two firearms had been illegally purchased by the defendant. The defendant was arrested without incident. No enhancements. Reduction for acceptance (-2). Priors for theft and attempted burglary.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	089	10(8-14)		13(15-21)	13(15-21)	14(18-24)	15(21-27)	16(24-30)	a(4)	b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 55868 90	§922(g)(1)	none	1989	12 base 10(15-21)	21 mos	III 6 pts	Y	Y	1 9mm pistol (loaded)	criminal
ATF received information that defendant illegally purchased a gun. A search warrant was executed and police seized a firearm and cocaine. Enhancement for obstruction (+2) (police when executing warrant chased the defendant through the residence into a dark, back bedroom. Police were forced to negotiate with the defendant for his surrender after they heard him load a gun). Reduction for acceptance (-2). Priors for armed robbery, battery of a police officer, possession of cocaine with intent to distribute. Note: the court adopted the guideline range indicated in the PSI, without objection. However, at offense level 10 and criminal history category III, the range is 10-16 months, not 15-21. No departure was entered, however.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	090	10(15-21)		26(78-97)	26(78-97)	28(97-121)	26(78-97)	28(97-121)	a(2)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ON RM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	ENT/ USE
§2K2.1 55906 91	§924(a) §922(g)(1)	none	1989	12 base 10(10-16)	6 mos downward depart (subst. asst.)	III 5 pts	N	N	1 9mm pistol (loaded)	not known
The defendant was observed removing a firearm from a vehicle and walking to a group of men awaiting him. He was arrested. No enhancements. Reduction for acceptance (-2). Downward departure for substantial assistance. The defendant was a witness at a trial of an alleged drug offender.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	091	10(10-16)		12(15-21)	12(15-21)	12(15-21)	14(21-27)	14(21-27)	a(4)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 56009 92	§922(g)(1)	none	1989	12 base 12(15-21)	21 mos	III 6 pts	N	N	1 .25 pistol (loaded)	not known
The defendant was observed DUI and brandishing a firearm. The defendant was stopped and consented to a search of his vehicle. No enhancements, or reductions. Priors include grand larceny (four counts), DWS, unlawful trespass, DWI.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	092	12(15-21)		14(21-27)	14(21-27)	14(21-27)	16(27-33)	16(27-33)	a(4)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 56025 93	§922(g)(1)	8 counts 922(a)(6)	1989	12 base 12(12-18)	17 mos	II 3 pts	Y	N	46 firearms	sale
Defendant was discovered illegally purchasing firearms by falsifying forms. The firearms were mainly .25 caliber and .380 caliber pistols and were thought to be transferred into criminal hands. No enhancements or reductions. Priors for assault with a weapon, and possession of a firearm.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	093	12(12-18)		26(70-87)	26(70-87)	27(78-97)	26(70-87)	27(78-97)	a(3)	b(2),b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	ENT/ USE
§2K2.1 56034 94	§924(a) §922(g)(1)	counts not known	1989	12 base 10(10-16)	12 mos	III 4 pts	Y	Y	1 .22 pistol (loaded)	criminal

Police executing an arrest warrant found the defendant with a loaded pistol, methamphetamine, phetamine, etamine, marijuana, and $1255 in cash. No enhancements. Reductions for acceptance (-2). Priors for burglary of business, breaking and entering of vehicle, delivery of marijuana, possession of drug paraphernalia.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	094	10(10-16)		20(41-51)	20(41-51)	22(51-63)	20(41-51)	22(51-63)	a(3)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 56045 95	§924(a) §922(g)(1)	7 counts 922(g)(1)	1989	12 base 12(12-18)	15 mos	II 2 pts	Y	N	1 .303 rifle (loaded) 6 additional firearms	criminal

Defendant was caught in a contract killing sting where agents posed as contract killers available to kill defendant's one-time son-in-law. A search warrant revealed the firearms. The defendant pled guilty to a one count superseding information. Enhancements for obliterated firearm serial number (+2) and reduction for acceptance (-2). Priors for aggravated assault, possession of firearm without a license, and carrying a concealed weapon, DUI (two counts).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	095	12(12-18)		24(57-71)	24(57-71)	26(70-87)	24(57-71)	26(70-87)	a(3)	b(2)b(3)b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K2.1 54800 96	§§5861(d) & 5871	see below	1989	16 base 14(15-21)	21 mos	I 0 pts	N	N	1 .22 rifle 6 .22 silencers 2 .45 silencers .22 ammunition	sale/ manuf.
Defendant was a licensed firearms dealer. He pleaded guilty to Count I of an eight-count indictment as follows: Counts I, V, and VIII: §§ 5861(d) and 5871; Counts II and VI: §§ 5861(i) and 5871; Counts III and VII: §§ 5861(e) and 5871; and Count IV: §§ 5861(f) and 5871. The base offense level was reduced by two points for acceptance of responsibility. Defendant sold 1 .22 rifle, 1 .22 silencer, 2 .45 silencers, and 2 rounds of .22 ammunition; he was arrested while manufacturing for sale 5 unserialized .22 silencers. Also manufactured by the defendant were the 2 .45 silencers.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	096	14(15-21)	18(27-33)	21(37-46)	23(46-57)	23(46-57)	23(46-57)	23(46-57)	a(1)	b(2)b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K2.1 55422 97	§5861(d)	2-§922(g) 21§846	1989	16 base 14(27-33)	21 mos downward depart (subst. asst.)	IV 7 pts	Y	Y	Sten MX2 mch. gn./CR2 shot guns CR 1 pistol/ CR 917 ammun. rnds.	sale/nal
Defendant pleaded guilty to Count I of a four-count indictment as follows: Count I: § 5861(d); Counts II and III: § 922(g); and Count IV: 21 USC § 846. The defendant conspired to sell the weapons in exchange for a 1/2 kilo. of cocaine and a 1/2 lb. of marijuana which he intended to distribute. The plea agreement capped the sentence at 27 months. The defendant's priors included assault and battery. Defendant was found in possession of kits from which he was intending to build a machine gun. The base offense level was reduced by two points for acceptance of responsibility. The court made a downward departure on the basis of substantial cooperation which the defendant rendered to local authorities with respect to a murder trial. The testimony the defendant offered exposed him to great personal risk and he was not promised anything in return for his cooperation.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	097	14(27-33)	18(41-51)	23(70-87)	25(87-108)	27(100-125	25(87-108)	27(100-125	a(2)	a(1)b(2)b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K2.1 55376 98	§5861(d)	none	1989	16 base 4 (0-6)	none	I 0 pts	N	N	12 gauge sawed-off shotgun	sport

Defendant pleaded guilty to one count of unlawful possession of a registered firearm. The base offense level was reduced to four as §2K2.1(b)(1) provides a level of six if the weapon was possessed solely for the purpose of sport. Another two points were subtracted due to acceptance of responsibility. The defendant discharged the weapon near his home in an attempt to scare a person with whom he was having a fight and who he believed was in possession of a gun.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	098	4(0-6)	16(21-27)	18(27-33)	20(33-41)	22(41-51)	20(33-41)	22(41-51)	a(1)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K2.1 52569 99	§5861(d)	§5861(d)- 10 counts	1989	16 base 4 (0-6)	none	I 0 pts	N	N	10 firearms	collect.

Defendant pleaded guilty to Count VI of an eleven-count indictment in which each count charged him with a violation of § 5861(d). The defendant possessed the following: a Sionics MAW silencer, a High Efficiency silencer, a .22 rifle pen gun bearing no serial number, a Colt AR-15, .223 rifle modified to shoot automatically, a Colt AR-15-A2 .223 rifle modified to shoot as a fully automatic machine gun, a Colt AR-15 .223 rifle modified to shoot as a fully automatic machine gun, a PWA Model commando AR-15 type .223 rifle modified to shoot as a fully automatic machine gun, an essential Arms Company, AR-15 type .223 rifle, and a SGW, .223 rifle. BATF agents also confiscated numerous other legal firearms and a great deal of ammunition. The offense level was reduced for acceptance of responsibility and pursuant to §2K2.1(b)(1) which applied as the defendant possessed the weapons solely for the purpose of collection. Defendant's only prior offense was negligent homicide.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	099*	4(0-6)	16(21-27)	21(37-46)	23(46-57)	23(46-57)	23(46-57)	23(46-57)	a(3)	a(1)b(2)[b3]

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K2.1 52577 1000	§5861(d)	none	1989	16 base 14(15-21)	15 mos.	I 0 pts	N	N	sawed-off shotgun	possess.
Defendant pleaded guilty to a one-count indictment filed due to his arrest for being in possession of an unregistered sawed-off shotgun. His offense level was reduced by two due to acceptance of responsibility. No priors.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	1000	14(15-21)	16(21-27)	16(21-27)	18(27-33)	18(27-33)	18(27-33)	18(27-33)	a(1)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K2.1 52838 1001	§5861(d)	none	1989	16 base 4 (0-6)	none	I 0 pts	N	N	fully auto. M-1 .30 combine .22 silencer	collect.
Defendant pleaded guilty to a one-count indictment for possession of a fully automatic M-1 .30 combine. A .22 silencer was also found but the defendant was not charged for possessing it. The defendant legally possessed a .38 Taurus revolver and a .223 Mini-14. The offense level was lowered due to acceptance of responsibility and, pursuant to §2K2.1(b)(1), as the gun was possessed solely for the purpose of collection.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	1001	4(0-6)	16(21-27)	16(21-27)	18(27-33)	18(27-33)	18(27-33)	18(27-33)	a(1)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K2.1 52950 1002	§5861(d)	§§5861 & 5871 and state charges	1989	16 base 14(15-21)	18 mos.	I 0 pts	N	Y	Colt AR-15 rifle ammunition	possess.

Defendant pleaded guilty to Count II of a two-count indictment. Count I charged unlawful possession of a Colt AR-15 rifle. Count II charged the lack of registration for that weapon. Also found at the defendant's residence were the clip with which the rifle was loaded (including 27 live rounds, none of which were in the chamber), a photo album including pictures of marijuana, a clip for a .45 automatic pistol, loose shells, a bolt for a Colt .45 rifle, syringes, needles, a "bong," four clips for an AR-15 rifle, and a small quantity of marijuana. State charges of possession of marijuana and an offensive weapon were dismissed as the case was given to federal authorities. The offensive level included a reduction for acceptance of responsibility.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	1002	14(15-21)	16(21-27)	16(21-27)	18(27-33)	18(27-33)	18(27-33)	18(27-33)	a(1)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K2.1 53197 1003	§5861(d)	none	1989	16 base 14(18-24)	21 mos	II 3 pts	Y	Y	listed below	possess.

Defendant pleaded guilty to a one-count indictment. His offense level was reduced due to acceptance of responsibility. His prior offenses include two counts of possession of marijuana, possession of marijuana for sale, possession of dangerous drugs, and possession of drug paraphernalia. When law enforcement searched the defendant's residence they found 34.9 grams of methamphetamine, a 9 mm Sten machine gun, a Remington shotgun, a .22 Ruger rifle, an Interarms double-barreled shotgun, a Ruger Mini-30 rifle, a U.S. Army 1903 rifle, 1,000 rounds of ammunition, and a C.S. riot grenade.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	1003	14(18-24)	16(24-30)	22(46-57)	24(57-71)	26(70-87)	24(57-71)	26(70-87)	a(3)	a(1)b(2)b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K2.1 53447 1004	§5861(d)	922(g)(1)	1989	16 base 14(27-33)	30 mos.	IV 8 pts	Y	N	20 gauge single-barrel shotgun (loaded); ammunition	possess.

Defendant pleaded guilty to Count II of a two-count indictment. The offense level was reduced for acceptance of responsibility. Defendant's prior offenses include grand larceny, burglary, attempted grand larceny, possession of marijuana with intent to distribute, brandishing a firearm, and unlawful receipt and possession of a firearm by a convicted felon.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	1004	14(27-33)	16(41-51)	22(63-78)	24(78-97)	24(78-97)	24(78-97)	24(78-97)	a(2)	a(1)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K2.1 53779 1005	§§5861(d) & 5871	§§5861(i) & 5871	1989	16 base 14(15-21)	15 mos	I 0 pts	N	N	4 silencers .22 revolver Charter Arms AR-7 .22 rifle	manuf/ sale

Defendant pleaded guilty to Count I of a two-count indictment. He possessed 4 silencers, a .22 revolver, and a Charter Arms AR-7 .22 rifle. He agreed to manufacture and sell silencers. At least two of the silencers lacked serial numbers and no weapons were registered in his name. The offense level was reduced by two for acceptance of responsibility and increased by two, pursuant to §2K2.1(b)(1), for the lack of serial numbers on the weapons.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	1005	16(21-27)	18(27-33)	20(33-41)	20(33-41)	20(33-41)	20(33-41)	20(33-41)	a(1)	b(2)b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K2.1 53794 1006	21§841-a-1 §§5861(d) & 5871	none	1989	16 base 16(24-30)	27 mos	II 2 pts	Y	Y	Sears and Roebuck model 700 12 gauge shotgun	possess.

Defendant pleaded guilty to two separate one-count indictments. His offense level was reduced by two for acceptance of responsibility and increased by two due to the aggregation of closely related counts. His priors included an attempted delivery of a controlled substance (Percodan). In addition to the weapon, the defendant was in possession of 4 20ml. bottles of injectable morphine, 20 morphine suppositories, 20 Darvocet, 30 Percodan, 902 pills of Tylenol w/ codeine McNeil, 94 pills of 100 mg. each of Meperdine HCL, 4 pills of 10 mgs of methadone, 201 pills of 10mg. Diazepam, 4 2mg. pills of Dilaudid, 457 pills of 60 mg. Acetam/Codeine, 92 pills of Mepergan Fortis, and an assortment of other pills. Defendant was in the business of selling these drugs.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	1006	16(24-30)	18(30-37)	20(37-46)	22(46-57)	24(57-71)	22(46-57)	24(57-71)	a(3)	a(1)b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K2.1 54699 1007	§§5861(d) & 5871	none	1989	16 base 16(24-30)	27 mos.	II 3 pts	Y	N	2 pipe bombs 16 12-gauge shotgun shells 16 M70 firecrckrs	criminal

The defendant intended to use the weapons to kill a known female and her 13-year old son. Defendant pleaded guilty to a one-count indictment. His priors include unlawful possession of a .38 Smith and Wesson pistol, housebreaking, and grand larceny. No adjustments were made to his offense level.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	1007	16(24-30)	18(30-37)	22(46-57)	24(57-71)	26(70-87)	24(57-71)	26(70-87)	a(3)	a(1)b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K2.1 55863 1008	§5861(d) & 5871	none	1989	16 base 14(15-21)	15 mos	I 0 pts	N	N	9mm machine gun	possess.

Defendant pleaded guilty to a one-count indictment. His offense level was reduced for acceptance of responsibility. Although he had no prior felony convictions the defendant had been arrested on charges of simple assault, for which he was convicted and fined, assault, on two separate occasions, and burglary of a habitation. The defendant purchased the gun from burglars who had stolen it. No evidence indicated the defendant knew the manner in which the gun was obtained.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	1008*	14(15-21)	16(21-27)	18(27-33)	18(27-33)	18(27-33)	18(27-33)	18(27-33)	a(1)	[b(3)]

CASE SUMMARIES

FIREARMS GUIDELINE § 2K2.2 (1989)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE//LOADED	INTENT/ USE
§2K2.2 90-30232 **#200**	922(a)(1)		1989	7(1-7)	1 mo.	I	N	N	4 handguns	sell

Defendant sold four handguns to agents, including at least one that was stolen. He admitted to a long history of buying, selling, and trading guns.

*1 month CTC.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	200	7(1-7)		13(12-18)	13(12-18)	13(12-18)	13(12-18)	13(12-18)	a(5)A	b(2),b(3)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE//LOADED	INTENT/ USE
§2K2.2 90-32818 **#201**	922(a)(1)		1989	4(0-4)	Probatn	I	N	N	2 handguns	sell

Defendant sold two stolen handguns.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	201	4(0-4)		12(10-16)	12(10-16)	12(10-16)	12(10-16)	12(10-16)	a(5)A	b(3)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE//LOADED	INTENT/ USE
§2K2.2 90-46777 **#202**	371/922(b) (subsec. not given)	61 cts 922(b)(2) 922(b)(5)	1989	12(10-16)	36 mos. upward depart.	I 0 pts	N	N	at least 62 firearms	sell

Defendant, a licensed dealer, sold firearms illegally, to persons known to him to be felons, and to persons known to be engaged in criminal activities with the firearms. (Eighty percent of the guns were sold illegally.) Defendant assisted people in securing false identifications (indicating heightened planning). Defendant kept shoddy records, and at one point had them destroyed after a partial fire, in order to cover his tracks. Agents discovered the racket after a drug raid proved an unusually high number of weapons were purchased at Defendant's shop. These were the grounds for the upward departure.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	202	12(10-16)		15(18-24)	15(18-24)	17(24-30)	17(24-30)	19(30-37)	a(6)	b(2)b(6)b(7)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE//LOADED	INTENT/ USE
90-44731 #203	922(a)(1) (A)	none	1989	6 base 4 total (0-6)	none	0 pts I	N	N	.380 machine pistol; silencer	sale
Defendant has no criminal record. Defendant sold MAC-11 .380 machine pistol and silencer to undercover agents.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	203	4(0-6)	16(21-27)+	16(21-27)	16(21-27)	16(21-27)	18(27-33)	18(27-33)	a(1)	

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE//LOADED	INTENT/ USE
90-45208 #204	922(m)	none	1989	6 base 4 total (0-6)	none	4 pts III	Y	N	4 .32 pistols; 9 mm. pistol	sale
Defendant's prior convictions included assault with a dangerous weapon and carrying a concealed weapon. Defendant sold weapons to persons who never appeared in person at the place of sale and otherwise conspired to effectuate a "straw sale."										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	204	4(0-6)		21(46-57)	21(46-57)	22(51-63)	21(46-57)	22(51-63)	a(3)	b(2),b(8)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE//LOADED	INTENT/ USE
90-45355 #205	922(a)(6) 2 counts	922(a)(6) 2 counts	1989	6 base 5 total (0-6)	3 mnths	0 pt I	N	N	2 9mm pistols; .32 pistol	sale
Defendant purchased the aforementioned weapons under an assumed name and subsequently transferred the weapons to a third party.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	205	5(0-6)		5(0-6)	5(0-6)	5(0-6)	7(1-7)	7(1-7)	a(6)	b(2)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	SON ..RM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE//LOADED	TENT/ USE
90-45542 #206	18:1715	none	1989	6 base 5 total (0-6)	none	0 pts I	N	N	2 9mm pistols; .45 pistol	sale
Defendant had no prior criminal history. Defendant purchased weapons from a gun store in Florida and mailed the weapons.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	206	5(0-6)		5(0-6)	5(0-6)	5(0-6)	7(1-7)	7(1-7)	a(6)	b(2)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE//LOADED	INTENT/ USE
90-49982 #207	924(a)	none	1989	6 base 4 total (0-6)	none	0 pts I	N	N	400 firearms	sale
Defendant had no previous criminal history. Defendant transferred weapons to persons known to have falsified ATF Form 4473's.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	207	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE//LOADED	INTENT/ USE
90-49146 #208	2 cts 922(a)(6)	none	1989	6 base 4 total (0-6)	none	0 pts I	N	N	rifle	sale
Defendant had no prior offenses. Defendant purchased a weapon for a Mexican national who was a Mexican government official.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	208	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	SON ERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE//LOADED	TENT/ USE
90-44879 #209	26:5861(d)	5861(d)	1989	16 base 14 total (15-21)	6 mos downward depart.	0 pts I	N	N	12-gauge; 16-gauge sawed off shotgun	possess.

Defendant had no prior criminal convictions. Defendant was found to possess two weapons upon a warrant search of his home and vehicle. Downward departure was granted. One mitigating factor was that the defendant had been victimized by three burglaries within a short frame of time and feared the violent disposition of the culprit. Possession of the guns was for the purpose of defending his family from further victimization.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	209	14(15-21)	16(21-27)	16(21-27)	16(21-27)	16(21-27)	18(27-33)	18(27-33)	a(1)	

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE//LOADED	INTENT/ USE
90-44899 #210	5861(d)	5842 5861(h)	1989	16 base 16 total (21-27)	6 mos downward depart.	0 I	N	N	12-gauge sawed-off shotgun	possess.

Defendant had no previous criminal convictions. Defendant was found to possess the gun during a search of his vehicle to which he consented while under arrest for driving without a license. A downward departure was imposed because of the defendant's extensive family support network and his naivete. The court believed an offense level of 10 was more appropriate and indicated a sentencing range of 6-12 months. The defendant was sentenced within this range.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	210	16(21-27)	18(27-33)	18(27-33)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	a(1)	

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	;ON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE//LOADED	TENT/ USE
90-47646 #211	26:5861(d)	none	1989	16 base 14 total (15-21)	15 mnths	0 pts I	N	N	AK-47 rifle; Uzi 9mm; silencer; .38 handgun; .25 semi-automatic handgun	sale
Defendant had no prior criminal offenses. Defendant was seized while attempting to sell gun(s) to an undercover agent while the two were in the car of the defendant.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	211	14(15-21)	16(21-27)	16(21-27)	16(21-27)	16(21-27)	18(27-33)	18(27-33)	a(1)	b(2),b(7)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE//LOADED	INTENT/ USE
90-49327 #212	26:5861(d)	5861(d) 922(g)	1989	16 base 15 total (41-51)	36 mnths downward depart.	13 pt VI	Y	Y	3 semiautomatic pistols	sale criminal
Defendant's criminal history includes 2 counts of marijuana possession, unlawful possession of a controlled drug, possession of marijuana with intent to distribute, 2 counts of possession of a firearm, and possession of cocaine. The defendant sought to sell one of the weapons for methamphetamine. Departure was most likely based on the plea bargain in which the government agreed to move for a departure due to the substantial assistance provided by the defendant. It was suggested that the departure would lower the offense level by 2 levels to 13. Hence the appropriate range would be 33-41, within which the defendant was actually sentenced.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	212	15(41-51)	17(51-63)	22(84-105)	24(100-125	27(130-162	24(100-125	27(130-162	a(3)	a(1)b(2,7,8)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE//LOADED	INTENT/ USE
§2K2.2 90-48288 #213	5861(d)	922(g)(1)	1989	16 base 14(18-24)	Probatn downward depart.	II 2 pts	N	N	3 incling pistol, sawed off shotgun rifle	not known

Defendant had a loaded 9mm luger pistol in the apartment where he was arrested after assaulting his wife. Defendant noted he could have blown the heads off the responding officers if he had so desired. Defendant also possessed a rifle and a sawed off shotgun in the apartment. Downward departure was specified in J&C, and the U.S. Attorney will appeal the departure, noting that the departure was improperly based on the claimed use of the sawed-off weapon to hunt grouse. The government notes that Defendant hid the weapons, fearing they were stolen, that the sawed-off weapon had a pistol handle and other features not appropriate for hunting, and that the sawed-off weapon is per se illegal, and should not be considered for a reduction or departure for hunting purposes. Defendant had "stale" drug convictions and current drunk driving convictions.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	213	14(18-24)	16(24-30)	16(24-30)	16(24-30)	16(24-30)	18(30-37)	18(30-37)	a(1)	

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE//LOADED	INTENT/ USE
§2K2.2 90-48796 #214	5861(f)	none	1989	16 base 14(15-21)	4 mos. downward depart.	I	N	N	1 bomb	not known

Defendant constructed a bomb which he gave to a codefendant who called the police. The police arrived and, not knowing of any imminent danger, were alarmed to have the device explode in their presence. No injuries. Downward departure based on substantial assistance by Defendant puts guideline level at 12. No additional justification for the remaining departure.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	214	14(15-21)	16(21-27)	18(27-33)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	a(1)	b(3)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE//LOADED	INTENT/ USE
§2K2.2 90-40156 **#215**	5861(d)		1989	14(18-24)	21 mos.	II	N	N	7 varied guns	not known
Defendant manufactured various types of guns and faked a raid on himself by hoodlums, as a way to avoid gun charges when he was found unconscious with some of the weapons and weapons parts on his person.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	215	14(18-24)	16(24-30)	16(24-30)	16(24-30)	16(24-30)	18(30-37)	18(30-37)	a(1)	

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE//LOADED	INTENT/ USE
90-49099 **#216**	26:5861(d)	none	1989	16 base 17 total (24-30)	none downward depart.	0 pts I	N	N	10 silencers	hobby
Defendant had no prior criminal record and was awarded the Purple Heart for service in Vietnam (service for which he could have deferred due to the pregnancy of his wife at the time of the draft). A plea agreement capped potential incarceration at 21 months. The court departed downward on government motion.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	216	17(24-30)	19(30-37)	19(30-37)	19(30-37)	19(30-37)	21(37-46)	21(37-46)	a(1)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	ENT/ USE
§2K2.2 #53491 **#217**	§922(d)(1) §922(d)(3)	none	1989	6 base 12(10-16)	6 mos* substant assist. depart.	I 0 pts	N	Y	1 machinegun (.45 caliber)	sale
Defendant purchased the firearm from friends he knew had stolen the machinegun (and other items, including a Super Bowl ring) from a Cincinnati Bengal player. Defendant purchased the firearm for an ounce of marijuana and $200. He later sold the gun for two bags (two ounces) of marijuana, to a person known to him to be a felon or a drug user. Enhancements for stolen firearm (+2), and for conviction under §922(d) (+6), and acceptance (-2). *CTC										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	217	12(10-16)	24(51-63)+	26(63-78)	26(63-78)	28(78-97)	28(78-97)	30(97-121	a(1)	b(3)b(4)b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 #54353 **#218**	§922(a)(1) §924(a)(1)	§371/§922	1989	6 base 11(8-14)	7 mos	I 0 pts	N	N	32 .38 revolvers 8 pistols (semi-automatic)	sale criminal
Defendant had a person order two revolvers from a licensed dealer. He then had another person purchase eight firearms from another licensed dealer. Later these two persons purchased another 24 firearms from a licensed dealer, who by then assisted them in covering up the illegal transaction. When agents became suspicious (defendant's firearms were showing up in New York City, having been used in various crimes there), they contacted defendant, who agreed to buy up to 36 firearms. Six additional revolvers were purchased in this way. Defendant admitted to having sold at least 24 firearms in New York City, typically at a 100% profit. Defendant later indicated the guns were given primarily to relatives and business associates for protection. Enhancements for multiple firearms (+5) and no acceptance.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	218	11(8-14)		17(24-30)	17(24-30)	17(24-30)	17(24-30)	17(24-30)	a(5)A	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 #54663 #219	§922(i)	none	1989	6 base 5(0-6)	41 days*	I 0 pts	N	N	11 firearms	sale
Defendant and a friend stole eleven firearms from the friend's father's house, and sold at least eight of them to pawn brokers. Enhancements were recommended for multiple firearms (+3) and stolen firearms (+2). Acceptance was given (-2). However, the court cross referenced to §2B1.2 (level 7). A prior burglary conviction (not clear if residential or commercial) was inexplicably dropped from criminal history, giving defendant category I. * time served										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	219	5(0-6)		5(0-6)	5(0-6)	5(0-6)	5(0-6)	5(0-6)	a(6)	[b(2),b(3)]

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 #55119 #220	922(a)(1)A	none	1989	6 base 4(0-6)	probatn	I 0 pts	N	N	At least 21 firearms.	sale
Defendant rented space and procured a dealer's license on behalf of a person who was featured with an AR-15 in the Shreveport Times Sunday Magazine as "One's Army." The operation involved a surplus store that sold firearms, grenades, and the like. The person had numerous priors, including four counts felon in possession, one count dealing without a license, burglary, and larceny. Defendant sold the firearms using another person's license. The defendant received $2 for each firearm sold by the person. Defendant received an acceptance reduction (-2), but no enhancement for multiple firearms.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	220*	4(0-6)		10(6-12)	10(6-12)	10(6-12)	10(6-12)	10(6-12)	a(5)A	[b(2)]

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	.ISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 #55213 **#221**	§922(a)6	§922(g)	1989	6 base 4(0-6)	probatn	I 1 pt	Y	N	1 pistol (.25) semi-automatic	poss-ession
Defendant purchased a gun from a pawn dealer, but later sold it. Prior was for conspiracy to distribute cocaine.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	221	4(0-6)		18(27-33)					a(3)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 #55489 **#222**	§371/ §922(a)(6)	none	1989	6 base 8(2-8)	4 mos	I 0 pts	N	N	7 pistols and revolvers	sale
Defendant, crossing state lines, attempted to have another person purchase a firearm on his behalf, but the person refused. Defendant found another person to purchase three revolvers, but the firearms were not in stock. Defendant returned a week later with the same person, and purchased seven firearms, including two 9mm semi-automatic pistols, four .32 caliber semi-automatic revolvers, and one .38 caliber revolver. Defendant was unable to purchase an additional three firearms, due to lack of firearms in stock. Only one of the firearms was accounted for. Enhancement given for multiple firearms (+2) and no acceptance reduction.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	222	8(2-8)		8(2-8)	8(2-8)	8(2-8)	10(6-12)	10(6-12)	a(6)	b(2)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 #55782 **#223**	§922(m)	none	1989	6 base 5(0-5)	probatn	I 0 pts	N	N	2 stolen guns 2 sawed off shotguns additional guns	sale

Defendant ran a hardware store and sold firearms to persons known to him to be convicted felons. The four firearms listed were found on the premises at the time of the arrest. Enhancements for multiple firearms (+1) and acceptance reduction granted (-2).

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	223	5(0-5)	17(24-30)+	17(24-30)	17(24-30)	17(24-30)	19(30-37)	19(30-37)	a(1)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 #60028 **#224**	922(a)(1)D 922(a)(1)A	none	1989	6 base 8(2-8)	2 mos*	I 0 pts	N	N	14 semi-auto pistols and revolvers	sale

Defendant traveled interstate to purchase and sell firearms. Purchases were reportedly primarily from pawn shops. Defendant had never sought a license for such sales. He offered an agent a 12 gauge shotgun, and admitted to the prior sale of 16 stolen firearms. He tried to realize $25 profit per gun he sold, and had a policy to "shoot a man for turning [me] in to the authorities. Over a period of four months, defendant sold agents in controlled sales eleven firearms for a total $990. At the last sale, defendant had three additional firearms with him for possible sale. Priors include only numerous traffic violations. Enhancements for multiple firearms (+4), and acceptance reduction applied (-2).

* CTC

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	224	8(2-8)		14(15-21)	14(15-21)	14(15-21)	14(15-21)	14(15-21)	a(5)A	b(2)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 #59993 **#225**	922(a)(1)A	none	1989	6 base 8(2-8)	2 mos	I 0 pts	N	N	1 Uzi (semi-auto) 6 shotguns 34 rifles 6 handguns	sale

Defendant sold firearms without a license. During a three-month period, defendant sold firearms on four occasions to ATF agents. An additional 47 firearms were seized at his home. Only 21 of these had price tags, and only these were included for purposes of the firearm table enhancement. A fifth sale of a rifle likely took place, but was not counted. No priors. Enhancements include multiple firearms (+4), and reduction for acceptance (-2). P.O. noted that defendant could have been "convicted under a more appropriate statute (e.g., 18:USC:922(o) or 26:USC:5861), one more in keeping with the offense behavior" and received a considerably higher guideline range.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	225	8(2-8)		14(15-21)	14(15-21)	14(15-21)	14(15-21)	14(15-21)	a(5)A	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 #59753 **#226**	§922(a)(6)	none	1989	6 base 9(4-10)	10 mos	I 0 pts	N	Y	47 firearms (apparently all pistols)	sale

Defendant and her husband purchased 47 firearms in Virginia (usually from dealers) and sold them over a period of eight months to persons in New York and New Jersey, in exchange for cocaine (a total of 595 grams of cocaine was exchanged for the guns and distributed by the couple from their house and on the street). Some of the cocaine was used personally by the husband. The firearms were sold through an intermediary to the same person in the New York area. On at least one occasion the defendant had another person purchase firearms on her behalf. On another occasion the defendant kept the firearm for herself, and later sold it to a pawn broker. Enhancements include multiple firearms (+5) and reduction for acceptance (-2).

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	226	9(4-10)		17(24-30)	17(24-30)	19(30-37)	17(24-30)	19(30-37)	a(5)E	b(2),b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 #59752 **#227**	§371/ §922(a)(6)	none	1989	6 base 9(18-24)	24 mos	V 10pts	Y	Y	47 firearms (apparently all pistols)	sale
Defendant and his wife purchased 47 firearms in Virginia (usually from dealers) and sold them over a period of eight months to persons in New York and New Jersey, in exchange for cocaine (a total of 595 grams of cocaine was exchanged for the guns and distributed by the couple from their house and on the street). Some of the cocaine was used personally by the defendant. The firearms were sold through an intermediary to the same person in the New York area. Priors include tampering with auto, two convictions for failure to appear, forcible trespassing, embezzlement, misdemeanor larceny, assault on law officer, escape, fugitive, felonious escape, burglary (not a residence), three grand larceny, and numerous driving offenses. Enhancements include multiple firearms (+5) and reduction for acceptance (-2).										
APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	227	9(18-24)		18(51-63)	18(51-63)	21(70-87)	18(51-63)	21(70-87)	a(5)E	b(2)b(7)b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 #59397 **#228**	§922(b)(2)	§5861(d) §5861(e) §5861(f)	1989	6 base 5(1-7)	4 mos*	III 4 pts	N	N	1 silencer 3 long guns 1 handgun	sale
Defendant test fired a .22 caliber rifle with a silencer attached to it, at the back of his residence. Defendant was a licensed dealer and offered to sell firearms, but no sales occurred at that time. No firearms were registered to the defendant. The defendant later unlawfully made and sold a silencer, sold an unregistered rifle, and agreed to remove the rifle's serial number. He later instructed the informant how to grind the number off the rifle. Defendant continued to possess three firearms (rifle, handgun, shotgun) while on bond. Priors include driving violations, and evading an officer. Enhancements include conviction under 18:922(b)(2) (+1), and reduction for acceptance (-2).										
APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	228*	5(1-7)	16(27-33)	19(37-46)	19(37-46)	19(37-46)	21(46-57)	21(46-57)	a(1)	[b(2)]b(3,6)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 #59179 **#229**	924(a)(1)A	none	1989	6 base 4(0-6)	6 mos	I 0 pts	N	N	1 revolver (.357) 1 pistol (.45) 1 pistol (.45) (attempted purchase)	not known
Defendant purchased two guns (total) on two separate occasions, and sought to purchase a third, from a dealer, having filled out forms with false addresses and telephone numbers. Defendant claimed the guns were strictly for sporting purposes. No enhancement for multiple firearms. Reduction for acceptance was applied (-2).										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	229*	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	[b(2)]

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 #56584 **#230**	922(a)(1)A	371/ 22:2778 22:2778	1989	6 base 8(2-8)	probatn downward depart	I 0 pts	N	N	97 AK-47 rifles	sale
Defendant and four others falsified acquisition forms and purchased, on one occasion, 97 AK-47 assault rifles, knowing that they would be exported to Mexico. Defendant's role apparently was minor. He was listed as the purchaser of some 201 AK-47's, accompanied the conspiracy leader during the ventures, and assisted in the loading and unloading of boxes of firearms. No priors. Enhancement for multiple firearms (+6), adjustment for role (-2) and reduction for acceptance (-2). Downward departure pursuant to a plea agreement (possibly substantial assistance).										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	230	8(2-8)		14(15-21)	14(15-21)	14(15-21)	14(15-21)	14(15-21)	a(5)A	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ON RM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	ENT/ USE
§2K2.2 #60387 **#231**	§5861(f)	none	1989	16 base 18(27-33)	27 mos	I 0 pts	N	N	9 silencers 6 handguns	sale
Defendant made nine silencers, and, on three occasions, sold a total of nine silencers and three handguns. Defendant also sold three handguns (two pistols and a revolver) to an undercover agent. Enhancement for multiple firearms (+4), and reduction for acceptance (-2). No priors.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	231	18(27-33)	20(33-41)	20(33-41)	20(33-41)	20(33-41)	22(41-51)	22(41-51)	a(1)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 #59702 **#232**	§5861(d)	§5861(i)	1989	16 base 16(21-27)	15mos	I 0 pts	N	N	1 short barrel shotgun	poss-ession
Defendant was found during an INS investigation to be in possession of a short-barrel shotgun, which lacked a serial number. Departure based on following grounds: "Departure of 2 points is ordered because the defendant plead (sic) to only Count I. The G'Lines (sic) do not give him a break for pleading. Also the sentence in Level 16 is unduly harsh given this lack of criminal history, the absence of any apparent criminal intent, his solid employment background and that he will be deported." The reduction of 2 levels resulted in a level 14 (15-21 months). Enhancement for missing serial number (+2), and reduction for acceptance (-2).										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	232	16(21-27)	18(27-33)	18(27-33)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	a(1)	b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 #57610 **#233**	§5861(d)	§5861(i)	1989	16 base 14(18-24)	18 mos	II 3 pts	Y	N	1 silencer	criminal

Defendant suggested to another person that that person could take care of his domestic problems by killing his wife. The defendant contracted to kill his wife for $10,000 ($1,000 down), and the other person contacted authorities. (The rest of this PSI was missing.) The silencer lacked a serial number. No enhancement given for this missing number. Acceptance reduction applied (-2). Prior crime of violence was solicitation to commit murder (conduct involved with this offense).

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	233	14(18-24)	16(24-30)	20(37-46)	20(37-46)	22(46-57)	22(46-57)	24(57-71)	a(1)	b(3)b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 #55912 **#234**	§5861(d)	none	1989	16 base 14(37-46)	43 mos	VI 17pts	Y	N	1 short barrel shotgun (loaded)	not known

Defendant was arrested on an outstanding warrant, and his vehicle searched. A loaded 16-gauge short barrel shotgun was found, as well as pills and drug paraphernalia. Defendant stated that the car was borrowed, and the contents not his. He stated that the ammunition found in his pocket had been rolling around in the car. Acceptance reduction granted (-2). Priors include storebreaking, felonious breaking and entering (not clear if residence or otherwise), robbery, two counts forgery, possession with intent to deliver cocaine, and other traffic offenses. Defendant admitted to other violent and non-violent crimes, but files could not be found.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	234	14(37-46)	16(46-57)	24(100-125	26(120-150	28(140-175	26(120-150	28(140-175	a(2)	a(1),b(7)

TABLE -- COMPARISON OF FIREARMS GUIDELINE §2K2.3 (1989) (INTENT TO USE IN OTHER OFFENSE) WITH PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)

CASE	1989	1990	#1	#2	#3	#4	#5	BASE	SOC
400	19(30-37)	18(27-33)+	22(41-51)	24(51-63)	26(63-78)	24(51-63)	26(63-78)	a(1)	b(3),b(7)
401	12(10-16)		12(10-16)	12(10-16)	12(10-16)	14(15-21)	14(15-21)	a(6)	b(2),b(4)
402	29(87-108)		29(87-108)					c(1)	a(1),b(7)
403	10(6-12)		14(15-21)					a(5)E	b(2)
404	10(6-12)		18(27-33)	18(27-33)	20(33-41)	18(27-33)	20(33-41)	a(5)E	b(2),b(7)

Note:

- Redlined figures represent the offense level and range that would result under the model guideline (version effective 3-27-91)
- All references to base offense level and specific offense characteristic relate to guideline section numbers as published.
+ Where 26 U.S.C. § 5861 was not the offense of convictions, the 1990 guideline would not technically apply, but has bee calculated here for the purposes of comparison.

TABLE -- COMPARISON OF FIREARMS GUIDELINE §2K2.3 (1987) (PROHIBITED TRANSACTIONS WITH PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)

CASE	1987	1989	1990	#1	#2	#3	#4	#5	BASE	SOC
512	5(0-6)	6(0-6)	18(27-33+	18(27-33)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	a(1)	b(2)
503	11(10-16)	16(24-30)	18(30-37)	20(37-46)	22(46-57)	24(57-71)	22(46-57)	24(57-71)	a(1)	b(2),b(8)
506	6(1-7)	8(4-10)	20(37-46+	22(46-57)	22(46-57)	24(57-71)	24(57-71)	26(70-87)	a(1)	b(2),b(8)
511*	12(10-16)	16(21-27)	18(27-33+	20(33-41)	20(33-41)	20(33-41)	22(41-51)	22(41-51)	a(1)	[b(2)]b(8)
502	6(0-6)	9(4-10)		23(46-57)	23(46-57)	23(46-57)	23(46-57)	23(46-57)	a(3)	b(2,3,5)
505	5(0-6)	7(1-7)		13(12-18)	13(12-18)	13(12-18)	13(12-18)	13(12-18)	a(5)E	b(2)
500	8(2-8)	6(0-6)		14(15-21)	14(15-21)	14(15-21)	14(15-21)	14(15-21)	a(5)E	b(2)
510	10(6-12)	10(6-12)		10(6-12)	10(6-12)	10(6-12)	12(10-16)	12(10-16)	a(6)	
504	4(0-6)	5(0-6)		5(0-6)	5(0-6)	5(0-6)	7(1-7)	7(1-7)	a(6)	b(2)
509	7(1-7)	6(0-6)		6(0-6)	6(0-6)	6(0-6)	8(2-8)	8(2-8)	a(6)	b(2)
501	5(0-6)	8(2-8)		8(2-8)	8(2-8)	8(2-8)	10(6-12)	10(6-12)	a(6)	b(2),b(3)
513	6(0-6)	8(2-8)		8(2-8)	8(2-8)	8(2-8)	10(6-12)	10(6-12)	a(6)	b(2),b(3)
514	7(1-7)	9(4-10)		9(4-10)	9(4-10)	9(4-10)	11(8-14)	11(8-14)	a(6)	b(2),b(3)
508	4(0-6)	5(0-6)		7(1-7)	7(1-7)	9(4-10)	9(4-10)	11(8-14)	a(6)	b(2),b(8)
515	10(6-12)#	10(6-12)#		10(6-12)#	10(6-12)#	10(6-12)	10(6-12)	12(10-16)	a(6)	b(3,8)c(1)
	12(15-21#	12(15-21#		12(15-21#	12(15-21#	12(15-21)	12(15-21)	14(21-27)	a(6)	b(3,8)c(1)
507	4(0-6)	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	b(4)

Notes:

- Redlined figures represent the offense level and range that would result under the model guideline (version effective 3-27-91).

_ All references to base offense level and specific offense characteristic refer to published guideline section numbers.

* This defendant should apparently have received an enhancement under the 1987 firearms table for sale or possession of multiple firearms. Where the defendant did not receive such an enhancement under the 1987 guideline, it has not been added here.

\+ Where 28 U.S.C. § 5861 was not an offense of conviction, the 1990 guideline does not technically apply, but the calculations are provided for comparison purposes.

\# These guideline ranges resulted from an application of §2D1.1 by way of the relevant cross reference.

TABLE -- COMPARISON OF FIREARMS GUIDELINE §2K2.5 (1989) (FEDERAL FACILITIES) WITH PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)

CASE	1989	1990	#1	#2	#3	#4	#5	BASE	SOC
614	4(0-6)	14(15-21)+	18(27-33)	18(27-33)	20(33-41)	20(33-41)	22(41-51)	a(1)	b(9)
602	4(0-6)		14(18-24)	14(18-24)	16(24-30)	16(24-30)	18(30-37)	a(4)	b(9)
616	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	
615	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	
607	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	
600	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	
603	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	
601	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	
604	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	
612	4(0-6)		6(0-6)	6(0-6)	8(2-8)	8(2-8)	10(6-12)	a(6)	b(7)
613	4(0-6)		8(2-8)	8(2-8)	12(10-16)	12(10-16)	14(15-21)	a(6)	b(7),b(9)
606	4(0-6)		6(0-6)	6(0-6)	8(2-8)	8(2-8)	10(6-12)	a(6)	b(9)
611	4(0-6)		6(0-6)	6(0-6)	8(2-8)	8(2-8)	10(6-12)	a(6)	b(9)
608	4(0-6)		6(0-6)	6(0-6)	8(2-8)	8(2-8)	10(6-12)	a(6)	b(9)
[illegible]	4(0-6)		6(0-6)	6(0-6)	8(2-8)	8(2-8)	10(6-12)	a(6)	b(9)
	4(0-6)*		6(0-6)	6(0-6)	8(2-8)	8(2-8)	10(6-12)	a(6)	b(7)
605	6(0-6)		10(6-12)	10(6-12)	10(6-12)	12(10-16)	12(10-16)	a(6)	b(2)

Notes:

- Redlined figures represent the offense level and range that would result under the model guideline (version effective 3-27-91)
- All references to specific offense characteristic refer to published guideline section numbers.

* No total offense level was provided for this defendant, so, for the purposes of this table, a total offense level of 4(0-6) was assumed.

\+ Where 26 U.S.C. § 5861 was not the offense of conviction, the 1990 guideline would not technically apply, but has been calculated here for the purposes of comparison.

TABLE -- DISTRIBUTION OF GUIDELINE RANGE MAXIMUMS
UNDER CURRENT FIREARMS GUIDELINE §2K2.1 (1989)

BASE OFFENSE LEVEL	NUMBER OF CASES	LESS THAN 12 MOS	(12-24) MOS	(24-33) MOS	(33-51) MOS	(51-63) MOS	(63-87) MOS	(87-121) MOS	(121-151) MOS	151-188) MOS	MORE THAN 188 MOS
§ a(1) (NFA firearm)	73	21	29	19	3	0	1	0	0	0	0
§ a(2) (two priors)	52	6	12	21	10	2	0	1	0	0	0
§ a(3) (one prior)	69	13	31	18	7	0	0	0	0	0	0
§ a(4) (felon)	38	9	20	6	2	0	0	1	0	0	0
§ a(5)A (engage in bus.)	7	6	1	0	0	0	0	0	0	0	0
(5)E ter- cate)	10	10	0	0	0	0	0	0	0	0	0
§ a(6) (misc.)	40	38	2	0	0	0	0	0	0	0	0
OVERALL+	289	103	95	64	22	2	1	2	0	0	0

TABLE -- DISTRIBUTION OF GUIDELINE RANGE MAXIMUMS
UNDER MODEL §2K2.1 (1991)

BASE OFFENSE LEVEL	NUMBER OF CASES	LESS THAN 12 MOS	(12-24) MOS	(24-33) MOS	(33-51) MOS	(51-63) MOS	(63-87) MOS	(87-121) MOS	(121-151) MOS	151-188) MOS	MORE THAN 188 MOS
§ a(1) (NFA firearm)	73	0	0	33	32	2	5	1	0	0	0
§ a(2) (two priors)	52	0	0	0	0	5	2	27	7	6	5
§ a(3) (one prior)	69	0	0	4	23	14	13	12	2	1	0
§ a(4) (felon)	38	2	11	10	10	3	1	1	0	0	0
§ a(5)A (engage in bus.)	7	1	5	1	0	0	0	0	0	0	0
(5)E ter- ate)	10	0	7	1	1	0	1	0	0	0	0
§ a(6) (misc.)	40	37	3	0	0	0	0	0	0	0	0
OVERALL	289	40	26	49	66	24	22	41	9	7	5

TABLE -- DISTRIBUTION OF GUIDELINE RANGE MAXIMUMS
UNDER PROPOSED §2K2.1 (1991) (OPTION 1)

BASE OFFENSE LEVEL	NUMBER OF CASES	LESS THAN 12 MOS	(12-24) MOS	(24-33) MOS	(33-51) MOS	(51-63) MOS	(63-87) MOS	(87-121) MOS	(121-151) MOS	151-188) MOS	MORE THAN 188 MOS
§ a(1) (NFA firearm)	73	0	0	39	28	4	2	0	0	0	0
§ a(2) (two priors)	52	0	0	0	0	6	8	26	7	5	0
§ a(3) (one prior)	69	0	0	6	28	13	16	5	0	1	0
§ a(4) (felon)	38	0	11	15	7	1	0	1	0	0	0
§ a(5)A (engage in bus.)	7	1	5	1	0	0	0	0	0	0	0
(5)E ter- state)	10	0	7	2	0	1	0	0	0	0	0
§ a(6) (misc.)	40	37	3	0	0	0	0	0	0	0	0
OVERALL	289	41	26	63	63	25	26	32	7	6	0

TABLE -- DISTRIBUTION OF GUIDELINE RANGE MAXIMUMS
UNDER PROPOSED §2K2.1 (1991) (OPTION 3)

BASE OFFENSE LEVEL	NUMBER OF CASES	LESS THAN 12 MOS	(12-24) MOS	(24-33) MOS	(33-51) MOS	(51-63) MOS	(63-87) MOS	(87-121) MOS	(121-151) MOS	151-188) MOS	MORE THAN 188 MOS
§ a(1) (NFA firearm)	73	0	0	28	32	4	6	3	0	0	0
§ a(2) (two priors)	52	0	0	0	0	5	3	26	7	6	5
§ a(3) (one prior)	69	0	0	5	21	14	14	10	3	1	1
§ a(4) (felon)	38	3	10	11	9	3	1	1	0	0	0
§ a(5)A (engage in bus.)	7	1	5	1	0	0	0	0	0	0	0
(5)E ter- cate)	10	0	7	1	1	0	1	0	0	0	0
§ a(6) (misc.)	40	37	3	0	0	0	0	0	0	0	0
OVERALL	289	41	25	46	63	26	25	40	10	7	6

TABLE -- DISTRIBUTION OF GUIDELINE RANGE MAXIMUMS
UNDER PROPOSED §2K2.1 (1991) (OPTION 5)

BASE OFFENSE LEVEL	NUMBER OF CASES	LESS THAN 12 MOS	(12-24) MOS	(24-33) MOS	(33-51) MOS	(51-63) MOS	(63-87) MOS	(87-121) MOS	(121-151) MOS	151-188) MOS	MORE THAN 188 MOS
§ a(1) (NFA firearm)	73	0	0	11	41	9	6	5	0	0	0
§ a(2) (two priors)	52	0	0	0	0	5	2	26	7	7	5
§ a(3) (one prior)	69	0	0	4	21	14	15	10	2	2	1
§ a(4) (felon)	38	2	4	10	14	3	4	1	0	0	0
§ a(5)A (engage in bus.)	7	1	5	1	0	0	0	0	0	0	0
(5)E ter- ..ate)	10	0	7	1	1	0	1	0	0	0	0
§ a(6) (misc.)	40	31	7	2	1	0	0	0	0	0	0
OVERALL	289	34	23	29	78	31	28	42	9	9	6

TABLE -- CRIMINAL HISTORY FREQUENCY AMONG DEFENDANTS WITH ONE OR MORE PRIORS [SUBSECTIONS (a)(2) AND (a)(3)]

GUIDELINE SECTION	AVERAGE CRIMINAL HISTORY	TOTAL CASES	CRIMINAL HISTORY I	CRIMINAL HISTORY II	CRIMINAL HISTORY III	CRIMINAL HISTORY IV	CRIMINAL HISTORY V	CRIMINAL HISTORY VI
(a)(2) (two prior)	Category IV	52 cases	4 cases	4 cases	9 cases	11 cases	12 cases	12 cases
(a)(3) (one prior)	Category III	69 cases	10 cases	20 cases	21 cases	4 cases	5 cases	9 cases

TABLE -- FREQUENCY OF GUIDELINE RANGES
UNDER PROPOSED GUIDELINE §2K2.1 (1991)

	TOTAL CASES	RANGE 0-8	RANGE 6-12	RANGE 12-18	RANGE 18-24	RANGE 21-27	RANGE 24-30	RANGE 27-33	RANGE 30-37	RANGE 33-41	RANGE 37-46	RANGE 41-51	RANGE 46-57	RANGE 51-63	RANGE 57-71	RANGE 63-78	RANGE 71-87	RANGE 78-97
§a(2) (two or more priors)	52												2	3		3	1	10
§a(2) (two priors)*	31												1	3		2	1	8
§a(3) (one priors)	69							5	3	6	6	10	4	7	7	3	2	3

TABLE -- FREQUENCY OF GUIDELINE RANGES
UNDER PROPOSED GUIDELINE §2K2.1 (1991)

	RANGE 87-108	RANGE 97-121	RANGE 108-135	RANGE 121-151	RANGE 135-168	RANGE 151-188	RANGE 168-210	RANGE 188-235	RANGE 210-262	RANGE 235-293	RANGE 262-327	RANGE 293-365	RANGE 324-405	RANGE 360-life
§a(2) (two or more priors)	11	6	3	8	5		2	1						
§a(2) (two priors)	8	1	1	4	2			1						
§a(3) (one priors)	8			3	2									

18 19 20 21 22

TABLE -- FREQUENCY OF TOTAL OFFENSE LEVELS
UNDER CURRENT FIREARMS GUIDELINES

	TOTAL CASES	TOTAL LEVEL 4	TOTAL LEVEL 5	TOTAL LEVEL 6	TOTAL LEVEL 7	TOTAL LEVEL 8	TOTAL LEVEL 9	TOTAL LEVEL 10	TOTAL LEVEL 11	TOTAL LEVEL 12	TOTAL LEVEL 13	TOTAL LEVEL 14	TOTAL LEVEL 15	TOTAL LEVEL 16	TOTAL LEVEL 17	TOTAL LEVEL 18	TOTAL LEVEL 19	TOTAL LEVEL 20
§a(1) (N.F.A. firearm)	73										1	3		34	5	19	1	6
§a(2) (two priors)	52	3		1				25		8	1	6		4		1		1
§a(3) (one priors)	69	7					1	25		14	1	2		11	1	5		
§a(4) (prohib. person)	38	5						17		14		1						
§a(5)A (engage in bus.)	7	2			1	3			1									
§a(5)E/F (inter-state)	10	3		1	1	1	4											
§a(6) (misc.)	40	25	5	2		3	1	2		2								
TOTAL	289	45	5	4	2	7	6	69	1	38	3	12	0	49	6	25	1	7

TABLE -- FREQUENCY OF TOTAL OFFENSE LEVELS
UNDER CURRENT FIREARMS GUIDELINES

	TOTAL LEVEL 21	TOTAL LEVEL 22	TOTAL LEVEL 23	TOTAL LEVEL 24	TOTAL LEVEL 25	TOTAL LEVEL 26	TOTAL LEVEL 27	TOTAL LEVEL 28	TOTAL LEVEL 29	TOTAL LEVEL 30	TOTAL LEVEL 31	TOTAL LEVEL 32	TOTAL LEVEL 33	TOTAL LEVEL 34	TOTAL LEVEL 35	TOTAL LEVEL 36	TOTAL LEVEL 37
§a(1) (N.F.A. firearms)	1	1		2													
§a(2) (two priors)		1	1														
§a(3) (one priors)	1	1															
§a(4) (prohib. person)	1																
§a(5)A (engage in bus.)																	
§a(5)E/F (inter-state)																	
§a(6) (misc.)																	
TOTAL	3	3	1	2													

TABLE -- FREQUENCY OF TOTAL OFFENSE LEVELS
UNDER PROPOSED GUIDELINE §2K2.1 (1991)

	TOTAL CASES	TOTAL LEVEL 4	TOTAL LEVEL 5	TOTAL LEVEL 6	TOTAL LEVEL 7	TOTAL LEVEL 8	TOTAL LEVEL 9	TOTAL LEVEL 10	TOTAL LEVEL 11	TOTAL LEVEL 12	TOTAL LEVEL 13	TOTAL LEVEL 14	TOTAL LEVEL 15	TOTAL LEVEL 16	TOTAL LEVEL 17	TOTAL LEVEL 18	TOTAL LEVEL 19	TOTAL LEVEL 20
§a(1) (N.F.A. firearms)	73													14	6	15	4	17
§a(2) (two priors)	52																	
§a(3) (one priors)	69															16	2	14
§a(4) (prohib. person)	38	2						1		5	1	9	1	5	4	5	3	
§a(5)A (engage in bus.)	7							1		1	1	3			1			
§a(5)E/F (inter-state)	10								1	1	1	3	2				1	
§a(6) (misc.)	40	16	4	5		7	2	3		2					1			
TOTAL	289	18	4	5	0	7	2	5	1	9	3	15	3	19	12	36	10	31

TABLE -- FREQUENCY OF TOTAL OFFENSE LEVELS
UNDER PROPOSED GUIDELINE §2K2.1 (1991)

	TOTAL LEVEL 21	TOTAL LEVEL 22	TOTAL LEVEL 23	TOTAL LEVEL 24	TOTAL LEVEL 25	TOTAL LEVEL 26	TOTAL LEVEL 27	TOTAL LEVEL 28	TOTAL LEVEL 29	TOTAL LEVEL 30	TOTAL LEVEL 31	TOTAL LEVEL 32	TOTAL LEVEL 33	TOTAL LEVEL 34	TOTAL LEVEL 35	TOTAL LEVEL 36	TOTAL LEVEL 37
§a(1) (N.F.A. firearms)	2	6	1	5	1	1											
§a(2) (two priors)	1	14	1	8	1	10	1	9	1	3	1	1			2		
§a(3) (one priors)	4	14	3	6	1	4	3	1	2								
§a(4) (prohib. person)	1		1														
§a(5)A (engage in bus.)																	
§a(5)E/F (inter-state)																	
§a(6) (misc.)																	
TOTAL	8	34	6	19	3	15	4	10	3	3	1	1	0	0	2	0	0

CASE FILE SUMMARIES

FIREARMS GUIDELINE § 2K2.1 (1989)

TAB G

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	NTENT/ USE
90-45462 #100	922(g)(1)	none	1989	12 10(10-16)	10 mos	III 6 pts	Y	N	one .44 magnum revolver	sale
Defendant sold the gun to a dealer, ostensibly to pick up some extra cash. He claimed the gun was his ex-wife's gun. Priors include first-degree murder, and aggravated assault.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	100	10(10-16)		22(51-63)	22(51-63	22(51-63)	22(51-63)	22(51-63)	a(2)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-45616 #101	922(g)(1)	none	1989	12 12(15-21)	15 mos	III 6 pts	Y	N	1 shotgun 2 revolvers 2 pistols loaded	not known
Defendant was stopped during a traffic stop. What turned out not to be cocaine was spotted on the dash. A search of the car revealed five weapons in the trunk of the car. Defendant claimed ignorance of the presence of the weapons. Priors include aggravated robbery.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	101	12(15-21)		22(51-63)	22(51-63)	22(51-63)	22(51-63)	22(51-63)	a(3)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-45747 #102	922(g)(1)	none	1989	12 12(15-21)	15 mos	III 6 pts	Y	N	1 shotgun 2 revolvers 2 pistols .32 loaded	not known
Defendant was stopped during a traffic stop. What turned out not to be cocaine was spotted on the dash. A search of the car revealed five weapons in the trunk of the car. Defendant claimed ignorance of the presence of the weapons. Priors include aggravated robbery.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	102	12(15-21)		22(51-63)	22(51-63)	22(51-63)	22(51-63)	22(51-63)	a(3)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	NTENT/ USE
90-45859 **#103**	922(g)(1)	5 counts 922(a)(6) 922(g)(1)	1989	12 10(6-12)	6 mos	I 1 pt	N	N	24 handguns	criminal sale

Defendant received large numbers of weapons from two dealers on more than one occasion, apparently on behalf of Jamaican drug dealers who were going to kill a friend of Defendant's after she stole drugs from them. In exchange for the weapons, the dealers agreed not to kill the woman. No related priors.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	103	10(6-12)		19(30-37)	19(30-37)	23(46-57)	21(37-46)	25(57-71)	a(4)	b(2)b(7)b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-45982 **#104**	922(n)	5 counts 922(n) 922(a)(6)	1989	12 10(10-16)	10 mos *	III 3 pts	N	N	9 handguns	sale

Defendant attempted to smuggle 8 handguns he purchased from two separate dealers, into Mexico for resale there. A ninth gun was his own, for protection, and possible sale. Defendant admitted to other sales in the past. No priors.

* concurrent to state sentence

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	104	10(10-16)		16(27-33)	16(27-33)	17(30-37)	18(33-41)	19(37-46)	a(4)	b(2),b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-46274 **#105**	922(g)(1)	none	1989	12 12(15-21)	21 mos	III 4 pts	Y	N	one .25 caliber handgun	not known

Defendant was seen throwing a handgun under his car, and was arrested. The weapon was found to have been stolen. Priors include distribution of cocaine.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	105	12(15-21)		20(41-51)	20(41-51)	20(41-51)	20(41-51)	20(41-51)	a(3)	b(3)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-47149 **#106**	922(g)(1)	none	1989	12 4(6-12)	9 mos	VI 15pts	Y	N	one .22 caliber rifle	target

Defendant was found to be in possession of a weapon he purchased at a flea market, and which he apparently used for target practice. Priors include DUI, robbery by force, burglary, DUI, simple robbery.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	106	4(6-12)		22(84-105)	22(84-105)	22(84-105)	22(84-105)	22(84-105)	a(2)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-46809 **#107**	922(a)(6)	922(g)(1)	1989	12 10(10-16)	probatn downward depart	III 10pts	Y	N	one .45 caliber rifle	protectn

Defendant was a Crips gang member, and reportedly was going to use the gun to shoot off on New Year's Eve. Defendant also claimed he needed the gun for protection. Defendant was convicted only of 922(a)(6), and the 18 U.S.C. § 922(g)(1) count was dropped, but the base offense level used was 12, instead of 6. Departure apparently based on substantial assistance to the government -- however, no statement of reasons exists, this is only the recommendation of the government and the P.O. Priors include possession of a controlled substance, robbery with a knife, carrying a concealed weapon.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	107	10(10-16)		18(33-41)	18(33-41)	18(33-41)	18(33-41)	18(33-41)	a(3)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-46788 **#108**	922(g)(1)	none	1989	12 14(37-46)	46 mos	VI 13pts	Y	N	one 12 gauge shotgun	possessn

Defendant was stopped for speeding and a shotgun was found in the trunk of his car. Defendant lied to the officer regarding Defendant's true name, and frustrated the investigation as a result. Priors include two burglaries, possession of marijuana, delivery of phenmetrazine, burglary. (residential)

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	108	14(37-46)		26(120-150)	26(120-150)	26(120-150)	26(120-150)	26(120-150)	a(2)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	USE
90-46787 #109	922(g)(1)	none	1989	12 12(27-33)	33 mos	V 12pts	Y	N	.410 gauge shotgun	sale
Defendant sold a weapon to an undercover storefront operation. Priors include two burglaries. The weapon had been stolen.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	109	12(27-33)		24(92-115)	24(92-115)	24(92-115)	24(92-115)	24(92-115)	a(2)	b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-49100 #110	922(g)(1)	none	1989	12 10(24-30)	30 mos	VI 19pts	Y	N	2 starter pistols ten rounds .38 ammunition	not apparent
Defendant, a felon, was found to have the firearms in his bedroom. Intended use is not apparent, and the pistols could not be readily converted to a firearm. The ammunition is incompatible with the starter pistols. Defendant was a possible drug user, but this could not be verified. Priors include numerous offenses, including three intended assaults while armed, escape, and other non-violent offenses.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	110	10(24-30)		22(84-105)	22(84-105)	22(84-105)	22(84-105)	22(84-105)	a(2)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-49095 #111	922(g)(1)	5861(d)	1989	12 10(15-21)	33 mos Upward Depart	IV 8 pts	N	N	1 machinegun 1 pistol 1 silencer grenades 4 other firearms loaded	criminal
Defendant was found to have the weapons as well as ammunition, explosives, and other gun supplies in his home. A CI tipped agents off to the activity. Priors include 2 unlawful possession of a firearm, and 1 felon in possession conviction. Departure justified by type of firearms, existence of arsenal (number of weapons?), intended use not lawful, three prior felony firearm convictions, likely recidivism, and probation status at time of offense conduct.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	111	10(15-21)	16(33-41)++	20(51-63)	22(63-78)	24(77-96)	24(77-96)	26(92-115)	a(1)	b(2),b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-49011 #112	922(g)(1)	408(g)(2) Soc. Sec. fraud	1989	12 12(12-18)	24 mos upward depart	II 3 pts	N	Y	one .45 pistol (loaded)	criminal

Defendant used a pistol during a cocaine drug deal. He later threatened police officers with the weapon. Departure justified by inadequacy of criminal history, as a result of consolidated sentences separated by an intervening arrest, Defendant, following his plea here, continued to possess a weapon, and pointed the weapon at a police officer and threatened the officer, and left the district while on bond. Extent of departure based on additional points for inadequate criminal history, resulting in Category IV sentence, not Category II. No enhancements or acceptance of responsibility granted. Priors include two for simple possession of cocaine and one juvenile gun possession.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	112	12(12-18)		16(24-30)	16(24-30)	18(30-37)	18(30-37)	20(37-46)	a(4)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-48919 #113	922(g)(1)	922(a)(6) 922(g)(4)	1989	12 10(6-12)	12 mos	I 1 pt	Y	N	one .380 pistol	not apparent

Defendant was found in an area where rental car thefts took place, and was found to have a pistol on him. Whether loaded is not apparent. Priors include attempted 1st degree murder, and carrying and firing a concealed weapon. Both convictions were stale for criminal history category purposes.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	113	10(6-12)		18(27-33)	18(27-33)	18(27-33)	18(27-33)	18(27-33)	a(3)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-48914 #114	922(g)(1)	not known	1989	12 10(24-30)	26 mos	VI 13pts	Y	N	one .38 revolver not loaded	sale

Defendant pawned a revolver. Priors include aggravated robbery, possession of cocaine, and other non-violent offenses. Actual departure likely occurred here since related cases applied, reducing criminal history category to 11 points and category V, and considering related cases separately when they were consolidated for sentencing requires a departure.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	114	10(24-30)		18(57-71)	18(57-71)	18(57-71)	18(57-71)	18(57-71)	a(3)	

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-50134 #115	922(g)(1)	922(a)(6)	1989	12 10(8-14)	8 mos	II 3 pts	Y	N	one 9mm pistol	not known
Defendant purchased a pistol, believing that his prior for attempted murder one had been expunged, when in fact his attorney failed to complete the required papers. (Defendant shot another driver in a traffic altercation that left the victim a quadriplegic.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	115	10(8-14)		18(30-37)	18(30-37)	18(30-37)	18(30-37)	18(30-37)	a(3)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-49642 #116	922(a)(3)	922(a)(6)	1989	12 10(6-12)	6 mos*	I 1 pt	Y	N	2 9mm semi-auto pistol 1 .38 revolver ammunition	not apparent
Defendant ordered a gun using false id and a false license. Defendant claimed the weapons were for protection. Priors include attempted homicide, aggravated assault, possession of a prohibited weapon, terroristic threats, when he attempted to shoot an off-duty officer and his two children. Plea agreement stipulated to using 922(a)(3) (base offense level 6).										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	116	10(8-14)		23(46-57)	23(46-57)	23(46-57)	23(46-57)	23(46-57)	a(2)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-49537 #117	922(g)(1)	none	1989	12 10(8-14)	probatn downward depart	II 3 pts	Y	Y	6 long guns 1 9mm pistol ammunition	criminal
Agents were alerted that Defendant was dealing in narcotics and had a stash of firearms to protect his operation. Priors include three breaking and entering convictions (not clear if personal residence or business, one is vehicle), trespass, one simple possession of cocaine, and one possession with intent to sell cocaine offenses. Also numerous stolen credit card offenses. Departure justified on grounds that Defendant was serving State term of home supervised release, and if sent to jail, would be required to serve State term of imprisonment. Further, Defendant has made strides in improving himself.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	117	10(8-14)		22(46-57)	22(46-57)	24(57-71)	22(46-57)	24(57-71)	a(3)	b(2),b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ON RM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	TENT/ USE
90-49310 **#118**	922(g)(1)	four drug counts, 922(g)(1)	1989	12 10(8-14)	14 mos	II 3 pts	N	Y	1 shotgun 2 pistols ammunition	criminal
Defendant was known to have dealt drugs, and was found to have 29 grams of cocaine and 388 grams of marijuana, as well as the weapons, in his home. Defendant claimed the drugs were for personal use. One prior for possession of marijuana.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	118	10(8-14)		15(21-27)	15(21-27)	17(27-33)	17(27-33)	19(33-41)	a(4)	b(2),b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-49288 **#119**	922(g)(1)	922(o)(1) 5861(e) 5861(d)	1989	12 10(6-12)	6 mos*	I 1 pt	Y	N	1 AK47 (automatic) 1 .38 revolver 4 other firearms	criminal
Defendant sold bootleg whiskey and weapons. Priors include murder, robbery, grand larceny, and numerous other nonviolent and bootleg whiskey convictions. Related cases doctrine eliminates most criminal history points. Defendant claimed not to have recognized the AK47 as an automatic weapon. The judge noted how serious the offense was and that the guidelines give a "great ... tremendous break" -- particularly in light of the potential for misuse by the criminal element.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	119	10(6-12)	18(27-33)++	25(57-71)	27(70-87)	28(78-97)	27(70-87)	28(78-97)	a(2)	a(1)b(2)b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-49273 **#120**	922(g)(1)	none	1989	12 12(27-33)	30 mos	V 12pts	Y	Y	1 .22 pistol 1 semi-automatic pistol, loaded	criminal
Defendant pointed a weapon at a passerby and her friend after he thought they talked to him. Defendant was found to be in possession of marijuana and over $1600. Priors include heroin distribution, possession of a firearm, cocaine distribution, and drug possession. The weapon's serial numbers were obliterated.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	120	12(27-33)		26(110-137	26(110-137	28(130-162	26(110-137	28(130-162	a(2)	b(3),b(7)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	:SON _ERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	NTENT/ USE
90-49225 **#121**	922(g)(1)	922(a)(6)	1989	12 10(10-16)	10 mos	III 5 pts	Y	N	1 shotgun	protectn

Defendant purchased a gun at a shop for protection and loaned it to a friend, all after a fist fight in his house. Priors include heroin distribution, and other non-violent offenses.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	121	10(10-16)		18(33-41)	18(33-41)	18(33-41)	18(33-41)	18(33-41)	a(3)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-49212 **#122**	922(a)(6) 922(g)(1)	none	1989	12 10(10-16)	10 mos	III 6 pts	Y	N	1 .38 revolver pawned four times	sale

Defendant pawned and rebought a revolver four times, and did so with other guns at least a total of nine times. Priors include sexual abuse, robbery, criminal trespass, burglary, among other non-violent offenses. P.O. believes Defendant had a fascination with collecting firearms, and no further criminal intent.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	122	10(10-16)		22(51-63)	22(51-63)	22(51-63)	22(51-63)	22(51-63)	a(2)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-48728 **#123**	922(g)(1)	none	1989	12 10(8-14)	8 mos*	II 2 pts	Y	N	1 10 mm semi automatic pistol	protectn/ sale

Defendant had taken the gun from his sister to prevent it from being stolen, and she had authorized him to sell it. He was a stopped in his car on his way to test the weapon. Priors include drug distribution.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	123	10(8-14)		18(30-37)	18(30-37)	18(30-37)	18(30-37)	18(30-37)	a(3)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	SON ERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-48795 #124	922(g)(1), 5861(d-f)	three firearms counts	1989	12 10(6-12)	12 mos	I 1 pt	Y	N	6 short barrel shotguns	criminal sale
Defendant operated a fence for stolen goods. He carried the short barreled shotgun during the sale of goods. Agents bought the weapon, and four others, and he cut off the barrels. At least one weapon had an obliterated serial number. Priors included a DUI offense, aggravated assault, theft and burglary, and possibly drug offenses.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	124	10(6-12)	20(33-41)	27(70-87)	29(87-108)	27(70-87)	29(87-108)	30(97-121)	a(2)	a(1)b(2,3,8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-48846 #125	922(g)(1)	922 (two counts)	1989	12 4(0-6)	5 mos	II 2 pts	N	N	2 long guns 5 revolvers 2 sacks of guns	sale
Defendant owned a pawn shop and sold revolvers to agents, on one occasion bringing two sacks full of weapons from his home to show agents. A warrant turned up ten weapons from the shop, and two from the residence. Defendant was considered a collector due to then number of weapons in the store, his reputation as a collector, and his sale of weapons through the store. Prior was an income tax evasion conviction. Defendant was in the process of having his gun ownership rights restored.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	125	4(0-6)		9(6-12)	9(6-12)	10(8-14)	12(12-18)	13(15-21)	a(4)	b(1)b(2)b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-48894 #126	841(a)(1) drug sales 922(g)(1)	none	1989	12 10(10-16)	16 mos	III 6 pts	Y	Y	6 shotguns 1 rifle 1 handgun loaded	criminal sale
Defendant offered a number of guns and drugs to agents for sale. When agents searched the home of Defendant, they discovered one pound of marijuana near the bed. Priors include drug distribution, DUI, eluding police, marijuana and LSD distribution.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	126	10(10-16)		28(97-121)	28(97-121)	31(135-168	28(97-121)	31(135-168	a(2)	b(2)b(7)b(8)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	:SON _ERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	.TENT/ USE
90-48911 #127	922(g)(1)	922(g)(1)	1989	12 10(8-14)	8 mos*	II 3 pts	Y	N	one Uzi semi-auto one .38 pistol loaded	protectn
Defendant purchased two weapons from a store, but misrepresented himself on the required forms. Priors include grand larceny, assault by threat, and numerous driving a and open container laws.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	127	10(8-14)		12(12-18)	12(12-18)	12(12-18)	14(18-24)	14(18-24)	a(4)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-51732 #128	922(g)(1)	none	1989	12 12(10-16)	10 mos	I 1 pt	Y	Y	one .45 caliber machinegun numerous others	possession
Defendant purchased a stolen machine gun with cash and marijuana. Defendant later decided to sell the weapon, with the knowledge that he, a convicted drug dealer, could not own the weapon. Priors include trafficking in marijuana.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	128	12(10-16)		24(51-63)	26(63-78)	28(78-97)	26(63-78)	28(78-97)	a(3)	a(1)b(2,3,7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-51568 #129	922(a)(6) 922(g)(1)	3 counts 922(a)(6)	1989	12 10(24-30)	27 mos	VI 14pts	Y	Y	4 handguns	criminal
Defendant purchased guns for resale to Jamaican drug gangs, in exchange for their canceling drug debts owed. Priors include three assault and battery, DWI, burglary, destruction of city property, drug distribution, two possession of PCP, and numerous other thefts and non-violent offenses.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	129	10(24-30)		25(110-137	25(110-137	28(140-175	25(110-137	28(140-175	a(2)	b(2)b(7)b(8)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-51481 **#130**	922(g)(1)	none	1989	12 10(24-30)	30 mos	VI 11pts	Y	Y	one 9mm pistol	sale

Defendant sold a weapon to another person. Defendant claimed he sold the weapon to support his drug habit. Priors include attempted armed robbery, breaking and entering and assault, possession of drug paraphernalia, possession of cocaine.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	130	10(24-30)		23(92-115)	23(92-115)	24(100-125	23(92-115)	24(100-125	a(2)	b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-51446 **#131**	922(g)(1)	5 counts 922(g)(1)922 (a)(6)	1989	12 4(0-6)	probatn	I 1 pt	Y	N	12 guns, incling shotguns, rifles, handguns, loaded	target practice

Defendant purchased 12 weapons on separate occasions. Defendant has a prior for assault with a deadly weapon. Defendant insisted that all the weapons were used for target practice. Defendant claimed to like the assault weapons best, since he could shoot targets, instead of spend time reloading.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	131	4(0-6)		21(37-46)	21(37-46)	21(37-46)	21(37-46)	21(37-46)	a(3)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-51320 **#132**	922(g)(1)	under- lying indictmt	1989	12 10(24-30)	36 mos upward depart	VI 17pts	Y	N	1 .22 rifle 1 .45 semi-auto pistol, loaded	possessn

Defendant possessed the weapons as "collector's items." Defendant had stored the weapons elsewhere, but was moving, and wanted to take the weapons with him. Priors include burglary, escape, drug dealing, robbery with a firearm, receipt of firearm by felon, feloniously carrying firearm, possession of firearm by felon, escape, possession of firearm by felon. Apparent upward departure is not justified, since there is no statement of reasons in the file, but the P.O. recommended departure on the basis of inadequacy of criminal history (related cases consolidated and not counted in criminal history, and large number of points inadequately accounted for by category VI).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	132	10(24-30)		22(84-105)	22(84-105)	22(84-105)	22(84-105)	22(84-105)	a(2)	

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-50852 #133	922(g)(1)	none	1989	12 10(15-21)	15 mos	IV 8 pts	Y	N	1 AR15 rifle 5 other firearms	sale

Defendant was a satanist who was obsessed with military weapons and accessories and apparently always sported a weapon. Defendant had his girlfriend purchase five weapons on one occasion. Defendant was arrested purchasing an AR15. Defendant may have had as many as three additional weapons in his home. Defendant admitted to reselling the weapons as his primary source of income. Priors include breaking and entering, and other felonies.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	133	10(15-21)		21(57-71)	21(57-71)	22(63-78)	21(57-71)	22(63-78)	a(3)	b(2),b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-50675 #134	922(g)(1)	922(g)(1) 922(a)(1)	1989	12 16(41-51)	48 mos	V 12pts	Y	N	1 .380 pistol 1 30/30 rifle 1 shotgun 2 handguns	sale

Defendant sold a weapon to an informant, and claimed to carry the others for self-protection. Priors include six firearm possession offenses, aggravated aggression, and importing marijuana. Some weapons stolen. Additional two-level enhancement appears in statement of reasons, but is not justified.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	134	16(41-51)		30(151-188	30(151-188)	31(168-210)	30(151-188)	31(168-210)	a(2)	b(2),b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-50423 #135	922(g)(1)	3 counts 922(g)(1)	1989	12 12(12-18)	12 mos	II 2 pts	Y	N	one 9mm revolver three others	possessn

Defendant purchased the weapon from a dealer through an intermediary. He did the same on at least three other occasions (not counted in this count, but probably considered relevant conduct). Since he used an intermediary, he received an enhancement of two points as an organizer. Priors include burglary. (residential)

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	135	12(12-18)		25(63-78)	25(63-78)	25(63-78)	25(63-78)	25(63-78)	a(2)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	SON ERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-50293 #136	922(g)(1)		1989	12 4(2-8)	probatn downward depart	IV 8 pts	N	N	one 44 magnum rifle	possessn

Defendant was stopped for being intoxicated, and a rifle was found behind the seat of his car. Defendant had fired the rifle at least twice, but claimed the rifle was his wife's. Defendant was believed to possess the weapon for target practice only. Priors include 3 DUI's and possession of drugs. Departure justified by need of Defendant to continue full-time employment. Court acknowledges that it is "unwarranted" departure, but after securing agreement from the government not to appeal, the court departed, noting "I don't think the temple of justice will come crashing down around our heads if we make a departure."

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	136	4(2-8)		4(2-8)	4(2-8)	4(2-8)	6(6-12)	6(6-12)	a(4)	b(1)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-44532 #137	922(g)(1)	none	1989	12 10(8-14)	10 mos	II 3 pts	N	Y	4 handguns (1 loaded) 1 shotgun 5 rifles	criminal possessn

During course of executing search warrant for drug records, officers found 10 guns. One .38 cal. Derringer, loaded, was in the defendant's coat pocket on a chair. Also found traces of cocaine, small amount of crack and triple beam scales. Defendant claimed he used but didn't sell drugs and had guns because "it looked real tough." Other guns were .44, .32, and .38 revolvers, Colt AR-15 .22 cal. rifle: 30/30 cal. rifle with scope, 30/30 cal. rifle, .30 cal. carbine; 6mm bolt-action rifle; double-barrel .20 ga. shotgun. Previous conviction in 1967 for accessory after fact to murder by helping evade capture and harboring. Also prior in 1982 for receiving stolen goods valued in excess of $63,000, including jewelry and guns.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	137	10(8-14)		17(27-33)	17(27-33)	19(33-41)	19(33-41)	21(41-51)	a(4)	b(2),b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	NTENT/ USE
90-50224 #138	922(g)(1)	922(g)(1)	1989	12 10(10-16)	16 mos	II 3 pts	N	N	1 AK47 (to purchase) 1 .25 semi automatic 1 AKS762 rifle (sold)	sale and criminal
Defendant and codefendant agreed to sell the AK47 to agents, but sold the AKS 762 to them, wearing a pistol. Defendant fled the scene during an attempted arrest. Three months later he was arrested at his home, with a pistol in the drawer. Priors include possession of cocaine, and two disorderly conduct.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	138	12(12-18)		14(18-24)	14(18-24)	15(21-27)	16(24-30)	17(27-33)	a(4)	b(2),b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-45999 #139	371	2 counts 922(a)(6)	1989	6 4(6-12)	9 mos*	VI 13pts	N	N	1 AK47 1 AR15	criminal
Defendant purchased firearms for another person, using false id and checks to do so. The weapons were later found to have been used in drug-related shootings. Defendant had priors for back checks, forgery, and theft. * 4.5 months BOP, 4.5 months CTC										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	139	4(6-12)		6(12-18)	6(12-18)	8(18-24)	8(18-24)	10(24-30)	a(6)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-46856 #140	924(a)(1)	none	1989	6 4(0-4)	probatn	I 0 pts	N	N	1 9mm semi-auto pistol 1 .45 caliber semi-automatic	protectn
Defendant purchased the weapons from dealers on behalf of another person. No priors.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	140	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	

USSG / CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	SON ERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	TENT/ USE
90-46856 **#141**	922(a)(6)	371/922	1989	6 4(0-6)	probatn	I 1 pt	N	N	2 AK47s	sale

Defendant purchased the guns from a shop on behalf of another person who intended to take the weapons to Mexico and use them, apparently against Mexican police. Priors include drug possession, and a DWI.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	141	4(0-6)		6(0-6)	6(0-6)	8(2-8)	8(2-8)	10(6-12)	a(6)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-48701 **#142**	922(a)(6)	none	1989	6 4(0-6)	probatn	III 4 pts	N	N	1 9mm automatic pistol	sale

Defendant purchased an automatic pistol with false identification. Defendant indicated he resells the weapons for considerable profit. At least one of his weapons was used in a shooting. Priors include misdemeanors for criminal sodomy with an animal and sexual battery.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	142	4(0-6)	16(27-33)	18(33-41)	18(33-41)	20(41-51)	20(41-51)	22(51-63)	a(1)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-51134 **#143**	922(a)(6)	922(g)(1)	1989	6 4(2-8)	2 mos*	IV 9 pts	Y	N	1 30/30 rifle	not known

Defendant purchased a 30/30 rifle after falsely stating she was not a felon. Priors include 2 burglary, and numerous non-violent offenses.

* time served

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	#143	4(2-8)		24(77-96)	24(77-96)	24(77-96)	24(77-96)	24(77-96)	a(2)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-50836 #144	922(a)(6)	1 count not known	1989	6 9(4-10)	6 mos	I 0 pts	N	Y	10 firearms - type not provided	sale

Defendant had another person purchase ten weapons on two separate occasions, for later transport to New Jersey, likely for sale. The court ordered, without explanation, the revision of the guideline upward to level 9, instead of the level 6 reflected in the PSI.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	144	9(4-10)		15(18-24)	15(18-24)	15(18-24)	15(18-24)	15(18-24)	a(5)E	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-50835 #145	922(a)(6)	one count not provided	1989	6 9(4-10)	6 mos	I 0 pts	N	Y	10 firearms -- type not provided	sale

Same as preceding case. Defendant had another person purchase ten weapons on two separate occasions, for later transport to New Jersey, likely for sale. The court ordered, without explanation, the revision of the guideline upward to level 9, instead of the level 6 reflected in the PSI.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	145	9(4-10)		15(18-24)	15(18-24)	15(18-24)	15(18-24)	15(18-24)	a(5)E	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-50382 #146	922(a)(6)	2 counts 922(a)(6) 1 ct 371	1989	6 4(0-6)	6 mos	II 3 pts	Y	N	1 AK47 1 AR15	criminal

Defendant asked another person to purchase firearms for him, and paid the person $500 to do so. Defendant had at least one other person conduct a similar transaction. The weapons were later found to have been used in drug-related shootings. Defendant had two priors for assault, and one for obstruction of justice and menacing.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	146	4(0-6)		22(46-57)	22(46-57)	22(46-57)	22(46-57)	22(46-57)	a(2)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ISON /ERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	NTENT/ USE
90-50341 #147	two counts 924(a)(1)	3 § 924 counts	1989	6 4(0-6)	1.5 mos	II 2 pts	N	N	9mm pistol, .44 pistol, .45 pistol, .25 pistol, .38 revolver	possession

Defendant, by making false statements, purchased the five weapons on separate occasions. Defendant had a traffic and drug record, so the weapons were purchased illegally. Defendant wanted the guns before the gun laws changed. Defendant had priors including possession of drug paraphernalia, and concealed weapon, as well as a DWI and other non-violent offenses.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	147	4(0-6)		14(18-24)	14(18-24)	14(18-24)	16(24-30)	16(24-30)	a(4)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-48983 #148	922(g)(1) 5861(d)	none	1989	16 16(21-27)	27 mos	II 1 pt	N	Y	6 firearms 6 grenades	criminal

Defendant used drugs and then spoke with agents about selling stolen goods, including firearms, in exchange for six grenades. Defendant intended to use the grenades against witnesses to a friend's drug bust. Defendant exchanged the grenades for six firearms, at least one without a serial number. (These weapons were not used to calculate the guideline sentence.) Defendant's codefendant was found with .96 grams of methamphetamine on his person.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	148	16(21-27)	18(30-37)	22(46-57)	24(57-71)	26(70-87)	24(57-71)	26(70-87)	a(1)	b(2)b(3)b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-48533 **#149**	5861(d)	922(e)	1989	16 14(15-21)	7.5 mos*	I 0 pts	N	N	1 .38 handgun 2 rifles 2 short barrel shotguns ammunition	sale

Defendant attempted to ship two cartons of weapons to Mexico. At least one of the weapons was sawed off, and at least one other was without a serial number. Defendant stated the weapons were to be sold in Mexico, with proceeds used to pay his son's doctor bills. Defendant had purchased at least two other weapons, neither of which could be found.

* time already served -- no departure entered -- no statement of reasons -- treated as low end of range.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	#149	14(15-21)	18(27-33)	20(33-41)	20(33-41)	20(33-41)	22(41-51)	22(41-51)	a(1)	b(2), b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-49137 **#150**	922(g)(1) 5861(d-f) 922(a)(6)	2 counts not known	1989	16 13(12-18)	12 mos	II 3 pts	Y	N	9 firearms -- shotguns, handguns, rifles	sale

Defendant operated a pawn shop, and purchased items from a burglar for resale. Among the items were firearms. Defendant also arranged for a meeting between agents and a third person who converted an AR15 into a fully automatic weapon. Priors included breaking and entering, marijuana dealing, and failure to present firearms for inspection. Firearms offenses receiving level 16 and level 12 were grouped.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	150	13(12-18)	15(21-27)	26(70-87)	28(87-108)	29(97-121)	28(87-108)	29(97-121)	a(2)	a(1)b(2)b(8)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-48407 #151	5861(c)	none	1989	16 14(37-46)	43 mos	VI 20pts	Y	N	1 short barrel 12 gauge shotgun	criminal

Defendant was spotted in a vehicle near a bank, and the vehicle had been seen in the vicinity of the bank during a recent bank robbery. Defendant fled the car, and left the firearm covered by a shirt in the back seat of the car. Defendant claimed the gun was a friend's and he was on his way to return the weapon. Priors include heroin sale, armed robbery, DUI, possession of marijuana, possession of cocaine, DWI, possession of drug paraphernalia, DWI, simple possession of demerol, resisting arrest, DWI, assaulting an officer, DWI, DWI, obstructing an officer, possession of drugs.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	151	14(37-46	16(46-57)	22(84-105)	24(100-125)	24(100-125)	24(100-125)	24(100-125)	a(2)	a(1)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-51748 #152	5861(d)	none	1989	16 16(27-33)	30 mos	III 5 pts	Y	Y	unloaded short barrel shotgun	possessn

Defendant was found to have the unloaded weapon in his closet. The weapon lacked a serial number. Defendant was arrested on search of his residence after he sold cocaine to a police officer. Defendant claimed the weapon had been left there by a friend only hours before the search. Priors include cocaine dealing (2 convictions), and two weapons (a sawed off shotgun and a .22 caliber revolver) were found following searches connected with those arrests.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	152	16(27-33)	18(33-41)	24(63-78)	26(78-97)	26(78-97)	26(78-97)	26(78-97)	a(2)	a(1)b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-51639 #153	922(g)(1) 371 5861(d)	36 counts including 922(m), (a)(6), (g)(1), (n)	1989	16 18(33-41)	41 mos	III 6 pts	Y	N	26 guns incling semi-auto pistols revolvers,	sale

Defendant had another person purchase 26 weapons for him on at least fifteen occasions, and possibly an additional 18 weapons on other occasions. Defendant sold these or other weapons to informants and agents. Defendant was chased after one of these sales, and struck an agent's car in an accident. Court notes that, while it did not formally depart, the prior conviction of Defendant for firearms offenses provided justification for an upward departure. Priors include robbery, burglary, two for possession of marijuana, possession of a sawed off shotgun, and possession of a controlled substance.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	153	18(33-41)	20(41-51	32(151-188	34(188-235)	35(210-262)	34(188-235)	35(210-262)	a(2)	a(1)b(2)b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	SON ERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	TENT/ USE
90-47302 #154	3cts 5861(d), 2 of 5861(i)	none	1989	16 19(37-46)	11 mos downward depart	III 4 pts	N	Y	several guns incling assault pistol, unloaded, silencers, sawed off weapons	sporting

Agents searched Defendant's residence in connection with a drug bust, and found the weapons around the unit. Counts were grouped, since different weapons were found on each of three separate searches. The silencers and some of the weapons were homemade, and Defendant claimed to be an inventor of guns. Original calculation led to level 19 (37-46 months), but court reduced this to level 9 based on sporting purposes for the silencers. The court departed downward to level 6 based on an analogy between reductions for sporting purposes, and the inventing/commercial objectives of the Defendant.
No priors.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	#154	19(37-46)	18(33-41)	22(51-63)	22(51-63)	24(63-78)	24(63-78)	26(78-97)	a(1)	b(2)b(3)b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-47179 #155	5861(d)	5861(i)	1989	16 4(0-4)	probatn	I 1 pt	N	N	one silencer	collectn

Defendant purchased a silencer from a dealer, in order to fit a machinegun he owned. Defendant owned 14 weapons legally. Defendant was determined to possess the weapons for collection and sporting purposes. Defendant's home had been searched in connection with a tip that drugs and weapons were kept at the home. Priors include one DWI.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	155	4(0-6)	16(21-27)	16(21-27)	16(21-27)	16(21-27)	18(27-33)	18(27-33)	a(1)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-46430 #156	5861(d)	5861(i)	1989	16 6(1-7)	supervised release*	II 2 pts	N	N	1 silencer 1 .22 caliber handgun	not known

Defendant was arrested for theft. A search of his home discovered the weapons. Defendant insisted the weapons were for collection purposes. The P.O. emphasized that no sporting purposes reduction was available for a silencer not registered, but the court held Defendant to be a collector. Priors included criminal possession of weapons.

*departure entered -- treated as low end of range.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	#156	6(1-7)	18(30-37)	18(30-37)	20(37-46)	20(37-46)	20(37-46)	20(37-46)	a(1)	

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-51294 **#157**	5861(d)/ 371	none	1989	16 11(8-14)	8 mos*	I 0 pts	N	N	1 firearm 2 silencers	criminal
Defendant assisted a codefendant in the purchase of a firearm and two silencers from an agent, for the purpose of robbing another person of $1,000,000, and possibly killing some others. Defendant was in the backseat of a car during the purchase, and was given a three-point reduction for role in the offense. Defendant claimed he was in the car on his way to a party with the codefendant. * 4 mos in BOP, 4 mos in CTC										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	#157	11(8-14)	13(12-18)	16(21-27)	16(21-27)	18(27-33)	18(27-33)	20(33-41)	a(1)	b(2)b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-51293 **#158**	5861(d) 371	none	1989	16 14(15-21)	15 mos	I 0 pts	N	N	1 firearm 2 silencers	criminal
Defendant purchased the firearms from an agent with the expressed ~~purchase~~ purpose of robbing an individual of $1,000,000 and possibly killing others.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	#158	14(15-21)	16(21-27)	19(30-37)	19(30-37)	21(37-46)	21(37-46)	23(46-a(1)	a(1)	b(2),b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-50404 **#159**	922(g)(1) 5861(d)	four cts 922(g)(1) 922(a)(6)	1989	16 14(18-24)	24 mos	II 4 pts	Y	N	1 AK47 1 .38 handgun, loaded other guns	not known
Defendant was found to be in possession of the weapons in a bedroom of his home -- the guns were in his baby's crib. Defendant was known to have purchased other weapons and ammunition. Priors include aggravated assault on an officer, DUI. Court emphasized Defendant's priors as a concern related to sentencing, as well as the type of weapon possessed.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	159	14(18-24)	16(24-30)	19(33-41)	21(41-51)	21(41-51)	21(41-51)	21(41-51)	a(3)	a(1),b(2)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-49241 **#160**	924(e) 922(g)(1)	5861(d) 844 crack possessn	1989	2A2.2 20(180 mos)	180 mos	VI 22pts	Y	Y	1 sawed off shotgun	criminal

Defendant held his girlfriend and another woman at gunpoint when he believed they had stolen crack cocaine from him. When officers approached, he fled, and threw the weapon away. Police also found .8 grams of crack. Priors include numerous burglaries, escape, obstruction of justice with violence, aggravated assault, and other non-violent offenses. Mandatory minimum under 924(e) of 15 years applies.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	160	20(70-87)	180 mos+	26(120-150	28(140-175)	30(168-210)	28(140-175)	30(168-210)	a(2)	a(1),b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-45783 **#161**	922(g)(1)	none	1989	12 14(37-46)	924(e) 15 yrs	VI 15pts	Y	N	1 .32 caliber handgun 1 .32 caliber revolver loaded	criminal

Defendant was found hiding in a closet, and was arrested after a brief struggle. Officers found a .32 caliber pistol in Defendant's pocket. The second weapon was located in another room. Defendant informed officers that he would have blown their brains out if he had the chance to draw his weapon. Priors include burglary, aggravated felonious sexual assault, burglary, four burglaries, possession of a dagger by a felon, and four more burglaries. Defendant was considered an armed career criminal under 924(e) and was sentenced to the statutory minimum of fifteen years. The guns were stolen.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	161	14(37-46)	180 mos+	26(120-150)	26(120-150)	26(120-150)	26(120-150)	26(120-150)	a(2)	b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-50286 **#162**	922(g)(1)	none	1989	12 12(21-27)	armed career 15 years	IV 9 pts	Y	N	.380 caliber semi-automatic pistol, loaded	criminal

Defendant was the passenger in a car involved in a high-speed situation. When officers finally approached the car, believed to be stolen, Defendant dropped the weapon to the floor of the car. Priors include burglary, armed robbery, possession of a firearm during commission of a felony, armed robbery, and possession of a firearm during a felony, carrying a concealed weapon. Defendant was sentenced under armed career offender (924(e)).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	162	12(21-27)	180 mos+	24(77-96)	24(77-96)	24(77-96)	24(77-96)	24(77-96)	a(2)	

USSG CASE	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ISON ERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	NTENT/ USE
90-51847 #163	922(g)(1)	none	1989	12 12(27-33) 37-career	360 mos	V 11pts	Y	N	one .45 caliber pistol, loaded	criminal

Defendant fired three shots through the rear window of a home occupied by the victim and his family, around 4:30 one afternoon. Defendant left the scene, and when pursued by police, threw the weapon out the window of his blue tow truck. Tests placed Defendant and his gun at the scene of the crime. Defendant did not receive acceptance of responsibility or obstruction of justice. Priors include manslaughter, terrorism, carrying weapons, robbery with a weapon, as well as numerous traffic, intoxication, and fighting offenses. The government sought the application of 924(e), Armed Career Criminal and career offender on grounds that 922(g)(1) was a violent offense.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	163	12(27-33)	180 mos++	26(110-137	26(110-137)	28(130-162)	26(110-137)	28(130-162)	a(2)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
90-47143 #164	922(g)(1)	none	1989	12 24 (100-125) car. off.	120 mos	VI 14pts	Y	N	2 rifles 1 pistol loaded	criminal

Defendant was the president of the Aryan Brotherhood, and was believed to be in possession of weapons. On searching his truck and home, the weapons, and large quantities of ammunition were found. Defendant claimed the pistol belonged to his wife, the gun to his 6-year old son, and the other rifle was supposed to be inoperable. Police had reliable evidence that Defendant carried the pistol for protection at all times, and both rifles were operable. Defendant was known to be a meth cook. Priors include possession of marijuana, possession of a firearm, unlawful carrying of a weapon, four burglaries, and two prison assaults, one resulting in the death of the inmate. Defendant was sentenced as a career offender.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	164	12(30-37)	120 mos*	25(110-137)	25(110-137)	25(110-137)	25(110-137)	25(110-137)	a(2)	b(2)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	SON ERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	ITEN. USE
90-46531 #165	922(g)(1)	none	1989	12 12(21-27)	924(e) 180mos	IV 7 pts	Y	N	2 revolvers 1 pistol 1 rifle 1 shotgun loaded	not known

Defendant was found to have five weapons and considerable ammunition in his home, apparently for protection. Priors include breaking and entering on two occasions, shooting into a dwelling, aggravated assault, assault with intent to murder a policeman, escape, assault, possession of a firearm while in possession of drugs, possession of heroin. Pending charges include cocaine and heroin distribution, and use of a firearm in commission of a felony. The weapons were stolen. Defendant was sentenced as an armed career criminal under 924(e).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	165	12(21-27)	180 mos+	26(92-115)	26(92-115)	26(92-115)	26(92-115)	26(92-115)	a(2)	b(2),b(3)

CASES SENTENCED BETWEEN SEPTEMBER 25, 1990, AND JANUARY 15, 1991

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 60885 166	§922(a)(6)	§922(a)	1989	6 base 4(0-6)	probatn	II 3 pts	N	N	1 pistol	not known

Defendant purchased a .25 caliber pistol by misrepresenting his indictment status. Defendant then boarded a plane to visit his estranged wife, despite her asking him not to visit or stay with her. Police arrested him when a tipster said defendant was on the plane, intending to kill his wife. Defendant says he intended to give his wife the gun for her protection. Priors include embezzlement, possession of cocaine (two convictions), and unlawful possession of firearm. Reduction for acceptance (-2), no enhancements.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	166	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 56610 167	§922(a)(6)	5 counts 922(a)(6)	1989	6 base 4(0-6)	probatn	I 0 pts	N	N	9 firearms (type not stated)	sale

Defendant and his ex-wife purchased nine firearms on behalf of Mexican residents, and falsified statements as to defendant's address, and the true purchasers of the firearms. Defendant purchased seven of the firearms in four separate transactions, and delivered the guns for profit to neighbors (he lived in Mexico) and friends. Reduction for acceptance (-2). No enhancements. No priors.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	167	4(0-6)		12(10-16)	12(10-16)	12(10-16)	12(10-16)	12(10-16)	a(5)E	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 56782 168	§922(a)(6)	none	1989	6 base 4(0-4)	probatn	I 0 pts	N	N	1 Intratec pistol (9mm)	none

Defendant assisted a friend in the purchase of the pistol, by paying at least a portion of the price, and signing the required forms indicating he was the purchaser. In fact, his friend possessed the firearm. Defendant appeared to have a variety of emotional problems. Reduction for acceptance (-2) applied. No enhancements. No priors.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	168	4(0-4)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 58001 169	§922(a)(6)	none	1989	6 base 8(2-8)*	*	I 0 pts	N	N	18 guns including two 9mms, two .380 pistols and two .25 pistols	sale

Defendant drove from New York to Virginia with two friends, and had one of the friends purchase three guns on his behalf. The friend bought twelve guns for the other person. The defendant then bused back to New York with all fifteen guns, and sold his three guns on the street for a total $1,000. The group made the trip a second time, with defendant giving the friend money for three additional pistols. Enhancement (apparently incorrectly given) for 18 firearms (+4), and reduction for acceptance (-2). No priors. * No statement of reasons or judgment was provided in this file. Information is taken from the PSI.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	169	8(2-8)		14(15-21)	14(15-21)	14(15-21)	14(15-21)	14(15-21)	a(5)E	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	bINTENT/ USE
§2K2.1 60280 170	§922(e)	original indictmt. for §5861(b) §5861(j)	1989	6 base 4(0-6)	$100 fine	I 0 pts	N	N	1 short barrel shotgun	possessn

Defendant purchased a firearm in Vermont and sawed the barrel off so that it woud fit in her bags for a bus trip to a New York women's peace camp. Defendant later returned to Vermont by bus with the firearm, and after arguing with a friend with whom she was living, fled into the woods with the gun, apparently with the purpose of committing suicide. No enhancements, reduction for acceptance (-2), no priors.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	170	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 60300 171	§5861(d)	none	1989	6 base 4(0-6)	probatn	II 2 pts	Y	N	1 short barrel shotgun	protectn

Defendant maintained the sawed-off firearm, and other firearms, at his place of business for personal and commercial protection. Reduction for acceptance (-2), no enhancements. The court, without explanation, reduced the relevant guideline estimate in the PSI to base offense level 6. Priors include aggravated assault with a firearm and two counts aggravated assault on a law enforcement officer with a deadly weapon (all of which occurred on a single occasion), and criminal mischief.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	171	4(0-6)	16(24-30)	18(30-37)	20(37-46)	20(37-46)	20(37-46)	20(37-46)	a(3)	a(1)

USSG & CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 60618 172	§922(a)(6)	§922(n)	1989	6 base 4(2-8)	8 mos	IV 7 pts	N	N	1 shotgun	not known

Defendant filed statements with a dealer that misrepresented his indictment status. Defendant was a member of the Crips gang. Defendant had been indicted for armed robbery, assault with a deadly weapon, and grand theft, and tested positive at the time of arrest for marijuana. Priors include robbery (juvenile) and exhibiting a firearm. Reduction for acceptance, and no enhancements.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	172	4(2-8)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 60061 173	172	4(2-8)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	

Defendant was found with seven loaded firearms, including a machinegun, after shooting rabbits in a park area. Defendant also had an explosive charge that explodes into fragments when shot. Defendant was wearing a police uniform, apparently to dissuade passersby from reporting him when he fired the firearms. Further, defendant gave false identification to arresting officers, and may have been a member of the Ku Klux Klan. Departure based on fact that criminal history was overrepresented by counting two DUI convictions and the summary probation that resulted therefrom. The court refused to count the points attributed to these offenses and reduced defendant's criminal history points to 1 point (category I), sentencing then within the appropriate range. No enhancements or reduction for acceptance. Extensive priors for possession of drugs (2 convictions), DUI (3 convictions), possession of a dangerous weapon.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	173	16(21-27)	18(27-33)	20(33-41)	20(33-41)	20(33-41)	22(41-51)	22(41-51)	a(1)	b(2)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	RISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 56195 174	§5861(d)	none	1989	16 base 14(18-24)	probatn down depart	II 2 pts	N	N	1 machine gun 1 silencer	not known

Defendant took possession of a machine gun and a silencer from an undercover agent. Priors include third degree battery, and harrassment of a minor. Downward departure due to diminished capacity (5K2.13) pursuant to agreement with the prosecution. Reduction for acceptance (-2) and no enhancements.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	174	14(18-24)	16(24-30)	16(24-30)	16(24-30)	16(24-30)	18(30-37)	18(30-37)	a(1)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 56416 175	§5861(d)	922(g)(1)	1989	16 base 6(12-18)	18 mos	VI 16pts	Y	N	1 short barrel shotgun 1 handgun	protectn

Defendant possessed a loaded sawed-off shotgun near a grocery store while he was intoxicated. Defendant claimed he was on his way to a logging camp and wanted the weapon for protection from animals and other threats. The gun was bought on the street in Idaho, and had been transported into Washington on the way to the camp. Priors include aggravated assault, assault with a deadly weapon (two convictions), resisting arrest (three convictions), telephone harassment, possession of cocaine, disorderly conduct (two convictions), and menacing. Reduction for lawful sporting purposes. No enhancement for missing serial number, although there was no such number on the firearm.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	175*	6(12-18)	16(46-57)	22(84-105)	24(100-125)	24(100-125)	24(100-125)	24(100-125)	a(2)	a(1)[b(3)]

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 58115 176	§5861(d)	§5861(d) §5861(i) §5861(i)	1989	16 base 4(0-6)	probatn	I 1 pt	N	N	1 machinegun 1 silencer	sporting

Defendant owned a metal fabrication shop, and had made a machinegun and silencer. The defendant later indicated to an agent that he had made several such firearms, and presently possessed two machineguns and one silencer. The defendant later sold a machinegun and a silencer to the agent, at which time he was arrested. An informant believed the defendant sold the firearms regularly to bikers, but the defendant insisted this was his first illegal sale. Defendant appeared to be a collector, and had 21 additional guns in his collection. Reduction for sporting purpose (-6) and for acceptance (-2). Neither firearm had an identification number, but no enhancement was provided for this characteristic.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	176	4(0-6)	16(21-27)	18(27-33)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	a(1)	b(3)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	RISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 58114 177	§5861(d)	none	1989	16 base 12 (10-16)+	10 mos*	I 0 pts	N	Y	1 machinegun 3 handguns	protect/ criminal

Defendant bought an Uzi that had been remanufactured into a machinegun, and maintained the Uzi, two handguns, and a 9mm pistol in his house, along with several hundred rounds of ammunition, 58.7 grams of marijuana, small quantities of cocaine, and drug paraphernalia. Defendant was believed to grow marijuana in his house for resale. Defendant was under indictment by the state prosecutor for the drug offenses at the time of sentencing for this offense. Defendant was the son of the Chairman of the Board of the local bank, and feared being kidnapped in order to gain access to bank funds. Reduction for acceptance (-2). + not apparent from the statement of reasons how this total offense level was achieved.* 5 months BOP, 5 months work release

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	177	12(10-16)	14(15-21)	17(24-30)	17(24-30)	19(30-37)	19(30-37)	21(37-46)	a(1)	b(2),b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 58305 178	§5861(d)	one count not stated	1989	16 base 4(0-4)	probatn	I 0 pts	N	N	1 silencer	collectn

Defendant was believed to have a machinegun and silencer which he fired occasionally, but otherwise kept hidden. Agents with a warrant were unable to find the machinegun or a converter, but found the silencer, as well as a short barrel shotgun and a semi-automatic rifle, as well as nunchukas, fuse blasting caps, and explosive safety fuses, at his home. Defendant indicated he was a mechanically inclined gun lover, and had no other purpose for the firearms. No priors. Reduction for sporting purposes (-10) and for acceptance (-2).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	178	4(0-6)	16(21-27)	18(27-33)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	a(1)	b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 59051 179	§5861(d)	none	1989	16 base 6(0-6)	probatn	I 0 pts	N	N	1 machinegun	possessn

Defendant possessed a machinegun with an obliterated serial number. Defendant initially intended to use the machinegun for hunting or target shooting. Defendant and another person "fired a few rounds out of the gun" before his arrest. Reduction for sporting purposes (-10) was pursuant to plea agreement. Enhancement for obliterated serial number (+2), and reduction for acceptance (-2). No priors.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	179	6(0-6)	18(27-33)	18(27-33)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	a(1)	b(3)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 59059 180	§5861(d)	none	1989	16 base 4(0-6)	fine	I 0 pts	N	N	1 machinegun (AKS-762)	possessn

Defendant owned five or six guns, including rifles and assault rifles, in addition to the machinegun (which had been converted from a semi-automatic). The other firearms were possessed as part of a collection. Defendant fired the machinegun occasionally out in the country. The person who converted this defendant's gun into a machinegun was the person who took the defendant in the previous case out shooting. Same judge presided over both cases. Reduction for sporting purposes (-10) and for acceptance (-2). No priors.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	180	4(0-6)	16(21-27)	16(21-27)	16(21-27)	16(21-27)	18(27-33)	18(27-33)	a(1)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 60328 181	§5861(d)	none	1989	16 base 14(15-21)	18 mos	I 1 pt	Y	N	2 short barrel shotguns	possessn

Defendant and others were spotted in a deli mart parking lot with a short barrel shotgun which they apparently intended to use on members of a rival gang. While being chased by police, fired at least one shot. Defendant had sawed the barrel of the shotgun off after buying the gun on the street. Defendant was a member of a Somoan gang, a rival gang of the Crips, and defendant believed himself to be an intended target of Crips violence. Defendant was caught a few months later with an unloaded short barrel shotgun in the vehicle in which he was riding. Defendant indicated a friend had left the gun in the defendant's car. Prior for vehicle prowling. Reduction for acceptance (-2). No enhancements. Prior unlawful use of weapon.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	181	14(15-21)	16(21-27)	16(21-27)	16(21-27)	16(21-27)	18(27-33)	18(27-33)	a(1)	

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	.ISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	.NTENT/ USE
§2K2.1 59819 182	§5861(d)	none	1989	16 base 20(33-41)	36 mos	I 0 pts	N	N	1 machinegun 1 pistol (loaded)	criminal

Defendant and his date were thrown out of a lounge after becoming unruly. They broke a window of the lounge, and grabbed a .45 caliber pistol from the dash of their Blazer. The lounge owner and another person struggled with the defendant to gain control of the gun, and, that being done, defendant and his date left, promising to "come back and kill you later." Defendant went home, secured his M16 machinegun and two clips of ammunition, and a 9 mm pistol, and returned to the lounge. He pointed the gun at the lounge owner, but another person, alerted to defendant's return, grabbed the barrel, and finally took the machinegun away. Defendant then pulled out the handgun and fired twice, before persons wrestled the gun away. The machinegun was stolen, and was marked as U.S. government property. Defendant previously had been licensed as a firearms dealer. No priors. Cross reference to 2A2.2 (aggravated assault) (base offense level 15), more than minimal planning (+2), discharge of firearm (+5), reduction for acceptance (-2).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	182+	20(33-41)+	20(33-41)+	20(33-41)+	20(33-41)+	22(41-51)	22(41-51)	24(51-63)	a(1)	b(3)b(7)c(1)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 59956 183	§5861(d)	922(g)(1)	1989	16 base 14(33-41)	37 mos	V 12pts	Y	N	1 shotgun	criminal

Defendant assaulted his former girlfriend with the loaded sawed off shotgun, apparently in an attempt to kill her, after they had broken up about a month earlier. He had returned to her residence demanding money, and when she refused, chased her into a hallway and fired a shot into the wall three feet from her. She fled, grabbing a knife, and was again stopped in the yard, before she managed to summon a police car driving by. Defendant has a prior conviction for physically assaulting the same woman. A plea agreement stipulated that the cross reference would not be used in this case. Reduction for acceptance (-2). Other priors include possession of a firearm, assault and battery, possession of a controlled substance, possession of a controlled substance for sale. P.O. indicated possible ground for departure being the discharge of the firearm that was unlawfully possessed.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	183	14(33-41)	16(41-51)	24(92-115)	26(110-137	28(135-168	26(110-137	28(135-168	a(2)	a(1),b(7)

USSG CASE	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 59958 184	§5861(d)	§5861(i) §5861(h)	1989	16 base 16(27-33)	27 mos	III 4 pts	N	N	1 machinegun 1 silencer	criminal possessn

Defendant, a previous member of a street gang (Harpys), was found to have in his possession an "assassination kit" including a padded gun case, with a 9mm pistol converted to a machinegun by removing a segment of the assembly which intercepts the firing cycle, and a silencer. The silencer lacked a serial number. Three other firearms were in defendant's home and car, all registered to relatives or friends. The machinegun had been purchased from another Harpys member. ATF believed on the basis of surveillance and informants that defendant continued to be a gang member, a charge defendant denied. Priors for speed contest driving, and DUI. Enhancement for obliterated serial number and missing serial number (+2) and reduction for acceptance (-2).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	184	16(27-33)	18(33-41)	18(33-41)	18(33-41)	18(33-41)	20(41-51)	20(41-51)	a(1)	b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 60000 185	§5861(d)	none	1989	16 base 24(63-78)	78 mos	III 4 pts	N	N	10 destructive devices	criminal

Defendant manufactured ten bombs in his garage with his younger brother. Some of the bombs were detonated to test the strength, timing, and stability of the devices. One was detonated in a newspaper vending machine. The design perfected, defendant placed a 60-minute timed pipe bomb at the main entrance to the house of a witness he believed had implicated defendant's father in a drug conviction. The bomb detonated at 5:15 a.m., blew outwardly for 90 feet and caused $700 damage to the residence. The witness typically left for work from 5:00 a.m. to 5:30 a.m., but left early that morning. Cross reference to 2K1.4 (base offense level 6) and enhancements for substantial risk of death or serious bodily injury (+18), organizer role (+2), and reduction for acceptance (-2). Priors include discharge of a firearm (BB gun) and malicious destruction of property under $100.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	185+	24(63-78)+	24(63-78)+	24(63-78)+	25(70-87)	27(87-108)	25(70-87)	27(87-108)	a(1)	b(2,3,7)c(1)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 60167 186	§5861(d)	none	1989	16 base 12(12-18)	12 mos	II 2 pts	Y	N	2 pipe bombs	not known

Defendant and a codefendant manufactured and sold two pipebombs to an informant on one occasion. Priors include simple burglary and DWI. Reduction for acceptance (-2). Additional 2 point reduction (probably for role) referred to in statement of reasons by referring to letter that was not included in the file.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	186	12(12-18)	14(18-24)	16(24-30)	18(30-37)	18(30-37)	18(30-37)	18(30-37)	a(1)	b(3)

USE CASE	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 60168 187	§5861(d)	none	1989	16 base 16(24-30)	30 mos	II 3 pts	Y	N	4 pipe bombs	criminal

Defendant and a codefendant manufactured and sold two pipebombs to an informant on one occasion, and two additional bombs to the informant after he had been wired by police. Defendant agreed to make additional bombs for the bombing of a hotel later, but was arrested prior to commencing this undertaking. Priors include illegal fire bomb possession, escape, burglary and assault with intent to commit second degree murder. Reduction for acceptance (-2). Enhancement for abuse of special skill (+2).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	187	16(24-30)	18(30-37)	25(63-78)	27(78-97)	29(97-121)	27(78-97)	29(97-121)	a(3)	a(1)b(2,3,7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 52962 188	§922(g)(1)	none	1989	12 base 4(0-6)	probatn	II 3 pts	Y	N	3 pistols 4 shotguns 6 rifles	sporting

Defendant possessed twelve firearms in a locked gun cabinet in his bedroom, and one pistol under his mattress. Defendant was a member of various hunting and gun clubs, had valid hunting licenses in three states, and Canada, and had completed an NRA basic training course. Defendant claimed the pistol found under the mattress was for his wife's protection. Defendant had been a member of a local motorcycle club (Centors) which later merged with the Hell's Angels, and had been arrested (but not convicted) for dealing drugs out of a notorious motorcycle club hangout. Reduction for sporting purposes (-6), and acceptance (-2). Priors for a driving offense, disorderly conduct, malicious destruction of property (2 counts), and possession of cocaine with intent to distribute (3 counts).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	188	4(0-6)		22(46-57)	22(46-57)	22(46-57)	22(46-57)	22(46-57)	a(3)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 56152 189	§922(g)(1) §924(e)(1)	none	1989	12 base 27 (130-162)	180 mos ACC and career offender	IV 9 pts	Y	Y	1 pistol	protectn criminal

Defendant was wanted on an escape warrant, and was a suspect in "numerous drug-related homicides." Police spotted him as the driver of a truck with three codefendants. All four passengers were searched, and were found to be wearing bullet-proof vests, and a total of four pistols, loaded, and ammunition were found on their possession or in the truck. The defendant admitted owning one of the guns, bought on the street, and wearing the vest, all for protection. Total offense level determined by conviction under §924(e)(1) (armed career criminal) (fifteen year mandatory minimum), finding that §922(g)(1) was an instant crime of violence, finding defendant was a career offender, assigning offense level 29 since the offense involved a fifteen to twenty year statutory maximum. Reduction for acceptance (-2). Priors for robbery (2 counts), robbery, assault on a police officer with a dangerous weapon.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	189	10(15-21)	180 mos+	22(63-78)	22(63-78)	22(63-78)	22(63-78)	22(63-78)	a(2)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 56166 190	§922(g)(1)	none	1989	12 base 12(15-21)	15 mos	III 4 pts	Y	N	1 .32 revolver	possessn
Defendant was stopped for a driving while intoxicated offense, and the gun was found in his pants pocket. The gun had been stolen from another person's residence. Enhancement for stolen firearm (+2) and reduction for acceptance (-2). Priors include second degree murder/use of a firearm in the commission of a felony, DUI.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	190	12(15-21)		20(41-51)	20(41-51)	20(41-51)	20(41-51)	20(41-51)	a(3)	b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 56214 191	924(a)(1)/ 922(g)(1)	922(g)(1)	1989	12 base 10(8-14)	8 mos*	II 3 pts	N	N	1 .38 caliber revolver and ammunition	possessn
Defendant possessed the revolver in the front closet of her home. Her ex-boyfriend informed his probation officer that the defendant possessed the revolver. Reduction for acceptance (-2), and no enhancements. Prior for receipt of stolen property. * 4 mos BOP, 4 mos CTC										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	191	10(8-14)		12(12-18)	12(12-18)	12(12-18)	14(18-24)	14(18-24)	a(4)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 56245 192	§922(g)(5)	none	1989	12 base 10(6-12)	4 mos*	I 0 pts	N	N	1 short barrel shotgun	target practice or other
Defendant and another person, both illegal aliens, were in the area where forty shots had been fired from a shotgun. The defendant owned the firearm, and the other person was doing the shooting. Both were drinking. The gun had been purchased on the street as a short barrel firearm. ATF informed the P.O. that a sporting reduction would not apply even though the firearm was apparently used in this instance for target practice, since ATF believes that such sawed off firearms have no legitimate lawful use. No enhancements. Acceptance reduction applied (-2).										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	192	10(6-12)	16(21-27)++	16(21-27)	16(21-27)	16(21-27)	18(27-33)	18(27-33)	a(1)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 56401 193	§922(g)(1)	none	1987	12 base 12(30-37)	60 mos upward depart	VI 15pts	Y	N	1 short barrel shotgun	not known

Defendant was convicted by a jury of possession of a firearm as a felon, but acquitted of possession of a short barrel shotgun. The defendant possessed the firearm while he lived in the home of a friend whose mother was gone for a number of weeks on vacation. The mother, angry that the firearm was in the house, turned it into police. No enhancements or reduction. Priors include escape, unlawful possession of a pistol, aggravated robbery (two counts)/attempted second degree murder (these three counts being part of a single occasion in which he robbed a convenience store and its customers, then fired at police in the ensuing chase until he was finally wounded). Upward departure on grounds that Commission did not adequately consider the aggravating circumstance of a defendant who "has demonstrated a willingness to use firearms in the commissions of crimes in the past and this is a firearms violation."

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	193	12(30-37)	18(57-71)++	20(70-87)	22(84-105)	22(84-105)	22(84-105)	22(84-105)	a(3)	a(1)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 56569 194	§922(g)(1) §924(e)(1)	none	1989	12 base 12 180 mos mand.min.	180 mos	VI 13pts	Y	Y	1 .32 revolver	criminal

Defendant was observed on a corner known for drug dealing activity two times over a nine-month period, and the second time was searched and found to have drugs and the revolver. No reductions or enhancements. Priors include possession of marijuana/resisting officer, carrying concealed weapon, armed robbery, aggravated assault, armed robbery/burglary-auto, carrying-concealed-weapon, possession of heroin. Defendant was sentenced as an Armed Career Criminal.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	194	12(30-37)	180 mos+	26(120-150	26(120-150	28(140-175	26(120-150	28(140-175	a(2)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	RISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 56585 195	§924(e) §922(g)(1)	none	1989	12 base 12 (292-life	292 mos	VI 18pts	Y	N	1 handgun (.22)	criminal

Defendant threatened his sister with the handgun, and his mother turned the gun in. The serial number was obliterated. The firearm had been purchased on the street. Enhancement for obliterated serial number (+2) and reduction for acceptance. Priors include driving offense, breaking and entering a dwelling house, trespass, resisting/threatening to kill a police officer/assault on police officer, voluntary manslaughter, distribution of marijuana/storehouse breaking, grand larceny/breaking-entering storehouse, attempted burglary storehouse, assault and battery, assault and battery, grand larceny (3 counts). Defendant was sentenced as an armed career offender and as a career offender, with the defendant receiving an offense level of 37 with a reduction for acceptance to level 35.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	195	12(30-37)	292 mos*	26(120-150	26(120-150	28(140-175	26(120-150	28(140-175	a(2)	b(3),b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 56614 196	§922(g)(5)	8 counts §1324(a)	1989	12 base 12(10-16)	11 mos	I 0 pts	N	N	1 .45 handgun (loaded)	criminal

Defendant carried a handgun while smuggling aliens from Mexico, in case problems were encountered with immigration agents. No priors. No enhancements or reductions.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	196	12(10-16)		16(21-27)	16(21-27)	18(27-33)	18(27-33)	20(33-41)	a(4)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 57142 197	§922(g)(1)	none	1989	12 base 14(37-46)	46 mos	VI 13pts	Y	N	1 9mm pistol	not known

Defendant was arrested with a stolen firearm after having been stopped for driving a stolen car with borrowed license plates. Enhancement for stolen firearm (+2). Priors include evading arrest, theft, robbery with bodily injury, theft by receiving.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	197	14(37-46)	24(100-125)	24(100-125)	26(120-150)	24(100-125)	26(120-150)	24(100-125)	a(3)	b(3)b(7)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 57779 198	§922(g)(1) §924(e)(1)	922(g)(1)	1989	12 base 12(30-37)	180mos	VI 24pts	Y	N	2 rifles 1 shotgun	sale

Defendant pawned three firearms on two separate occasions to the same licensed firearms dealer. Defendant indicates he borrowed the weapons from his father and pawned the weapons for bond money. No enhancements or reductions. Priors include burglary (not known of what building), burglary of a habitation, theft of items from a habitation, burglary of a habitation (3 additional convictions), criminal mischief. Defendant sentenced under armed career offender provision to statutory minimum.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	198	12(30-37)	180 mos+	26(120-150	26(120-150	27(130-162	26(120-150	27(130-162	a(2)	b(2),b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 57832 199	§922(g)(1) §924(e)(1)	none	1989	12 base 14(37-46)	360mos	VI 15pts	Y	N	1 .357 revolver	sale

Defendant attempted to sell the handgun on the street. The handgun was stolen. At the time the defendant possessed the gun it had blood on the handle, and a spent cartridge inside. Enhancement for stolen firearm (+2) and no reduction for acceptance. However, career offender and armed career criminal provisions are used in tandem to set an offense level of 37 (career offender provision applied to underlying statutory maximum (life) for armed career criminal. Priors include theft, burglary (object building unknown), burglary of residence, attempted burglary of residence, burglary of storehouse building, burglary of vehicle.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	199	14(37-46)	360 mos*	27(130-162	27(130-162	28(140-175	27(130-162	28(140-175	a(2)	b(3),b(8)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 57878 000	§922(g)(1)	none	1989	12 base 12(21-27)	27 mos	IV 7 pts	N	N	1 .357 revolver	crim./ possessn

Defendant was a passenger in a car stopped for speeding. The revolver was under defendant's seat, ammunition was in the front seat, and $6,000 was in the pocket of another passenger. The revolver was purchased on the street for "protection." The firearm was stolen. Enhancements for stolen firearm (+2) and reduction for acceptance (-2). Priors include possession of a controlled substance (cocaine) and possession of a firearm while in possession of a controlled substance (both counts occurring on same occasion). (The PSI twice indicates the drug offense was simply "possession" and once indicates the offense was "possession with intent to distribute.") Defendant was also convicted of third degree assault, but was assessed no points since defendant failed to show for sentencing. Memos filed by both parties regarding constitutionality of enhancement for stolen firearm in absence of charges under §922(i) or §922(j), or actual knowledge of defendant that the firearm he possessed was stolen.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	000	12(21-27)		14(27-33)	14(27-33)	14(27-33)	16(33-41)	16(33-41)	a(4)	b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 57946 1	§922(g)(1)	none	1989	12 base 12(27-33)	27 mos	V 12pts	Y	N	1 9mm pistol	crim./ possessn

Defendant stole two 9mm pistols from a store, after hiding in the store until it closed. The defendant told his cousin that the pistols were going to be used in a bank robbery. On the day of the apparent robbery, agents arrested defendant with one of the pistols, serial numbers obliterated, fully loaded. Defendant denied that he intended to rob the bank, and the court did not resolve the factual dispute as it was not relied on in determining the sentence. Enhancement for obliterated serial number (+2), and reduction for acceptance (-2). Priors include numerous larceny and theft priors as a juvenile, forgery, receiving stolen property, transferring stolen property, and attempted burglary of a residence.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	001	12(27-33)		16(41-51)	16(41-51)	18(51-63)	18(51-63)	20(63-78)	a(4)	b(3),b(7)

USSG & CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 57949 2	§922(g)(1) §924(a)(2)	2 counts 922(a)(6) 1 count 922(g)(1)	1989	12 base 10(24-30)	26 mos	VI 13pts	N	N	1 shotgun 1 rifle ammunition	sale/ possessn
Defendant purchased the two firearms from dealers, and later pawned the rifle to a dealer. Defendant was also found to be in possession of a magazine of .223 ammunition for the rifle, a 20-round box of ammunition for the rifle, and 99 shotgun shells. No enhancements, and reduction for acceptance (-2). Priors include juvenile priors for simple assault, worthless checks (7 counts), breaking and entering and larceny, and adult priors for worthless checks (3 counts), worthless check, false police report, cruelty to animals/shooting within city limits, and 17 counts of obtaining property by false pretense/carrying concealed weapon (consolidated for sentencing).										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	002	10(24-30)		13(33-41)	13(33-41)	14(37-46)	15(41-51)	16(46-57)	a(4)	b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 58158 3	§922(g)(1)	none	1989	12 base 10(24-30)	26 mos	VI 15pts	Y	N	1 .22 rifle	not known
Defendant, intoxicated, returned to the home of his common-law wife with the rifle. The wife called police for assistance. She later told police of three incidents where she had been threatened by the defendant with various firearms. Reduction for acceptance. No enhancements. Priors include assault with a dangerous weapon in the commission of a felony, reckless driving, rape, escape, no account check, DWI.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	003	10(24-30)		22(84-105)	22(84-105)	22(84-105)	22(84-105)	22(84-105)	a(2)	

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 58443 4	2 counts §924(e)(1) and §922(g)(1)	none	1989	12 base 15(37-46)	180 mos	V 12pts	Y	N	1 handgun and ammunition	criminal

Defendant was arrested for engaging in disorderly conduct, after he was found urinating on the front steps of an apartment building in view of pedestrians. A search revealed a handgun, which defendant then grabbed and turned toward the policeman who grabbed the revolver cylinder to prevent it from revolving and firing. After a struggle, the defendant was disarmed. Defendant contends that the fact that he possessed a firearm was fabricated by police officers. Enhancement under 3A1.2(b) for assault on a police officer (+3). No acceptance reduction. Priors for robbery (5 convictions), simple assault/retail theft, possession of a controlled substance/possession with intent to distribute.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	004	15(37-46)	180 mos+	29(140-175	29(140-175	31(168-210	29(140-175	31(168-210	a(2)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 58451 5	§924(a)(1) §922(g)(1)	none	1989	12 base 10(10-16)	13 mos	III 4 pts	N	N	1 .357 revolver	criminal

A police officer stopped a car for a traffic violation in front of defendant's house. Defendant, intoxicated, harassed the officer, directing the officer to move away from defendant's house, and became increasingly belligerent, until defendant was put under arrest and ordered to lie on the ground. He refused, and reached for a cocked, loaded gun under his belt. The officer attempted to remove the gun and handcuff defendant, but was only able to do so after a scuffle, and the with the assistance of another officer. Reduction for acceptance (-2). No enhancements. Prior for introduction of contraband into a work camp.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	005	10(10-16)		14(21-27)	14(21-27)	16(27-33)	16(27-33)	18(33-41)	a(4)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 58513 6	§922(g)(1) §924(a)(2)	none	1989	12 base 10(21-27)	27 mos	V 12pts	Y	N	1 .32 revolver	crim/ possessn

Defendant was acting suspiciously with a number of individuals, and fled when police on patrol arrived. Defendant discarded the revolver before he was apprehended. Reduction for acceptance (-2). Juvenile priors for aggravated assault (2 convictions) and carrying a weapon. Adult priors include burglary of a residence, assault and battery, carrying a weapon, assault with intent to commit armed robbery, assault.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	006	10(21-27)		22(77-96)	22(77-96)	22(77-96)	22(77-96)	22(77-96)	a(2)	

USSG CASE	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	RISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	NTENT/ USE
§2K2.1 58611 7	§922(g)(1)	§841(a)	1989	12 base 10(10-16)	10 mos	III 4 pts	Y	Y	not known	criminal

Defendant and eighteen codefendants were charged in a twelve count indictment with various drug-related offenses. Defendant was a buyer, and was associated with 109 kilos of marijuana. Reduction for acceptance (-2). Priors include selling marijuana, possession of cocaine, assault and battery of a high and aggravated nature.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	007	10(10-16)		24(63-78)	24(63-78)	26(78-97)	24(63-78)	26(78-97)	a(2)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 59175 8	§924(a)(2) §922(a)(6)	none	1989	12 base 12(15-21)	15 mos	III 6 pts	Y	N	1 .22 revolver	possessn criminal

Defendant was in the area when someone (either he or his intoxicated nephew) fired a pistol. Defendant had purchased the handgun on the street by giving his nephew money. The handgun was stolen. Enhancement for stolen firearm (+2), and reduction for acceptance. Priors include non-aggravated robbery.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	008	12(15-21)		20(41-51)	20(41-51)	20(41-51)	20(41-51)	20(41-51)	a(3)	b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 59079 9	§924(e)(1) §922(g)(1)	none	1989	12 base 12(30-37)	180 mos	VI 19pts	Y	N	1 .380 pistol	criminal

Defendant was suspected of possessing stolen property, and a search of his home ended in his fleeing, after dropping a plastic baggy containing 5.4 grams of cocaine. Also found in the residence were 20.9 grams of marijuana, 26 stolen firearms, two stolen firearm safes, ammunition, and other stolen items. Defendant had sold five or six firearms on the street. Defendant also possessed a .380 pistol which was discovered on a table in the living room. Defendant denied owning the stolen firearms, and said the drugs had been given to his roommate in exchange for some of the firearms. Priors include auto theft, burglary of a habitation (two convictions), burglary of a motor vehicle, possession of marijuana, evading arrest, DWI/possession of marijuana, attempted capital murder. No enhancements or reductions (defendant found guilty after a trial).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	009	12(30-37)	180 mos+	35(292-365	35(292-365	39(360-life	35(292-365	39(360-life	a(2)	b(2,3,7,8)

USSG CASE	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	RISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	NTENT/ USE
§2K2.1 59203 10	§922(g)(1) §924(a)(2)	none	1989	12 base 10(21-27)	24 mos	V 12pts	N	N	1 .44 revolver and ammunition	possessn

Defendant was stopped for an apparent DWI and the revolver and ammunition were found in the car. The pistol was exchanged on the street for defendant's motorcycle. Defendant claimed to need the firearm to protect himself from his estranged wife's boyfriend. Reduction for acceptance (-2). Priors include theft of vehicle, forgery, interstate transportation of stolen vehicle, larceny of auto, second degree burglary of storehouse, first degree theft, failure to return from furlough, DWI (two convictions), attempted second degree burglary of storehouse, DWI/resisting arrest.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	010	10(21-27)		12(27-33)	12(27-33)	12(27-33)	14(33-41)	14(33-41)	a(4)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 59361 11	§922(g)(1)	none	1989	12 base 12(27-33)	33 mos	V 11pts	N	Y	1 9mm pistol (loaded)	criminal

Defendant was stopped for suspected DWI, and found to have Schedule IV drugs on his person. An inventory search of the vehicle revealed the loaded firearm, and 24 grams of methamphetamine, as well as 27 grams of marijuana. No enhancements or reductions. Priors include DWI, possession of controlled substance (4 convictions).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	011	12(27-33)		14(33-41)	14(33-41)	16(41-51)	16(41-51)	18(51-63)	a(4)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 59362 12	§922(g)(1)	922(g)(1)	1989	12 base 10(21-27)	27 mos	V 10pts	Y	N	1 .357 revolver and ammunition	criminal

Defendant was stopped and frisked in a high crime area after police suspected he was carrying a firearm. The firearm was found and defendant claimed he had the firearm since he was on his way to collect on a debt, and he feared the person would be armed. Reduction for acceptance (-2). Priors include possession of stolen government property, delivery of marijuana/possession of heroin, possession of dangerous drugs, and delivery of a controlled substance.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	012	10(21-27)		22(77-96)	22(77-96)	22(77-96)	22(77-96)	22(77-96)	a(2)	

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	RISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 59418 13	§922(g)(1)	none	1989	12 base 14(37-46)	180 mos	VI 16pts	Y	N	1 .22 pistol (loaded)	criminal

Defendant had apparently pointed a firearm at his boyfriend during "a lover's spat" and threatened to shoot. The defendant, however, denied possessing the gun, until police found it in his car. The firearm was stolen. Enhancement for stolen firearm (+2), and no reductions. Priors include auto burglary/grand larceny, burglary of occupied residence (5 counts) along with grand theft (5 counts) all for the same occasion, burglary of residence, burglary of residence (2 counts) along with two counts of grand theft (all same occasion), burglary of residence/grand theft, burglary, shoplifting, burglary of dwelling/grand theft (four convictions), burglary of dwelling (24 counts)/grand theft (19 counts)/petit theft (3 counts) (all same occasion), grand theft, burglary of dwelling/petit theft (two convictions), robbery, petit theft.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	013	14(37-46)	180 mos+	28(140-175	28(140-175	30(168-210	28(140-175	30(168-210	a(2)	b(3),b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 59425 14	§924(e) §922(g)(1)	4 counts §922(e)& 922(g)(1)	1989	12 base 14(37-46)	180 mos	VI 23pts	Y	N	5 shotguns/rifles	sale

Defendant burglarized a residence and acquired the firearms. He pawned one of the firearms to a licensed dealer, and subsequently was arrested. Enhancement for stolen firearms. No reduction. Priors include burglary of vehicle, burglary of residence/grand theft (two counts on each for same occasion), grand theft, petit theft, burglary of commercial/grand theft (two convictions), burglary. These were juvenile convictions. Adult priors include five burglary of residence, uttering a forged instrument/grand theft, dealing in stolen property (two convictions), burglary of residence, resisting arrest.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	014	14(37-46)	180 mos+	27(130-162	27(130-162	28(140-175	27(130-162	28(140-175	a(2)	b(3),b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.1 59506 15	§924(a)(2) §922(g)(1)	§5861(d)	1989	12 base 10(8-14)	8 mos*	II 3 pts	Y	N	1 short barrel shotgun	possessn

Defendant was found to have a short barrel shotgun under his bed. Prior for assault (placing common-law wife's son in bucket of scalding hot water). Reduction for acceptance (-2), no enhancements. * 4 mos BOP, 4 mos CTC

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	015	10(8-14)	16(24-30)++	18(30-37)	20(37-46)	20(37-46)	20(37-46)	20(37-46)	a(3)	a(1)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 #52638 #235	§5861(f)	371/5861f 5861(d) 5861(i)	1989	16 base 14(15-21)	21mos	I 0 pts	N	N	1 destructive device	criminal

Defendant and a codefendant made a destructive device out of dynamite in order to kill the codefendant's former girlfriend who had recently married another person. Defendant purchased the dynamite and five electric detonators from a dealer, and constructed the device with seven sticks, one evening. They later secretly attaching the device to the bottom of the new husband's truck, which was parked at the couple's home. The intended victim managed to drive to work the next morning without detonating the device. Coworkers found the device when it dropped out of the truck chassis. The bomb was turned over to ATF agents who detonated the "highly explosive" device. ATF noted that the bomb was capable of "killing numerous people" depending on the location of detonation. Reduction for acceptance. No priors. The P.O. noted the analogy to the attempted murder guideline would result in a substantially higher sentence.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	235	14(15-21)	16(21-27)	20(33-41)	22(41-51)	24(51-63)	24(51-63)	26(63-78)	a(1)	b(3),b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 #52421 #236	§5861(f)	371/5861f §5861(d) §5861(i)	1989	16 base 16(21-27)	23 mos	I 0 pts	N	N	1 destructive device	criminal

Defendant and a codefendant made a destructive device out of dynamite in order to kill the defendant's former girlfriend who had recently married another person. Codefendant purchased the dynamite and five electric detonators from a dealer, and the two defendants constructed the device with seven sticks, one evening. They later secretly attaching the device to the bottom of the new husband's truck, which was parked at the couple's home. The intended victim managed to drive to work the next morning without detonating the device. Coworkers found the device when it dropped out of the truck chassis. The bomb was turned over to ATF agents who detonated the "highly explosive" device. ATF noted that the bomb was capable of "killing numerous people" depending on the location of detonation. No priors. The P.O. noted the analogy to the attempted murder guideline would result in a substantially higher sentence. No adjustments to offense level.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	236	16(21-27)	18(27-33)	22(41-51)	24(51-63)	26(63-78)	26(63-78)	28(78-97)	a(1)	b(3),b(7)

CASE FILE SUMMARIES

FIREARMS GUIDELINE § 2K2.2 (1987)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 89-08214 **#300**	5861(d)		1987	10(6-12)	Probatn	I	N	N	4 sawed off shotguns	sale

Defendant attempted to sell a shotgun to a person known to him as a convicted felon. Appears that Defendant modified the guns for resale, particularly to ex-cons just out of prison. Departure rationalized on the basis that the guidelines remove too much discretion from sentencing judge, and "based upon my own judgment and experience as to what I think an appropriate sentence is."

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	300	10(6-12)	15(18-24)	17(24-30)	17(24-30)	17(24-30)	17(24-30)	19(30-37)	19(30-37)	a(1)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 89-09674 **#301**	5861(c)		1987	10(6-12)	9 mos.	I	N	N	1 sawed off shotgun	criminal

Defendant was involved in the robbery of a couple -- having driven next to them in his car and robbed them after showing them the sawed off shotgun. Defendant was later stopped and the weapon was found in his trunk.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	301	10(6-12)	14(15-21)	16(21-27)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	22(41-51)	a(1)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 89-11631 **#302**	371/ 5861(d-f)	2 cts not named	1987	12 base 14(27-33)	30 mos.	IV 9 pts	Y	Y	1 destructive device 1 handgun	criminal

Defendant solicited another person to build a destructive device, and purchased the bomb made of five sticks of dynamite, a digital timer, a 12-volt battery, and a metal lunch box, in order to rob yet another bank. The bomb was intended to divert attention. In the meantime, defendant and a codefendant used a handgun to burglarize three condominiums. When these burglaries were investigated, defendant decided to sell the destructive device, the gun, and the stolen items for $50, and a small amount of marijuana and cocaine. The purchaser buried the bomb for awhile, until ATF agents, tipped off by an informant, offered to buy the device for $200. Eventually defendant was arrested for the burglaries. Priors include store breaking, daytime housebreaking, two counts burglary of condominiums. Enhancement for aggravating role (+4), and reduction for acceptance (-2).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	302	14(27-33)	18(41-51)	20(51-63)	30(135-168)	32(168-210)	34(210-262)	32(168-210)	34(210-262)	a(2)	a(1),b(3), b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 89-12284 **#303**	5861(b)		1987	10(6-12)	6 mos.	I	N	N	1 sawed off	not known

Defendant threatened another person with the gun before it was sawed off. After it was sawed off, Defendant was stopped for drunk driving, and the gun was found. Defendant was sentenced to 3 months CTC and 3 months CAG.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	303	10(6-12)	14(15-21)	16(21-27)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	22(41-51)	a(1)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 89-17355 **#304**	5861(d)		1987	10(6-12)	8 mos.	I	Y	N	1 sawed off shotgun	not known

Defendant received 8 months CTC after he slipped on the ice and shot himself. Prior conviction for possession of cocaine with intent to distribute and possession of a .25 derringer.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	304	10(6-12)	14(15-21)	16(21-27)	18(27-33)	20(33-41)	20(33-41)	20(33-41)	20(33-41)	a(3)	a(1)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 89-19130 **#305**	§5861(d)	8 cts 21:841 21:846 3 cts 5861(d) 922(g)(1) 924(c)(1) 5861(a)	1987	12 base 16(27-33)	39 mos. upward depart	III 6 pts	Y	Y	30 machinegun pistols, AR15s, silencers, destructive devices	criminal

Defendant, a member of the Hells Angels cycle organization, operated a large methamphetamine manufacturing lab, and maintained a huge cache of weapons to protect it. Defendant had assaulted agents with weapons. Collected antique weapons. Threatened to kill witness. Departure based on underrepresentativeness of criminal history. Extent of departure determined by increasing category by one and sentencing near limit of that range. Priors include possession with intent to distribute meth, disturbing the peace, felon in possession, resisting arrest, battery. Enhancement for possession of silencer (+4). No acceptance.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	305	16(27-33)	21(46-57)	23(57-71)	31(135-168	33(168-210	35(210-262	33(168-210	35(210-262	a(2)	a(1)b(2,7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 89-19908 **#306**	5861(d)		1987	11(8-14)	8 mos.	I	N	N	several incling rifles, sawed off	criminal

Defendant, 24 years old, stole several weapons during a burglary and set the home on fire. He disposed of all but three weapons, which were stored at his home until his arrest.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	306	11(8-14)	18(27-33)	20(33-41)	20(33-41)	20(33-41)	20(33-41)	22(41-51)	22(41-51)	a(1)	b(2),b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 89-21656 **#307**	5861(d)		1987	4(0-4)	Probatn	I	N	N	3 automatic AR15s	not known

Defendant owned three weapons which he had converted to automatic. It appears Defendant was a gun nut, involving himself with a gun crowd and gun magazines.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	307	4(0-6)	4(0-6)	17(24-30)	17(24-30)	17(24-30)	17(24-30)	19(30-37)	19(30-37)	a(1)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 89-22659 **#308**	§371/ §5861(d)	§371/ 5861(d,e)	1987	12 base 14(15-21)	16 mos.	I 0 pts	N	Y	1 machinegun	sell

Defendant, a member of a motorcycle gang called the Pagans, organized the sale of a machinegun to a CI. The Pagan Motorcycle Gang was a racketeering organization operating in Pennsylvania and West Virginia which distributed firearms and drugs. Defendant was one of 29 codefendants charged in an 85-count indictment. No priors. Enhancement for role in the offense (+2).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	308	14(15-21)	18(27-33)	20(33-41)	20(33-41)	20(33-41)	20(33-41)	22(41-51)	22(41-51)	a(1)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 89-24821 **#309**	2 cts §5861(d)	none	1987	12 base 13(18-24)	21 mos.	III 4 pts	Y	Y	several automatic rifles	sell

Defendant converted rifles with obliterated serial numbers to automatic weapons and sold them as part of a four-person operation. Defendants admitted they knew the weapons would be used in criminal enterprises. Defendants threatened to kill the narc who turned them in. Defendant actually assaulted the narc. Defendant had prior convictions for assault at a court house, petty theft. Defendant had been dealing marijuana and firearms with agents for an extended period of time. Enhancements for obstruction of justice (+2), and obliterated serial number (+1), and reduction for acceptance.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	309	13(18-24)	20(41-51)	22(51-63)	27(87-108	29(108-135)	32(151-188)	29(108-135)	32(151-188)	a(3)	a(1) b(2,3,7,8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 89-25213 **#310**	§5861(d)	§5861(d) 922(g)(1)	1987	12 base 10(21-27)	24 mos.	V 12 pts	Y	Y	22 guns incling machinegun & sawed off	not known

Defendant, a felon and a neo-Nazi living in the woods with a concubine and four children, received an AR15 machine gun and a short-barreled shotgun, and possessed 21 other weapons at the time of his arrest. Defendant had been convicted of possession of a controlled substance on two occasions (including one occasion where he was arrested with two pounds of marijuana, and a loaded shotgun), receiving stolen property, burglary of a residence, and frequenting place where methadone was used. Defendant, at the time of sentencing, had charges pending for possession of a controlled substance. No enhancements; reduction for acceptance was applied (-2).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	310	10(21-27)	14(33-41)	16(41-51)	22(77-96)	24(92-115	24(92-115	24(92-115	24(92-115	a(3)	a(1),b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ISON ERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	TENT/ USE
§2K2.2 90-25799 #311	§5861(d)	§922(g) §924(a)	1987	12 base 10(15-21)	21 mos.	IV 9 pts	Y	N	1 sawed off shot gun	criminal

Defendant, an emotionally disturbed person, was despondent over being forced by his parents to be a preacher, and decided to do a number of criminal acts, before committing suicide. Defendant planned with an informant to rob hotel rooms, secure a car and then visit a prostitute with whom he was angry. Defendant then apparently intended to kill her. Defendant had a prior conviction for robbery with a deadly weapon, a .33 caliber pistol, two charges grand larceny auto, one grand larceny personal property. Reduction for acceptance (-2), and no enhancements.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	311	10(15-21)	14(27-33)	16(33-41)	20(51-63)	22(63-78)	24(77-96)	22(63-78)	24(77-96)	a(3)	a(1),b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 90-27612 #312	5861(d)		1987	10(8-14)	12 mos.	II	Y	N	1 machinegun	crim.

Defendant, an ex-National Guard, converted a gun into a machinegun and then fired it and a pistol into the woods in the belief that Drug agents had surrounded his home. Judge notes in sentencing that the Commission assigned a level 12, and considered it a serious offense. He further notes how serious this offense is -- it couldn't be any more serious. Priors include simple possession, possession of drug paraphernalia, and possession of a deadly weapon.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	312	10(8-14)	14(18-24)	16(24-30)	20(37-46)	20(37-46)	20(37-46)	20(37-46)	20(37-46)	a(3)	a(1),b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 90-27931 #313	5861(d)		1987	10(6-12)	6 mos.	I	N	Y	sawed off rifle	not known

Defendant sawed off the rifle and used it for hunting and target practice. Some indication he was forming a para-military group to defend the country and the constitution. Prior conviction for violation of state firearms law (possession of sawed off shotgun (30 day sentence, all but 2 days suspended).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	313	10(6-12)	14(15-21)	16(21-27)	18(27-33)	18(27-33)	18(27-33)	18(27-33)	18(27-33)	a(3)	a(1)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 90-30808 **#314**	5861(d)		1987	4 (0-4)	Probatn	I	N	N	4 guns incling tear gas weapon	not known

Defendant and his wife appear to have collected a small number of guns and stored them, loaded, at home. Defendant had traded at least one gun for another unusual and antique one. Defendant had been investigated for other vending machine crimes. One of the guns was a shotgun converted into a tear gas weapon, a weapon that had been fired, but which Defendant insisted was used solely as a conversation piece. Court overruled P.O. regarding collection reduction, and granted reduction based on § 2K2.2(b)(3).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	314	4(0-4)	4(0-4)	17(24-30)	17(24-30)	17(24-30)	17(24-30)	19(30-37)	19(30-37)	a(1)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 90-31913 **#315**	§5861(d)	§5861(d)	1987	12 base 10(8-14)	14 mos.	II 3 pts	N	N	2 sawed off shotguns	criminal

Defendant was a member of the Crips gang, and used sawed off shotguns to rob people. He had helped another gang member hold a woman against her will with a shotgun when police intervened and he fled. Defendant was also arrested for firing shots in public with a sawed off shotgun. These separate charges are to be dropped as part of the plea agreement in this case. Priors include petty theft and misdemeanor battery.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	315	10(8-14)	14(18-24)	16(24-30)	18(30-37)	18(30-37)	20(37-46)	20(37-46)	22(46-57)	a(1)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K2.2 90-32381 **#316**	5861(d)		1987	10(8-14)	8 mos.	II	Y	N	2 rifles sawed off	not known

Defendant, a Crips member, transported stolen, loaded guns in the trunk of a stolen car, while going out to party with some friends at an isolated lake. Priors include battery and two convictions for resisting arrest. No evidence on the intended use of the weapons, but Defendant claims he and his friends were going target shooting.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	316	10(8-14)	14(18-24)	16(24-30)	20(37-46)	20(37-46)	20(37-46)	20(37-46)	20(37-46)	a(3)	a(1)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K2.2 90-34124 **#317**	§5861(d)	§5861(e)	1987	12 base 14(15-21)	18 mos.	I 0 pts	N	N	3 grenades	sale

Defendant owned and transferred three grenades for $800 each, then threw several other grenades into the river when police pursued him. Enhancement for obstruction of justice (+2).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	317	14(15-21)	19(30-37)	21(37-46)	23(46-57)	23(46-57)	25(57-71)	25(57-71)	25(57-71)	a(1)	b(2)b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K2.2 90-34676 **#318**	5861(d)		1987	10(6-12)	8 mos.	I	N	Y	6 guns AR15/.22/AK47/ silencers	not known

Defendant was evicted from his apartment, and the guns were found in the closet. Defendant constructed the silencers, and ran an extensive silencer manufacturing operation in the apartment. Defendant denied the weapons were silencers, and claimed the guns were for target practice.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	318	10(6-12)	16(21-27)	18(27-33)	20(33-41)	20(33-41)	20(33-41)	22(41-51)	22(41-51)	a(1)	b(2)b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	SON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	TENT/ USE
2K2.2 90-35551 #319	5861(d)		1987	4(0-4)	Probatn	I	N	Y	1 sawed off shotgun	criminal
Defendant was arrested for growing marijuana, and was found to have a sawed off shotgun in a gun cabinet with 20 other weapons.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	319	4(0-4)	4(0-4)	16(21-27)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	22(41-51)	a(1)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K2.2 90-37692 #320	§922(o)		1987	4(0-4)	Probatn	I	N	N	2 machineguns	sell
Defendant converted rifles and pistols into machine guns for later sale.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	320	4(0-4)	4(0-4)	16(21-27)	16(21-27)	16(21-27)	16(21-27)	18(27-33)	18(27-33)	a(1)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 90-38070 #321	5861(e)		1987	10(6-12)	11 mos.	I	N	N	4 machine guns	sell
Defendant manufactured machineguns for resale.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	321	10(6-12)	15(18-24)	17(24-30)	17(24-30)	17(24-30)	17(24-30)	19(30-37)	19(30-37)	a(1)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 90-40699 #322	§5861(d)	none	1987	12 base 10(10-16)	13 mos.	III 4 pts	Y	N	1 sawed off shotgun	sell

Defendant purchased for $20 a shotgun from a friend whose mother had given it as a present. Defendant claimed the firearm had been sawed off prior to his purchasing it. Defendant later sold the firearm to another person. Priors include trafficking in cocaine and driving offenses. Reduction for acceptance (-2), and no enhancements.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	322	10(10-16)	14(21-27)	16(27-33)	18(33-41)	20(41-51)	20(41-51)	20(41-51)	20(41-51)	a(1)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 90-41855 #323	§5861(d)	none	1987	12 base 10(6-12)	6 mos.	I 1 pt	N	N	5 guns incling one sawed off shotgun	sell

Defendant traded guns, including one sawed off shotgun, for beers -- guns he got as collateral for a $100 debt. When he found out the guns were stolen, he buried the un-traded guns in his backyard. Priors include carrying a concealed weapon (two convictions), and DUI. Reduction for acceptance (-2), no enhancements.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	323*	10(6-12)	14(15-21)	18(27-33)	18(27-33)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	a(1)	b(2)[b(3)]

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 90-42798 #324	§5861(d)	922(g)(1) 924(a)(1)	1987	12 base 10(8-14)	14 mos.	II 3 pts	Y	N	5 guns incling sawed off shotgun	not known

Defendant was arrested for drunk driving, and was found to be a felon in possession of a loaded, sawed off shot gun in the front seat of his car, along with four other firearms. Priors include conviction for murder, burglary of a store, forgery, and DWI. Reduction for acceptance (-2).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	324	10(8-14)	16(24-30)	18(30-37)	18(30-37)	18(30-37)	18(30-37)	20(37-46)	20(37-46)	a(3)	a(1)b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 90-43887 #325	§5861(d)		1987	12 base 10(6-12)	6 mos.	I	N	N	1 sawed off shotgun	criminal

Defendant was stopped while driving his car erratically, and was found to be in possession of hash, and a sawed off shotgun. The Defendant had used the gun on another person earlier in the evening. Defendant was sentenced to six months home detention in lieu of imprisonment.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	325	10(6-12)	14(15-21)	16(21-27)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	22(41-51)	a(1)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
#326										

CASE DELETED -- CORRECT GUIDELINE NOT APPLIED

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	.SON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	.TENT/ USE
§2K2.2 90-44953 #327	§5861(h)		1987	11(8-16)	14 mos.	I	N	N	(loaded) 9 guns incling 1 machine gun, 1 rifle, 1 silencer, 3 pistols	?

Defendant possessed several guns with obliterated serial numbers, and quite a bit of martial gear. Defendant was arrested when he smiled into an apartment building security camera and then shot it out. P.O. objected to the failure of the guidelines to account for multiple weapons, and the silencer. The guns were loaded.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	327	11(8-16)	20(33-41)	22(41-51)	22(41-51)	22(41-51)	22(41-51)	24(51-63)	24(51-63)	a(1)	b(2),b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 90-45370 #328	§5861(d)	3 cts not named	1987	12 base 12(15-21)	21 mos.	III 4 pts	Y	N	11 guns incling grenades, pistol, rifle	criminal

Defendant harassed the wife from whom he was separated, by throwing a pipe bomb at her car, and later setting it on fire with a Molotov. He later threw a Molotov through a window one night, having previously cut the phone cords so emergency help would not arrive, and he kidnapped his child after beating his wife. The rifle was not registered and had no serial number. Priors include unlawfully carrying a weapon, terrorist threats, possession of a controlled substance (2 convictions). Reduction for acceptance (-2).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	328	12(15-21)	19(37-46)	21(46-57)	25(70-87)	27(87-108	29(108-135)	27(87-108	29(108-135	a(3)	a(1) b(2,3,7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 90-47673 **#329**	5861(d-e)		1987	10(6-12)	6 mos.	I	N	Y	6 grenades	sell

Defendant, a former military person, constructed the grenades and sold them, in part for cocaine and crack. Defendant was sentenced to 6 months CTC in lieu of imprisonment.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	329	10(6-12)	18(27-33)	20(33-41)	22(41-51)	24(51-63)	26(63-78)	24(51-63)	26(63-78)	a(1)	b(2,3,7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 90-49256 **#330**	§5861(d)		1987	10(10-16)	10 mos.	III	N	N	1 sawed off shotgun	sell

Defendant attempted to sell a sawed off shotgun to a drinking buddy who promptly called the police and had Defendant arrested.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	330	10(10-16)	14(21-27)	16(27-33)	17(30-37)	17(30-37)	18(33-41)	19(37-46)	20(41-51)	a(1)	b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 90-49868 **#331**	§5861(d)	none	1987	12 base 10(8-14)	8 mos.	II 3 pts	Y	Y	1 sawed off shotgun	not known

Defendant made a semi-automatic rifle and possessed it along with a considerable amount of drugs. Priors include aggravated assault. Reduction for acceptance of responsibility (-2).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	331	10(8-14)	14(18-24)	16(24-30)	20(37-46)	22(46-57)	24(57-71)	22(46-57)	24(57-71)	a(3)	a(1),b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ON ..M	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	ENT/ USE
§2K2.2 90-50142 #332	§5861(d)		1987	12 base 10(6-12)	10 mos.	I	Y	Y	1 automatic 1 semi-auto- matic	not known

Defendant purchased the firearms and concealed them with drugs at a friend's house (possibly a crack house), where police arrived to handle a sick person call. Defendant had prior arrests for carrying and brandishing a dangerous weapon, for carrying a concealed weapon, all of which cases were pending at the time of this case.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	332	10(6-12)	14(15-21)	16(21-27)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	22(41-51)	a(1)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.2 90-50657 #333	5861(d-e)		1987	10(15-21)	15 mos.	V	Y	N	1 sawed off shotgun	sell, criminal

Defendant purchased a sawed off shot gun, then taped the handle, which had fallen off. Defendant sold the gun to another person who used it in an armed robbery. Defendant was identified by the fingerprints he left on the handle when he taped the gun. Defendant is suspected to have used the gun in the robbery, but it can not be proven. Priors include burglaries, battery, robbery while armed with a deadly weapon.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	.1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	333	10(15-21)	14(33-41)	16(41-51)	24(92-115	26(110-137	28(130-162	26(110-137	28(130-162	a(2)	a(1),b(7)

CASE FILE SUMMARIES

FIREARMS GUIDELINE § 2K2.3 (1987)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	SON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.3 90-47080 **#500**	§ 924(b) (no subsec. noted)	6 counts (not stated)	1987	6 base 8 (2-8)	6 mos.	I 0 pts	N	N	17 firearms, incling Uzi semis, pistols, revolvers	sell

Defendant over a five-month period bought numerous weapons in interstate transactions that BATF monitored, and sold at least 17 firearms to BATF agents. Agents informed Defendant at various times that he was selling to felons, out of state residents, and the like. Defendant also operated without a license, without requiring requisite completion of paperwork, and convinced his son to join the racketeering. Defendant was convicted under 18 U.S.C. § 924(b), and sentenced using the 1987 guidelines, receiving level 8.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	500	8(2-8)	6(0-6)		14(15-21)	14(15-21)	14(15-21)	14(15-21)	14(15-21)	a(5)E	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.3 90-45622 **#501**	922(j)	371/659	1987	5 (0-6)	probatn	I 1 pt	N	N	5 rifles	not known

Defendant was a dock worker who stole a carton of five rifles while loading several cartons onto a Roadway Express freight truck. Defendant was convicted under 18 U.S.C. § 922(j) (knowing transport or sale of stolen firearms) and sentenced using the 1987 guidelines, receiving level 5.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	501	5(0-6)	8(2-8)		8(2-8)	8(2-8)	8(2-8)	10(6-12)	10(6-12)	a(6)	b(2),b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	SON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	TENT/ USE
§2K2.3 90-44739 **#502**	922(b)(2)	none	1987	6 (0-6)	Probatn	I 1 pt	Y	N	6 handguns	sell

Defendant was a licensed firearms dealer who sold six handguns to two persons who did not possess valid identification cards. The firearms' serial numbers were obliterated. Defendant was convicted under 18 U.S.C. § 922 (b)(2) (sale of firearms in violation of State law), and sentenced using the 1987 guidelines, receiving level 6. Prior for battery.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	502	6(0-6)	9(4-10)		23(46-57)	23(46-57)	23(46-57)	23(46-57)	23(46-57)	a(3)	b(2,3,5)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.3 89-09572 **#503**	§5861(d)	11 cts 5861(d-f)	1987	12 base 11(10-16)	10 mos.	I 1 pt	N	Y	7 bombs & grenades	crim.

Defendant made at least seven bombs and grenades, and admitted he intended to use at least one weapon against his enemies, including his drug customers who had not paid up, drug dealers to whom a friend owed money, and a neighbor. Defendant detonated at least one of the bombs, in a practice run. Defendant was charged with making a grenade, making pipe bombs, and with transferring pipe bombs. The drug related conduct, though admitted, appears not to have been charged. Defendant was convicted under 26 U.S.C. § 5861(d) (possession of unregistered firearm), and sentenced using the 1987 guidelines, receiving level 11.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	503	11(10-16)	16(24-30)	18(30-37)	20(37-46)	22(46-57)	24(57-71)	22(46-57)	24(57-71)	a(1)	b(2),b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.3 90-35392 **#504**	§924(a)(1)	none	1987	6 (0-6)	138 days	I 0 pts	N	N	4 firearms	sell

Defendant purchased four firearms in as many days, using aliases and false drivers licenses, and then proceeded to sell the weapons. Defendant was convicted of 18 U.S.C. § 924(a)(1) (penalty provision for numerous firearms offenses under 18 U.S.C. § 922), and sentenced using 1987 guideline § 2K2.3, receiving level 4. 138 days represented the time already served.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	504	4(0-6)	5(0-6)		5(0-6)	5(0-6)	5(0-6)	7(1-7)	7(1-7)	a(6)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.5 90-39376 **#605**	§930	22:2778	1989	6 - base 6 (0-6)	12 mos upward depart	I 0 pts	N	N	13 rifles, hand-guns & shotguns	sale

Defendant rode in one of two trucks, which, when the camper was torn open, was found to have a stash of rifles, handguns, and shotguns stored in a false wall. Defendant, a migrant worker claimed he was driving the truck for a friend, in exchange for the friend paying Defendant's expenses for his trip home to Mexico. Departure based on number and type of firearms involved in offense conduct.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	605	6(0-6)		10(6-12)	10(6-12)	10(6-12)	12(10-16)	12(10-16)	a(6)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.5 90-43230 **#606**	§930	none	1989	6 - base 4 (0-6)	4 mos*	I 0 pts	N	N	1 .25 automatic (loaded)	poss-ession

Defendant attempted to evade a federal building metal detector while he carried a suitcase with a loaded .25 automatic. Defendant had asked to be taken to the office of a particular federal district judge.

*time served

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	606	4(0-6)		6(0-6)	6(0-6)	8(2-8)	8(2-8)	10(6-12)	a(6)	b(9)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.5 90-43926 **#607**	Calif. law	none	1989	6 - base 4 (0-6)	4 mos	III 6 pts	N	N	1 knife	not known

Defendant was stopped at the entrance to Edwards Air Force Base and found to have a knife in his pants.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	607	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.5 90-44381 **#608**	§930	none	1989	6 - base 4 (0-6)	6 mos	I 0 pts	none	N	1 9 mm Semi-automatic pistol (loaded)	pro-tection

Defendant's son was being heard in court as Defendant attempted to enter with a loaded 9 mm semi-automatic pistol wrapped in a shawl, and placed in her handbag. Defendant claimed to have carried the weapon for protection the night before, and to have forgotten about it the next day.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	608	4(0-6)		6(0-6)	6(0-6)	8(2-8)	8(2-8)	10(6-12)	a(6)	b(9)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.5 90-44416 **#609**	§930	none	1989	6 - base 4 (0-6)	Probatn	I 0 pts	N	N	1 .25 caliber automatic pistol (loaded)	not known

Defendant attempted to enter a courthouse with a loaded .25 caliber automatic pistol and ammunition.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	609	4(0-6)		6(0-6)	6(0-6)	8(2-8)	8(2-8)	10(6-12)	a(6)	b(9)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.5 90-44704 **#610**	§930	none	1989	6 - base total level not provided	Probatn	I 0 pts	N	N	1 .38 caliber revolver	criminal

Defendant was emotionally distraught over having been left by his wife. Defendant purchased a .38 caliber revolver and confronted her outside a post office building.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	610	4(0-6)*		6(0-6)	6(0-6)	8(2-8)	8(2-8)	10(6-12)	a(6)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	N .M	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	NT/ USE
§2K2.5 90-47436 **#611**	§930	none	1989	6 - base 4 (0-6)	Probatn	I 0 pts	N	N	1 .22 caliber semi-automatic gun (loaded)	not known
Defendant attempted to enter the courthouse with a loaded .22 caliber semi-automatic gun.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	611	4(0-6)		6(0-6)	6(0-6)	8(2-8)	8(2-8)	10(6-12)	a(6)	b(9)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.5 90-48567 **#612**	§930	none	1989	6 - base 4 (0-6)	Probatn	I 0 pts	N	N	1 9 mm pistol (unloaded)	threat
Defendant was an disturbed individual who sexually harassed a co-worker, and who threatened a supervisor with a unloaded 9 mm pistol after Defendant was disciplined for the harassment. Offense took place in and around a post office building.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	612	4(0-6)		6(0-6)	6(0-6)	8(2-8)	8(2-8)	10(6-12)	a(6)	b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.5 90-49284 **#613**	§930	none	1989	6 - base 4 (0-6)	Probatn	I 0 pts	N	N	1 knife	threat
Defendant, evidently an emotionally disturbed person, wrote threatening letters to a court after he was denied social security benefits, threatening to "mow down" all the staff with an uzi. Defendant showed at an appeal of his case with knives and razor blades, some of which he claimed he would use to "terminate" himself.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	613	4(0-6)		8(2-8)	8(7-8)	12(10-16)	12(10-16)	14(15-21)	a(6)	b(7),b(9)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	;ON RM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	ENT/ USE
§2K2.5 90-49718 **#614**	§930	§5861(d)	1989	6 - base 4 (0-6)	Probatn	I 0 pts	N	N	1 .25 caliber pen gun and a razor knife	not known
Defendant attempted to attend her son's hearing with a razor knife and pen gun in her purse.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	614	4(0-6)	14(15-21)+	18(27-33)	18(27-33)	20(33-41)	20(33-41)	22(41-51)	a(1)	b(9)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.5 90-55500 **#615**	§930	none	1989	6 - base 4 (0-6)	Probatn	III 4 pts	N	N	1 4 1/4" folding knife	poss-ession

Defendant crossed the border from Canada into the United States, and, while drunk, belligerently threatened to shoot Customs officers, "if they didn't have uniforms on." When searched, officers discovered the knife. Priors are four DUI and driving related offenses.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	615	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.5 60431 **#616**	§930	1 count not stated	1989	6 base 4(0-6)	probatn	I 1 pt	N	N	1 .32 handgun (loaded)	criminal

Defendant, a postal employee, and an informant for the government, took mail and parcels on a periodic basis into the bathroom to open and read. He was finally caught sitting fully clothed on a toilet, opening a parcel. A handgun was found in his briefcase on the work floor area. The gun had been purchased on the street, he claimed as protection. Prior for possession of stolen property. Defendant may be suffering from psychological problems. Reduction for acceptance (-2).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	616	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	

CASE FILE SUMMARIES

FIREARMS GUIDELINE § 2K2.3 (1989)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	ENT/ USE
§2K2.3 89-20597 #400	§922(a)(5)		1989	19(30-37) downward departure	24 mos.	I		N	1 .357 magnum revolver 1 bomb	crime

Defendant provided a .357 magnum revolver and a bomb to two out of state residents, with the charge of harassing a person in Maine and burning that person's house down, all in order to ensure the repayment of a debt owed to Defendant. Defendant was convicted under 18 U.S.C. § 922(a)(5) (transfer of firearm to out of state resident), and sentenced (incorrectly) under 1989 guideline §2K2.3, receiving total offense level 19 (apply § 2K2.3 cross reference to §2X1.1 and § 282.1 (burglary guideline) with minimal planning and firearms enhancements (+4) and with acceptance of responsibility reduction (2)). 1989 guideline § 2K2.1 would result in a level 4. Downward departure based on apparently aggravating factors ("plea agreement does not clearly demonstrate the defendant's personal involvement. The Court finds him to have been a facilitator and arranger of the overall offense.")

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	400	19(30-37)	18(27-33)+	22(41-51)	24(51-63)	26(63-78)	24(51-63)	26(63-78)	a(1)	b(3),b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.3 90-40277 #401	§922(d)(5)		1989	12(10-16)	10 mos. split	I		N	6 rifles	not known

Defendant purchased 6 rifles in order to provide them to illegal aliens, in violation of 18 U.S.C. § 922(d)(5). Defendant was sentenced (correctly) under 1989 guideline §2K2.3, which cross references 1989 guideline § 2K2.2, resulting in level 12. Sentence was a split sentence (five months CTC, five months imprisonment).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	401	12(10-16)		12(10-16)	12(10-16)	12(10-16)	14(15-21)	14(15-21)	a(6)	b(2),b(4)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.3 90-52542 #402	§924(g)	none	1989	29 (87-108)	96 mos	I 0 pts	N	N	1 sawed off 12 guage shotgun	crime

Defendant became angry with a person, and determined to rob his trailer for revenge. Defendant provided a sawed off shotgun as one of a number of firearms that were to be used to rob the trailer. Four persons, other than the defendant, then went to the trailer, and after requesting to use the phone, shot through the door. Several additional shots were fired, and one of the robbers was killed, before they all fled. §2K2.3 (1989) was used to cross reference §2B3.1(a) (base offense level 20) with enhancements for discharge of a firearm (5 levels) and enhanced role in the offense (4 levels). No acceptance of responsibility.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	402	29(87-108)		29(87-108)	29(87-108)	29(87-108)	29(87-108)	29(87-108)	c(1)	a(1),b(7)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.3 90-54870 #403	§922(b)(3)	1 count (unknown)	1989	12 10(6-12)	9 mos	I 0 pts	N	N	15 .25 cal. handguns, 1 AR-15	sale

Defendant and his wife, license firearms dealers, sold the firearms to an ATF agent who represented himself to be a Mexican national in the United States illegally. The agent indicated his intent to transport the firearms to Mexico.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	403	10(6-12)		14(15-21)	14(15-21)	14(15-21)	14(15-21)	14(15-21)	a(5)E	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.3 54648 #404	§922(b)(3)	8 counts including §371 §841(a)	1989	12 base 10 (6-12)	6 mos	I 0 pts	N	N	15 handguns 1 AR-15 40 firearms other guns	sale/ criminal

Defendant and her husband, licensed dealers, sold firearms to an ATF agent who represented himself as a Mexican national in the United States illegally. Defendant agreed to sell the guns for cocaine for personal use and fir delivery to others. On other occasions the defendant allowed persons with state driver's licenses to purchase guns on behalf of Mexican nationals. She later sold an additional 40 firearms to agents.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	404	10(6-12)		18(27-33)	18(27-33)	20(33-41)	18(27-33)	20(33-41)	a(5)E	b(2),b(7)

CASE FILE SUMMARIES

FIREARMS GUIDELINE § 2K2.5 (1989)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.5 90-38988 **#600**	§930	22:2778	1989	6 - base 4 (0-6)	Probatn	I 0 pts	N	N	1 30.06 rifle	not known
Defendant admitted placing a rifle inside the bumper of his car and attempting to bring it into Mexico.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	600	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.5 89-25400 **#601**	§930	18:1001 22:2778	1989	6 - base 4 (0-6)	Probatn	I 0 pts	N	N	1 Derringer .22 caliber handgun (unloaded)	protection
After denying possessing any firearms on her return trip from Mexico, Defendant was found to have an empty Derringer .22 caliber handgun in her purse, claiming it had been purchased for self-protection after she was robbed on the side of a road in Mexico.										

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	601	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.3 90-35028 **#505**	922(a)(3)	none	1987	5 (0-6)	Probatn	I 0 pts	N	N	2 9mm handguns, 13 additional firearms	not known

Defendant purchased two 9mm handguns, and made deposits on 13 additional firearms, which turned out to be destined for the Dominican Republic. Defendant was convicted under 18 U.S.C. § 922(a)(3), and sentenced using 1987 guideline § 2K2.3, receiving level 5 (0-6 months), after receiving a minor role reduction of three levels, but not an acceptance of responsibility reduction.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	505	5(0-6)	7(1-7)		13(12-18)	13(12-18)	13(12-18)	13(12-18)	13(12-18)	aa(5)E	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.3 90-31192 **#506**	§922(a)(1)	none	1987	6 (1-7)	7 mos.	II 3 pts	N	Y	1 semi-automatic pistol, 1 machine gun, 2 pistols, & sawed-off shotgun	crim.

Defendant sold cocaine to undercover BATF agents, and showed them a semi-automatic pistol he used to protect his operation. He asked to purchase a machinegun, and two additional pistols. When he was arrested, agents uncovered half a kilo of cocaine, and a sawed-off shotgun. Defendant was convicted under 18 U.S.C. § 922(a)(1), and sentenced under 1987 guideline § 2K2.3, receiving level 6 (1-7 months).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	506	6(1-7)	8(4-10)	20(37-46+	22(46-57)	22(46-57)	24(57-71)	24(57-71)	26(70-87)	a(1)	b(2),b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.3 90-27786 **#507**	§922(d)(1)	none	1987	4 (0-6)	Probatn	I 0 pts	N	N	1 .30 caliber carbine	not known

Defendant provided a .30 caliber carbine to a person arrested with a weapon, and likely provided additional firearms to the person at other times. Defendant was charged under 18 U.S.C. § 922 (d)(1) with providing a firearm to a felon, and was sentenced under 1987 guideline § 2K2.3, receiving level 4.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	507	4(0-6)	4(0-6)		4(0-6)	4(0-6)	4(0-6)	6(0-6)	6(0-6)	a(6)	b(4)

USSG CASE	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	SON ERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	TENT/ USE
§2K2.3 89-24111 **#508**	§922(1)	None	1987	4 (0-6)	6 mos.	III 4 pts	N	Y	1 shotgun 1 semi-automatic machine pistol 1 rifle	not known

Defendant, a convicted felon whose wife had recently kicked him out of the house, was stopped at a port of entry, on his way back from a weekend in Mexico with two nude dancers. Defendant was found to have secreted a small amount of marijuana, a shotgun, a semi-automatic machine pistol, and a rifle in his car. Defendant was on probation at the time of his arrest. Defendant was convicted under 18 U.S.C. § 922(1) (illegal importation of firearms), and sentenced under 1987 guideline § 2K2.3, receiving level 4 (no enhancements for his felon status).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	508	4(0-6)	5(0-6)		7(1-7)	7(1-7)	9(4-10)	9(4-10)	11(8-14)	a(6)	b(2),b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.3 90-42610 **#509**	371/ 922(a)(3)	922(a)(3)	1987	7 (1-7)	Probatn	I 0 pts	N	N	3 .32 caliber automatics 3 9 mm automatics	sell

Defendant received by UPS delivery, three .32 caliber automatics, and three 9 mm automatics, for planned resale in New York to a convicted felon. Defendant was convicted of conspiracy to transfer firearms without a license, and was sentenced under the predicate guideline §2K2.3 (1987), receiving level 7. Sentence may have been probation and one month CTC, since no departure is recorded or justified. No statement of reasons was available for this file.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	509	7(1-7)	6(0-6)		6(0-6)	6(0-6)	6(0-6)	8(2-8)	8(2-8)	a(6)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.3 90-38306 **#510**	371/§545	3 cts 545	1987	10 (6-12)	12 mos. suspnded	I 0 pts	N	N	26 importd knives 286 ill. knives 1 .38 cal. revol.	sell

Defendant and his wife sold imported switchblade knives over a three-day period at the International Exposition Center in Cleveland, Ohio. Agents seized 26 imported knives, and Defendant offered a bribe. The agents refused the bribe, but instructed Defendant on the law, and no further action was taken until several months later when Defendants again sold switchblades at another state fair. Despite warnings, Defendants continued to sell the knives, for which they were arrested and 286 illegal knives and a .38 caliber revolver were seized. Defendant was convicted under 18 U.S.C. § 545 for distributing the knives, and was sentenced under 1987 guideline § 2K2.3, receiving a level 10. The government and the P.O. recommended an additional 2-level increase based on the number of weapons involved, and the application of § 2K2.3 only to firearms, and not knives, but the court refused to make the departure.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	510	10(6-12)	10(6-12)		10(6-12)	10(6-12)	10(6-12)	12(10-16)	12(10-16)	a(6)	

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	SON ERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	TENT/ USE
§2K2.3 90-37833 **#511**	371/922(c)	none	1989	12(10-16)	12 mos.	I 0 pts	N	Y	79 weapons: AK-79 assault rifles, weapons w/tri-burst activators	sell

Defendant operated a gun shop out of his home, having applied for, and received, a federal license. Defendant later met with undercover agents on a regular basis, promising to deliver 100 firearms, including automatic weapons, a silencer, AK-47 assault rifles, and weapons with tri-burst activators. Defendant sold at least 79 weapons to agents (some of whom presented themselves as requiring the guns for unlawful uses) before he was arrested and convicted of conspiracy to violate firearms laws (including 18 U.S.C. § 922(c)), and sentenced to level 12, using 1987 guideline § 2K2.2 (referenced by 2X1.1), and applying an abuse of trust enhancement.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	511*	12(10-16)	16(21-27)	18(27-33+	20(33-41)	20(33-41)	20(33-41)	22(41-51)	22(41-51)	a(1)	[b(2)]b(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.3 90-36599 **#512**	§922(a)(4)	922(j)	1987	5 (0-6)	probatn	I 0 pts	N	N	1 sawed-off shotgun	protectn

Defendant, a trucker, claimed to have borrowed a friend's sawed-off shotgun (which had an obliterated serial number) in order to protect himself on late trips. Defendant was convicted under 18 U.S.C. § 922(a)(4), and sentenced under 1987 guideline § 2K2.3, resulting in level 5.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	512	5(0-6)	6(0-6)	18(27-33+	18(27-33)	18(27-33)	18(27-33)	20(33-41)	20(33-41)	a(1)	b(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.3 89-16731 **#513**	371/922(j)	2cts 922j 922(a)(1) 11 cts 841/846	1987	6 (0-6)	Probatn	I 1 pt	N	N	7 stolen firearms	sell

Defendant was involved in a number of drug sales late in one year, and firearms sales, including sales of seven stolen firearms the following year. Defendant was convicted of conspiracy to sell firearms, and sentenced under 1987 guideline §2K2.3, resulting in a sentence level of 6.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	513	6(0-6)	8(2-8)		8(2-8)	8(2-8)	8(2-8)	10(6-12)	10(6-12)	a(6)	b(2),b(3)

USSG CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	;ON .RM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	TENT/ USE
§2K2.3 89-19669 **#514**	371/922(i)	none	1987	7 (0-6)	4 mos.	I 0 pts		N	11 firearms	sell

Defendant joined other codefendants in burglarizing homes and selling the stolen firearms. The conspirators together stole and sold 27 firearms in this manner, and Defendant personally was involved in the theft of 11 of those. Defendant was convicted for conspiracy to transport stolen firearms. Defendant was sentenced under 1987 guideline § 2K2.3, to 4 months imprisonment, the amount of time already served in prison. (This probably should have been level 8, accounting for the entire conduct of the conspiracy.)

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	514	7(1-7)	9(4-10)		9(4-10)	9(4-10)	9(4-10)	11(8-14)	11(8-14)	a(6)	b(2),b(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.3 90-30089 **#515**	§922(i)	§924(c)	1987	10(10-16)	6 mos.	III 6 pts	N	Y	1 rifle 1 rifle	crime

Defendant joined with other conspirators to steal a rifle from a private residence, and use that rifle and another stolen rifle to protect themselves while they distributed 1.6 kilograms of marijuana. Defendants were charged under 18 U.S.C. § 922(i) (transporting stolen firearms) and 18 U.S.C. § 924(c) (mandatory five year sentence for use of weapons in connection with a drug trafficking crime). Defendant pled to the § 922 count and was sentenced under 1987 guideline § 2K2.3 which cross references § 2X1.1 and the predicate guideline § 2D1.1, resulting in level 10.

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	515	10(6-12)#	10(6-12)#		10(6-12)#	10(6-12)#	10(6-12)	10(6-12)	12(10-16)	a(6)	b(3,8)c(1)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
§2K2.3 89-25952 **#516**	§922(i)	§924(c)	1987	12(15-21)	10 mos.	III 4 pts	N	Y	1 rifle 1 rifle	crime

Defendant led other conspirators (see the case above) to steal a rifle from a private residence, and use that rifle and another stolen rifle to protect themselves while they distributed 1.6 kilograms of marijuana. Defendants were charged under 18 U.S.C. § 922(i) (transporting stolen firearms) and 18 U.S.C. § 924(c) (mandatory five year sentence for use of weapons in connection with a drug trafficking crime). Defendant pled to the § 922 count, and was sentenced under 1987 guideline § 2K2.3 which cross references § 2X1.1 and the predicate guideline § 2D1.1, resulting in level 12 (including an aggravating role enhancement).

APPLICATION OF PROPOSED GUIDELINE	CASE NUMBER	1987 RANGE	1989 RANGE	1990 PROJECTED	1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5	BASE LEVEL	OFFENSE CHARACTERISTIC
	516	12(15-21#	12(15-21#		12(15-21#	12(15-21#	12(15-21)	12(15-21)	14(21-27)	a(6)	b(3,8)c(1)

SUMMARY OF ACTUAL SENTENCING RANGES FOR DEFENDANTS WHO HAD TWO QUALIFYING PRIOR CONVICTIONS FOR PURPOSES OF (a)(1) OF THE PROPOSED FIREARMS GUIDELINE.

CASE #	BOTTOM OF RANGE	TOP OF RANGE	CRIM. HIST.	A.C.C.	N.F.A. or D.D.
100	51	63	III		
106	84	105	VI		
108	120	150	VI	X	
109	92	115	V		
110	84	105	VI	X	
116	46	57	I	X	
119	63	78	I		NFA
120	130	162	V		
122	51	63	III		
124	78	97	I		NFA
126	78	97	III		
129	120	150	VI	X	
130	84	105	VI		
132	84	105	VI	X	
134	130	162	V		
135	63	78	II	X	
143	77	96	IV		
146	46	57	II		
150	70	87	II		NFA
151	100	125	VI	X	NFA
152	78	97	III		NFA
153	121	151	III		NFA
160	168	210	VI	YES	NFA
161	120	150	VI	YES	
162	77	96	IV	YES	

CASE #	BOTTOM OF RANGE	TOP OF RANGE	CRIM. HIST.	A.C.C.	N.F.A. or D.D.
163	110	137	V	YES	
164	110	137	VI		
165	92	115	IV	YES	
175	100	125	VI	X	NFA
183	135	168	V	X	NFA
189	63	78	IV	YES	
194	140	175	VI	YES	
195	140	175	VI	YES	
198	110	137	VI	YES	
199	120	150	VI	YES	
3	84	105	VI		
4	168	210	V	YES	
6	77	96	V	X	
7	78	97	III		
9	235	293	VI	YES	
12	77	96	V		
13	168	210	VI	YES	
14	140	175	VI	YES	
19	84	105	VI	X	
21	92	115	V	YES	
22	100	125	IV	YES	NFA
23	168	210	VI	X	
24	120	150	VI	X	
28	100	125	VI	X	
29	120	150	VI		
30	84	105	VI	X	
33	84	105	VI		
35	92	115	IV		

CASE #	BOTTOM OF RANGE	TOP OF RANGE	CRIM. HIST.	A.C.C.	N.F.A. or D.D.
38	120	150	VI	X	
41	100	125	VI	YES	
45	77	96	V		
46	100	125	VI	YES	
48	51	63	III		
51	110	137	V		
53	140	175	VI		
55	120	150	VI		
57	100	125	VI	X	
63	100	125	VI		
64	63	78	I		
68	77	96	IV		
71	84	105	VI		
79	108	135	II		
81	92	115	IV	YES	
86	46	57	VI		
87	140	175	VI	YES	
90	97	121	IV	X	NFA
97	100	125	IV	YES	
1004	78	97	IV		
234	120	150	VI	X	NFA
302	168	210	IV	X	DD
305	188	235	III		DD
333	130	162	V		NFA

X -- Armed Career Criminal Prerequisite Offenses
▒ -- Would Drop Out Using Decay Factor
▬ -- Would Only Count One Prior Using Decay Factor

SUMMARY OF ACTUAL SENTENCING RANGES FOR DEFENDANTS WHO HAD ONE QUALIFYING PRIOR CONVICTION FOR PURPOSES OF (a)(2) OF THE PROPOSED FIREARMS GUIDELINE.

CASE #	BOTTOM OF RANGE	TOP OF RANGE	CRIM. HIST.	A.C.C.	N.F.A. or D.D.
101	51	63	III		
102	51	63	III		
105	41	51	III		
107	33	51	III		
113	27	33	I		
114	57	71	VI		
115	30	37	II		
117	57	71	II	X	
121	33	41	III		
123	30	37	II		
128	78	97	I		NFA
131	37	46	I		
133	51	63	IV		
159	41	51	II		NFA
171	37	46	II		NFA
187	121	151	II		DD
188	46	57	II		
190	41	51	III		
193	84	105	VI		NFA
197	84	105	VI		
8	41	51	III		
15	37	46	II		NFA
16	46	57	IV		
17	51	63	V		
18	63	78	V		

CASE #	BOTTOM OF RANGE	TOP OF RANGE	CRIM. HIST.	A.C.C.	N.F.A. or D.D.
20	27	33	I		
25	41	51	I		NFA
31	41	51	III		
34	70	87	VI		
37	51	63	III		
39	84	105	VI		
40	51	63	III		
43	51	63	V		
44	57	71	V		
47	33	41	III		
50	33	41	III		
54	46	57	II		
56	140	175	VI		
58	77	96	III		
61	27	33	I		
62	63	78	III		
67	57	71	VI		
69	87	108	IV		
73	57	71	III		NFA
78	33	41	III		
82	84	105	VI		
83	30	37	II		
85	33	41	III		
93	63	78	II		
94	41	51	III		
95	70	87	II		
99	46	57	I		
1003	87	108	II		DD

CASE #	BOTTOM OF RANGE	TOP OF RANGE	CRIM. HIST.	A.C.C.	N.F.A. or D.D.
1006	57	71	II		
1007	87	108	II		DD
204	41	51	III		
212	130	162	VI		NFA
221	27	33	I		
304	33	41	I		NFA
309	121	151	III		NFA
310	92	115	V		NFA
311	77	96	IV		NFA
312	37	46	II		NFA
313	27	33	I		NFA
316	37	46	II		NFA
324	37	46	II		NFA
328	135	168	III		DD
331	57	71	II		NFA
502	41	51	I		

X -- Armed Career Criminal Prerequisite Offenses
▒ -- Would Drop Out Using Decay Factor

TABLE -- OFFENDERS WITH THREE OR MORE PRIORS

A COMPARISON OF POTENTIAL OFFENSE LEVELS AND RANGES
UNDER ARMED CAREER CRIMINAL (A.C.C.) AND CAREER OFFENDER (C.O.) PROVISIONS
AND CURRENT AND PROPOSED FIREARMS GUIDELINES

	NUMBER OF CASES	CASES WHERE PROPOSED GUIDELINE RANGE PROVIDES SENTENCE LOWER THAN A.C.C.	AVERAGE RANGE UNDER CURRENT GUIDELINE*	AVERAGE RANGE UNDER PROPOSED §2K2.1 (OPTION 3)	AVERAGE RANGE UNDER §4B1.4	AVERAGE TOTAL OFFENSE LEVEL UNDER CURRENT GUIDELINE*	AVERAGE TOTAL OFFENSE LEVEL UNDER PROPOSED §2K2.1 (OPTION 3)	AVERAGE TOTAL OFFENSE LEVEL UNDER §4B1.4
ARMED CAREER CRIMINAL ACTUALLY CHARGED	21 cases	20 cases	30-37 months	128-155 months	188 months+	level 13	level 27	level 33
CAREER OFFENDER PROVISION APPLIED	4 cases	3 cases	30-38 months	128-159 months	214 months+	level 12	level 27	level 32
ARMED CAREER CRIMINAL NOT CHARGED	26 cases	26 cases	24-30 months	106-131 months	199-248 months	level 11	level 25	level 32
ALL DEFENDANTS WITH 3 OR MORE PRIORS	51 cases	49 cases	26-33 months	116-142 months	208 months++	level 12	level 26	level 32

- all defendants had at least three qualifying priors, and all could have been sentenced as armed career criminals; however, 28 of the defendants were not so sentenced, compared with 21 who were given the §924(e) enhancement, and 4 who were sentenced as career offenders.
- "average range" was calculated by averaging the figures for the upper end of the range to achieve and average range maximum, and by averaging the figures for the lower end of the range to determine the average range minimum.

* two cases using a cross reference were not counted when calculating these averages.

\+ reflects the average actual sentence imposed in these cases.

++ this represents an average actual sentence, calculated by the average of the actual sentences and the midpoint in the range for cases not charged.

TAB I

TABLE -- CASES IN WHICH CAREER OFFENDER (CO) AND ARMED CAREER CRIMINAL (ACC) WERE ACTUALLY APPLIED

CASE NO.	1989 GUIDELINE RANGE	ACTUAL ACC/CO SENTENCE	PROPOSED GUIDELINE OPTION #1	PROPOSED GUIDELINE OPTION #2	PROPOSED GUIDELINE OPTION #3	PROPOSED GUIDELINE OPTION #4	PROPOSED GUIDELINE OPTION #5	BASE LEVEL	SPECIFIC OFENSE CHARAC-TERISTIC
160	20(70-87)	180 mos+	26(120-150	28(140-175	30(168-210	28(140-175	30(168-210	a(2)	a(1),b(7)
161	14(37-46)	180 mos+	26(120-150					a(2)	b(3)
162	12(21-27)	180 mos+	24(77-96)					a(2)	
163	12(27-33)	180 mos++	26(110-137	26(110-137	28(130-162	26(110-137	28(130-162	a(2)	b(7)
164	12(30-37)	120 mos*	25(110-137					a(2)	b(2)
165	12(21-27)	180 mos+	26(92-115)					a(2)	b(2),b(3)
189	10(15-21)	180 mos+	22(63-78)					a(2)	
194	12(30-37)	180 mos+	26(120-150	26(120-150	28(140-175	26(120-150	28(140-175	a(2)	b(7)
195	12(30-37)	292 mos*	26(120-150	26(120-150	28(140-175	26(120-150	28(140-175	a(2)	b(3),b(7)
198	12(30-37)	180 mos+	26(120-150	26(120-150	27(130-162	26(120-150	27(130-162	a(2)	b(2),b(8)
199	14(37-46)	360 mos*	27(130-162	27(130-162	28(140-175	27(130-162	28(140-175	a(2)	b(3),b(8)
004	15(37-46)	180 mos+	29(140-175	29(140-175	31(168-210	29(140-175	31(168-210	a(2)	b(7)
009	12(30-37)	180 mos+	35(292-365	35(292-365	39(360-lif	35(292-365	39(360-lif	a(2)	b(2,3,7,8)
	14(37-46)	180 mos+	28(140-175	28(140-175	30(168-210	28(140-175	30(168-210	a(2)	b(3),b(7)
[illegible]	14(37-46)	180 mos+	27(130-162	27(130-162	28(140-175	27(130-162	28(140-175	a(2)	b(3),b(8)
021	12(27-33)	180 mos+	24(92-115)					a(2)	
022	14(27-33)	180 mos+	27(100-125					a(2)	b(2),b(3)
029	10(24-30)	84 mos*	24(100-125	24(100-125	26(120-150	24(100-125	26(120-150	a(2)	b(7)
041	12(30-37)	180 mos+	24(100-125					a(2)	
046	12(30-37)	180 mos+	24(100-125					a(2)	
053	12(30-37)	360 mos++	26(120-150	26(120-150	28(140-175	26(120-150	28(140-175	a(2)	b(7)[b(3)]
068	12(21-27)	180 mos+	24(77-96)					a(2)	
071	10(18-24)	180 mos+	22(84-105)					a(2)	[b(3)]
081	10(15-21)	180 mos+	24(77-96)	24(77-96)	26(92-115)	24(77-96)	26(92-115)	a(2)	b(7)
087	12(30-37)	180 mos+	26(120-150	26(120-150	28(140-175	26(120-150	28(140-175	a(2)	b(7)

Notes:

* Court applied Career Offender provisions.

\+ Court applied Armed Career Criminal provisions.

++ Court applied Career Offender and Armed Career Criminal provisions.

TABLE -- DEFENDANTS WITH THREE QUALIFYING PRIORS

ARMED CAREER CRIMINAL (ACC) COULD HAVE BEEN APPLIED

CASE NO.	ACTUAL 1989 GUIDELINE RANGE	POTENTIAL SENTENCE UNDER §4B1.4	PROPOSED GUIDELINE OPTION #1	PROPOSED GUIDELINE OPTION #2	PROPOSED GUIDELINE OPTION #3	PROPOSED GUIDELINE OPTION #4	PROPOSED GUIDELINE OPTION #5	BASE LEVEL	SPECIFIC OFFENSE CHARAC-TERISTIC
006	10(21-27)	31(168-210	[illegible]					a(2)	
019	10(24-30)	31(188-235	[illegible]					a(2)	
~~022~~	~~14(27-33)~~	~~32(210-262~~	~~27(100-125~~					~~a(2)~~	~~b(2),b(3)~~
023	14(37-46)	33(235-293	28(140-175	28(140-175	[illegible]0	28(140-175	30(168-210	a(2)	b(7)
024	10(24-30)	31(188-235	24(100-125	24(100-125	[illegible]	24(100-125	26(120-150	a(2)	b(7)
028	10(24-30)	31(188-235	[illegible] 25(110-137	25(110-137	26(120-150	25(110-137	26(120-150	a(2)	b(2),b(8)
030	12(30-37)	31(188-235	[illegible]					a(2)	b(3)
038+	22(84-105)+	33(235-293	26(120-150	26(120-150	[illegible]	269120-150	28(140-175	a(2)	b(7)
057	10(24-30)	33(235-293	[illegible] 25(110-137	25(110-137	26(120-150	25(110-137	26(120-150	a(2)	b(8)
066+	21(77-97)+	31(188-235	[illegible]	26(120-150	28(151-188	26(120-150	28(151-188	a(2)	b(3)
086	12(30-37)	33(235-293	15(41-51)	15(41-51)	16(46-57)	17(51-63)	[illegible]	a(4)	b(8)[b(3)]
090	10(15-21)	31(155-188	26(78-97)	26(78-97)	[illegible]	26(78-97)	28(97-121)	a(2)	b(7)
	4(6-12)	31(188-235	[illegible]					a(2)	
	14(27-33)	32(210-262	22(63-78)	[illegible]				a(2)	a(1)
108	14(37-46)	33(235-293	[illegible]					a(2)	
110	10(24-30)	31(188-235	[illegible]					a(2)	
116	10(6-12)	31(151-188	[illegible]					a(2)	b(2)
117	10(8-14)	31(151-188	[illegible] 26(70-87)	26(70-87)	28(87-108)	26(70-87)	28(87-108)	a(2)	b(2),b(7)
129	10(24-30)	31(188-235	25(110-137	25(110-137	[illegible] 28(140-175	25(110-137	28(140-175	a(2)	b(2)b(7)b(8)
132	10(24-30)	31(188-235	[illegible]					a(2)	
135	12(12-18)	33(188-235	[illegible]					a(2)	b(2)
151	14(37-46	32(210-262	22(84-105)	[illegible]				a(2)	a(1)
175*	6(12-18)	32(210-262	22(84-105)	[illegible]				a(2)	a(1)[b(3)]
183	14(33-41)	31(235-293	24(92-115)	26(110-137	[illegible]	26(110-137	28(130-162	a(2)	b(7)
234*	14(37-46)	32(210-262	24(100-125	26(120-150	[illegible]	26(120-150	28(140-175	a(2)	a(1),b(7)
302*	14(27-33)	32(210-262	30(135-168	32(168-210	[illegible]	32(168-210	34(210-262	a(2)	a(1)b(3,7)

Note: In these cases, defendants had at least three priors that qualified the defendant for Armed Career Criminal status, but the §924(e) enhancement was not sought.

\+ Result of cross reference to assault.

* Defendant would have qualified for Armed Career Criminal status had he been convicted under 18 U.S.C. §922(g)(1).

ARMED CAREER CRIMINAL AND CAREER OFFENDER
SUMMARY

Armed Career Criminal Provisions

(Read 18:924(e) and §4B1.4 for background)

Related Cases: **No restrictions for consolidated cases.** Count each prior separately if one or more cases is consolidated for sentencing purposes, and is not part of the same course of conduct.

Decay Factor: **No restrictions on age of convictions.** Count each prior regardless of age, if the defendant was sentenced as an adult.

Violent Crimes: **No restrictions on burglaries or B/E's.** Count each prior where an element of the crime included the use or threatened use of force or violence. Don't look at the actual underlying facts, only at the elements of the generic crime. Count both storehouse burglary and residential burglary as violent crimes.

Drug Offense: **Restricted to distribution offenses.** Count any offense that involves drug distribution, possession with intent to distribute, and conspiracy to distribute. Do not count simple possession offenses.

Career Offender Provisions

(Read §4B1.1 and 1.2 for background)

Related Cases: **Restrictions apply.** Count each prior separately ONLY if the prior was separated from another by an INTERVENING ARREST, or if the prior was a CRIME OF VIOLENCE, and is not part of the same course of conduct. Do not count drug distribution offenses unless they are separated by an intervening arrest.

Decay Factor: **Restricted to 10 or 15 years.** Count each prior ONLY if the prior received a sentence longer than one year and a day, and was less than fifteen years old, OR if the prior was less than ten years old.

Violent Crimes: **Restricted to residential burglaries and B/E.** Same as Armed Career Criminal, but do not count storehouse burglary or B/E. Do count residential burglary and B/E.

Drug Offense: **Same as Armed Career Criminal.**

TABLE -- NUMBER OF QUALIFYING PRIORS WHEN CALCULATED USING CAREER OFFENDER, ARMED CAREER CRIMINAL, AND HYBRID SYSTEMS

	TOTAL CASES REVIEWED	DEFENDANTS WITH 0 PRIORS	DEFENDANTS WITH 1 PRIOR	DEFENDANTS WITH 2 PRIORS	DEFENDANTS WITH 3 OR MORE PRIORS
ARMED CAREER CRIMINAL	140+	--	60	34	46
PROPOSED HYBRID SYSTEM	121++	--	69	52*	*
CAREER OFFENDER GUIDELINE	140+	12	68	28	32

Note:

\+ The criminal histories of 230 of the 289 firearms cases were reviewed again to recalculate the number of priors under A.C.C. and C.O. provisions. These 230 cases were selected by reviewing all case summaries and determining which were known to have prior convictions of some sort, and which might have such prior convictions. Of these 230 cases, 140 defendants had one or more priors under the A.C.C. provisions. The remaining defendants had zero priors under the A.C.C. provisions, and could only have zero priors under the C.O. provisions, and so have not been summarized in this table.

++ 121 defendants had one or more priors as originally calculated using the hybrid system.

* This figure represents defendants with two, three, or more priors. When these priors were calculated, we did not distinguish between defendants with two and defendants with three priors.

TABLE -- ANALYSIS OF DIFFERENT NUMBER OF QUALIFYING PRIORS UNDER CAREER OFFENDER AND ARMED CAREER CRIMINAL PROVISIONS

Firearms Cases	Cases Where Number of Priors Changed	Cases Where Offense Level Actually Changed	Decay Factor	Related Cases Definition	Crime of Violence Definition
289 cases	42 cases (15%)	25 cases (9%)	29 cases	5 cases	14 cases

TABLE -- NUMBER OF QUALIFYING PRIORS
USING ARMED CAREER CRIMINAL STATUTE (A.C.C.)
AND USING CAREER OFFENDER (C.O.) PROVISIONS

CASE NUMBER	USSC ID NUMBER	NUMBER OF PRIORS USING A.C.C.	SUMMARY OF A.C.C. PRIORS	NUMBER OF PRIORS USING C.O.	SUMMARY OF C.O. PRIORS	REASON FOR DIFFERENCE IN NUMBER OF PRIORS
001	57946	1	attempted burglary	1	same	
003	58158	2	assault with a dangerous weapon and use of a firearm, rape	2	same	
004	58443	6	5 robberies, PWI to deliver crack	6	same	
006	58513	4	burglary, assault and battery, assault with intent to rob, assault	2	burglary, assault with intent to rob	decay
007	58611	2	selling marijuana, assault and battery	1	assault and battery	suspended sentence
008	59175	1	robbery	1	same	
009	59079	3	burglary, burglary, attempted murder	3	same	
010	59203	2	burglary, attempted burglary of storehouse	0		suspended sentence, crime of violence
012	59362	2	delivery of marijuana, delivery of dangerous drugs	2	same	
013	59418	41	robbery, 40 burglary	14	1 robbery, 13 burglary	related cases
014	59425	12	12 burglaries	10	10 burglaries	related cases
015	59506	1	assault	1	same	
016	59325	2	drug trafficking	2	same	
017	59718	2	burglary, assault with bodily injury	2	same	
018	59813	1	attempted murder	1	same	
019	59971	5	armed robbery, burglary (not clear of what), attempted burglary of residence, robbery, and aggravated assault	4	not counted: burglary not clear of what	crime of violence
020	60018	1	shooting into an inhabited dwelling	0		decay

TABLE -- NUMBER OF QUALIFYING PRIORS
USING ARMED CAREER CRIMINAL STATUTE (A.C.C.)
AND USING CAREER OFFENDER (C.O.) PROVISIONS

CASE NUMBER	USSC ID NUMBER	NUMBER OF PRIORS USING A.C.C.	SUMMARY OF A.C.C. PRIORS	NUMBER OF PRIORS USING C.O.	SUMMARY OF C.O. PRIORS	REASON FOR DIFFERENCE IN NUMBER OF PRIORS
021	60193	3	robbery, burglary II, bank robbery	1	bank robbery	decay
022	60220	5	3 burglary, 2 deliveries of cocaine	3	1 burglary, 2 delivery of cocaine	decay, crime of violence
023	60228	3	armed robbery, burglary, B/E	2	armed robbery, B/E	crime of violence
024	60272	3	2 assault, PWI marijuana	3	same	
025	60383	1	assault and battery	1	same	
028	60562	4	2 battery, attempted rape, murder	3	battery, attempted rape, murder	decay
029	60631	2	selling cocaine, robbery	2	same	
030	60646	3	burglary, sale of false drugs, PWI	3	same	
031	60718	1	conspiracy to possess cocaine with intent to sell	1	same	
032	51847	3	manslaughter, terrorism, robbery	3	same	
033	51959	2	A/B on a policeman (two convictions)	2	same	
034	52291	2	burglary of a building, burglary of habitation	1	burglary of habitation	crime of violence
035	52292	2	burglary	2	same	
036	52358	2	burglary	0		crime of violence
037	52481	1	burglary	1	same	
038	52550	4	agg. assault, assault with intent to commit rape, attempted robbery, assault	3	attempted robbery, assault, assault with intent to rape	decay
039	52578	2	arson and burglary	1	arson	related case
041	52640	4	2 burglary, 2 offensive touching	4	same	

TABLE -- NUMBER OF QUALIFYING PRIORS
USING ARMED CAREER CRIMINAL STATUTE (A.C.C.)
AND USING CAREER OFFENDER (C.O.) PROVISIONS

CASE NUMBER	USSC ID NUMBER	NUMBER OF PRIORS USING A.C.C.	SUMMARY OF A.C.C. PRIORS	NUMBER OF PRIORS USING C.O.	SUMMARY OF C.O. PRIORS	REASON FOR DIFFERENCE IN NUMBER OF PRIORS
043	52863	1	PWID cocaine	1	same	
044	52868	1	burglary	1	same	
045	53235	2	B/E, assault with a deadly weapon	2	same	
046	53337	5	burglary/battery, armed burglary, agg. battery, attempted murder, assault with a deadly weapon	5	same	
047	53480	1	rape	1	same	
048	53742	2	A/B, sale and delivery of cocaine	2	same	
051	53807	2	distribution of cocaine	2	same	
053	54087	4	armed robbery (2 counts), ADW, B/E residential	4	same	
054	54361	1	assault	1	same	
055	54370	1	ADW of law enforcement officers	1	same	
056	55164	1	voluntary manslaughter	1	same	
057	55313	9	burglary, agg. battery, 8 drug delivery	2	drug delivery, agg. battery	related cases, decay
058	55448	1	cocaine delivery	1	same	
059	54492	1	burglary	1	same	
061	54676	1	agg. assault and battery	1	same	
062	54696	1	PWID cocaine and heroin	1	same	
063	54704	2	burglary, drug manufacture	2	same	
064	54873	2	assault, distribution of heroin	1	distribution of heroin	decay
066	55066	5	4 assault, unlawful use of weapon	5	same	

TABLE -- NUMBER OF QUALIFYING PRIORS
USING ARMED CAREER CRIMINAL STATUTE (A.C.C.)
AND USING CAREER OFFENDER (C.O.) PROVISIONS

CASE NUMBER	USSC ID NUMBER	NUMBER OF PRIORS USING A.C.C.	SUMMARY OF A.C.C. PRIORS	NUMBER OF PRIORS USING C.O.	SUMMARY OF C.O. PRIORS	REASON FOR DIFFERENCE IN NUMBER OF PRIORS
067	55187	1	burglary	1	same	
068	55421	4	3 robbery, assault	3	2 robbery, assault	decay
069	55426	1	assault	1	same	
071	59415	3	B/E, robbery, battery of a policeman	3	same	
078	55533	1	burglary	1	same	
079	55669	2	robbery, delivery of cocaine	1	delivery of cocaine	decay
081	55690	3	2 burglary, cocaine trafficking	3	same	
082	55591	2	burglary	2	same	
083	55614	1	delivery of cocaine	1	same	
085	55722	1	bank robbery	1	same	
086	55786	3	burglary	0		decay, crime of violence
087	55789	6	B/E	4	B/E	decay, related cases
089	55833	2	burglary	1	burglary	decay
090	55868	3	robbery, battery, PWID cocaine	3	same	
092	56009	1	B/E	1	same	
093	56025	1	assault	1	same	
094	56034	2	burglary, delivery of marijuana	0		decay
095	56045	1	agg. assault	0		decay
097	55422	1	A/B	0		decay
100	45462	2	first degree murder, aggravated assault	2	same	
1004	53447	2	office burglary, PWID marijuana	1	PWID marijuana	crime of violence
1006	53794	1	delivery of controlled substance	1	same	

TABLE -- NUMBER OF QUALIFYING PRIORS
USING ARMED CAREER CRIMINAL STATUTE (A.C.C.)
AND USING CAREER OFFENDER (C.O.) PROVISIONS

CASE NUMBER	USSC ID NUMBER	NUMBER OF PRIORS USING A.C.C.	SUMMARY OF A.C.C. PRIORS	NUMBER OF PRIORS USING C.O.	SUMMARY OF C.O. PRIORS	REASON FOR DIFFERENCE IN NUMBER OF PRIORS
1007	54699	1	residential burglary	1	same	
101	45616	1	aggravated robbery	1	same	
102	45747	1	aggravated robbery	1	same	
105	46274	1	PWI to distribute cocaine	1	same	
106	47149	3	B/E-robbery by force, simple robbery, burglary 2nd degree,	2	simple robbery, burglary 2nd degree	decay
107	46809	1	robbery	1	same	
108	46788	3	residential burglary, delivery of phenmatrizine, burglary of a building	2	residential burglary, delivery of phenmatrizine	crime of violence
109	46787	2	storehouse burglary, storehouse burglary	0		crime of violence
110	49100	3	assault with intent to rob while armed, assault with intent to rob while armed, assault with intent to do great bodily harm	3	same	
114	48914	1	aggravated robbery	1	same	
115	50134	1	attempted murder 1st degree	1	same	
117	49537	4	B/E, B/E, B/E, PWI to sell cocaine,	1	PWI to sell cocaine	decay
119	49288	2	murder robbery by violence	0		decay
120	49273	2	PWI to sell heroin, PWI to deliver cocaine	2	same	
121	49225	1	possession of heroine for sale	1	same	
122	49212	2	robbery, residential burglary	2	same	

TABLE -- NUMBER OF QUALIFYING PRIORS
USING ARMED CAREER CRIMINAL STATUTE (A.C.C.)
AND USING CAREER OFFENDER (C.O.) PROVISIONS

CASE NUMBER	USSC ID NUMBER	NUMBER OF PRIORS USING A.C.C.	SUMMARY OF A.C.C. PRIORS	NUMBER OF PRIORS USING C.O.	SUMMARY OF C.O. PRIORS	REASON FOR DIFFERENCE IN NUMBER OF PRIORS
123	48728	1	PWI distribute marijuana	1	same	
126	48894	1	PWI to sell marijuana and LSD	1	same	
127	48911	1	assault by threat	1	same	
128	51732	1	trafficking in marijuana	1	same	
129	51568	4	assault and battery, distribution of marijuana and phenmetrazine, felony possession of PCP, felony possession of PCP/assault and battery	4	same	
131	51446	1	assault with deadly weapon	1	same	
132	51320	3	residential B/E, sale of stimulants, robbery with firearm	1	robbery with firearm	decay
133	50852	1	residential B/E,	1	same	
134	50675	2	agg. aggression, importing marijuana	2	same	
135	50423	1	residential burglary	1	same	
143	51134	2	2 residential burglary	2	same	
146	50382	1	assault	1	same	
150	49137	2	storehouse B/E, delivery of marijuana	0		decay
151	48407	3	sale of phencyclidine and heroin, armed robbery, assault on police officer	3	same	
152	51748	2	delivery of cocaine, delivery of cocaine	2	same	

TABLE -- NUMBER OF QUALIFYING PRIORS
USING ARMED CAREER CRIMINAL STATUTE (A.C.C.)
AND USING CAREER OFFENDER (C.O.) PROVISIONS

CASE NUMBER	USSC ID NUMBER	NUMBER OF PRIORS USING A.C.C.	SUMMARY OF A.C.C. PRIORS	NUMBER OF PRIORS USING C.O.	SUMMARY OF C.O. PRIORS	REASON FOR DIFFERENCE IN NUMBER OF PRIORS
159	50404	1	aggravated assault on officer	1	same	
160	49241	4	residential burglary, storehouse burglary, obstruction with violence, storehouse burglary	2	residential burglary, obstruction with violence	crime of violence
162	50286	3	residential burglary, armed robbery, armed robbery	3	same	
163	51847	3	manslaughter, terrorism, robbery 2nd degree	3	same	
164	47143	3	residential burglary, storehouse burglary, attempted storehouse burglary	1	residential burglary	crime of violence
165	46531	6	storehouse B/E, storehouse B/E, shooting into a dwelling, aggravated assault, assault with intent to commit murder, assault	2	assault, assault with intent to commit murder	decay
171	60300	1	agg. assault on a police officer	1	same	
175	56416	3	battery, ADW, agg. assault	3	same	
183	59956	3	ADW, A/B, PWID	3	same	
186	60167	1	residential burglary	1	same	
187	60168	1	assault with intent to kill	1	same	
188	52962	1	PWID	1	same	
189	56152	3	assault with intent to rob, robbery, assault on a police officer	2	robbery, assault on a police officer	decay
190	56166	1	murder	1	same	

TABLE -- NUMBER OF QUALIFYING PRIORS
USING ARMED CAREER CRIMINAL STATUTE (A.C.C.)
AND USING CAREER OFFENDER (C.O.) PROVISIONS

CASE NUMBER	USSC ID NUMBER	NUMBER OF PRIORS USING A.C.C.	SUMMARY OF A.C.C. PRIORS	NUMBER OF PRIORS USING C.O.	SUMMARY OF C.O. PRIORS	REASON FOR DIFFERENCE IN NUMBER OF PRIORS
193	56401	2	aggravated robbery, aggravated robbery	2	same	
194	56569	3	armed robbery, agg assault, robbery	3	same	
195	56585	5	agg. murder, threats, 3 B/E	2	agg. murder, B/E	decay, crime of violence
197	57142	1	robbery	1	same	
198	57779	5	residential burglaries	5	same	
199	57832	4	4 burglaries	4	same	
227	59752	2	APO, burglary	1	assault	crime of violence
234	55912	3	B/E, robbery, PWID	3	same	
302	11631	3	storehouse breaking, housebreaking, burglary	1	burglary	decay
305	19130	2	PWID, battery	0		decay
309	24821	1	assault	1	same	
310	25213	1	burglary II	1	same	
311	25799	1	robbery	1	same	
316	32381	1	battery	1	same	
322	40699	1	trafficking	1	same	
328	45370	1	terroristic threats	1	same	
331	49868	1	agg. assault	1	same	
333	50657	1	robbery	1	same	
602	25011	2	robbery, rape	0		decay

UNITED STATES SENTENCING COMMISSION
1331 PENNSYLVANIA AVENUE, NW
SUITE 1400
WASHINGTON, D.C. 20004
(202) 626-8500
FAX (202) 662-7631

William W. Wilkins, Jr. Chairman
Julie E. Carnes
Helen G. Corrothers
Michael S. Gelacak
George E. MacKinnon
A. David Mazzone
Ilene H. Nagel
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Paul L. Maloney (ex officio)

MEMORANDUM

TO: COMMISSIONER JULIE E. CARNES

FROM: VINCE VENTIMIGLIA

RE: FIREARMS EXPORT GUIDELINE §2M5.2

DATE: MARCH 4, 1991

You asked that I review cases sentenced under §2M5.2 (Exportation of Arms, Munitions, or Military Equipment or Services Without Required Validated Export License) and determine how total offense levels under the firearms export guideline (§2M5.2) generally compare to total offense levels under the current firearms guidelines, and the proposed firearms guideline.

In general, the proposed firearms guideline (§2K2.1), and the firearms export guideline (§2M5.2) produce similar total offense levels for similar conduct. The current firearms guidelines produce total offense levels that diverge considerably from §2M5.2 where small arms are involved.

The attached table briefly summarizes relevant sentencing information for the sixty-nine single count cases sentenced post-Mistretta under §2M5.2 to determine the nature of offenses generally

prosecuted. Typically, the statute of conviction is 22 U.S.C. § 2778, authorizing the Secretary of State to require exporters of defense articles (including firearms) and defense services to secure an export license prior to exporting such items.

The actual facts of the case (including whether or not the defendant received acceptance of responsibility) were applied to the current §2M5.2, which was amended in 1990. Under the previous version (under which all sixty-nine cases were sentenced) base offense level 14 applied where the hardware was not "sophisticated," and base offense level 22 applied where the hardware was "sophisticated." No specific offense characteristics applied. The 1990 amendments provide for a base offense level 14 where the offense involves only ten or fewer non-fully-automatic small arms (rifles, handguns, or shotguns); and a base offense level 22, otherwise.

The proposed firearms guideline §2K2.1 (1991) does not supplant or alter §2M5.2, but nevertheless produces total offense levels that are consistent with the export guideline, since similar offense conduct could conceivably be charged under either the export guideline (§2M5.2) or the firearms guidelines. (For example, persons charged with exporting without a license under 22 U.S.C. § 2778 might theoretically be charged with transferring firearms to a person not residing in the State in which the transferor resides.)

Generally, the proposed firearms guideline §2K2.1 (1991) would provide a base offense level 12 under §2K2.1(a)(5)(E) (unlawfully transferring firearm to person not residing in transferor's State of residence), where only small arms (as defined in §2M5.2) are involved.

Where other firearms are involved, base offense level 18 (machineguns, etc.) or 20 (destructive devices) would apply. The most frequently occurring specific offense characteristic, §2K2.1(b)(2), would add the following levels where multiple firearms are involved:

	Number of Firearms	Increase in Level
(A)	3-4	add **1**
(B)	5-7	add **2**
(C)	8-12	add **3**
(D)	13-24	add **4**
(E)	25-49	add **5**
(F)	50 or more	add **6.**

The current guidelines would also apply this multiple firearms table, assuming sentencing under §2K2.2 (1990), which involves firearms dealing offenses. The relevant base offense level under §2K2.2 would be level 6 where small arms are involved, and level 18 where other firearms are involved (disregarding the requirement of a particular statute of conviction).

A comparison of the proposed firearms guideline §2K2.1 (1991), the current export guideline (§2M5.2), and the current firearms guideline provides, all things equal, the following results:

TABLE -- COMPARISON OF TOTAL OFFENSE LEVELS UNDER CURRENT AND PROPOSED FIREARMS GUIDELINES AND EXPORT GUIDELINE (2M5.2)			
OFFENSE CONDUCT	TOTAL OFFENSE LEVELS		
	CURRENT FIREARMS GUIDELINE (2K2.2)	PROPOSED FIREARMS GUIDELINE (2K2.1)	CURRENT EXPORT GUIDELINE (2M5.2)
Exporting 1-2 small arms	level 6	level 12	level 14
Exporting 3-4 small arms	level 7	level 13	level 14
Exporting 5-7 small arms	level 8	level 14	level 14
Exporting 8-10 small arms	level 9	level 15	level 14
Exporting 11-12 small arms	level 9	level 15	level 22
Exporting 13-24 small arms	level 10	level 16	level 22
Exporting 25-49 small arms	level 11	level 17	level 22
Exporting 50+ small arms	level 12	level 18	level 22
Exporting 1-2 N.F.A. firearms	level 18	level 18	level 22
Exporting 3-4 N.F.A. firearms	level 19	level 19	level 22
Exporting 5-7 N.F.A. firearms	level 20	level 20	level 22
Exporting 8-12 N.F.A. firearms	level 21	level 21	level 22
Exporting 13-24 N.F.A. firearms	level 22	level 22	level 22
Exporting 25-49 N.F.A. firearms	level 23	level 23	level 22
Exporting 50+ N.F.A. firearms	level 24	level 24	level 22
Exporting 5-7 destructive devices	level 20	level 22	level 22

TABLE -- CASE SUMMARIES FOR FIREARMS EXPORT GUIDELINE §2M5.2

USSC ID NO.	FIREARM OR AMMUNITION INVOLVED	§2M5.2 TOTAL OFFENSE LEVEL (1989)	§2M5.2 ACTUAL SENTENCE IMPOSED (1989)	§2M5.2 TOTAL OFFENSE LEVEL (1990)*	TYPE OF CONDUCT
89-9513	13650 rounds of ammunition	12(10-16)	16 months	level 20	sale
89-9802	13650 rounds of ammunition	12(10-16)	13 months	level 20	sale
89-10011	8 long and short guns, 50 rounds of ammunition	12(12-18)	probation	level 12 or level 20	sale
89-10787	light anti-tank weapons, M79 grenade launchers, MAC10 machineguns	22(41-51)	36 months	level 22	sale
89-11143	250 descramblers	12(10-16)	12 months	level 20	sale
89-12333	21 firearms, 2000 rounds of ammunition	12(10-16)	12 months	level 20	sale and gifts
89-13261	14 AK47 rifles	12(10-16)	12 months	level 20	sale
89-14815	6 pistols, 1235 rounds ammunition	12(10-16)	probation	level 12 or level 20	gifts
89-14886	10 handguns, ammunition	12(10-16)	10 months	level 12 or level 20	pro-tection
89-15199	1 pistol	12(10-16)	4.5 months	level 12	pro-tection
89-15284	25 firearms, AK47s, and Uzis	22(46-57)	12 months	level 22	sale
89-17382	10 handguns	16(21-27)	21 months	level 16	intl defense
89-17383	10 handguns	14(15-21)	4.5 months	level 14	intl defense
89-17572	5 long and short guns and 1,060 rounds ammunition	12(10-16)	12 months	level 12 or level 20	sale
89-17999	50 Uzis, pistols, long arms	8(2-8)	4 months	level 16	sale
89-18319	11 long and short guns, and ammunition	14(15-21)	16 months	level 22	sale

TABLE -- CASE SUMMARIES FOR FIREARMS EXPORT GUIDELINE §2M5.2

USSC ID NO.	FIREARM OR AMMUNITION INVOLVED	§2M5.2 TOTAL OFFENSE LEVEL (1989)	§2M5.2 ACTUAL SENTENCE IMPOSED (1989)	§2M5.2 TOTAL OFFENSE LEVEL (1990)*	TYPE OF CONDUCT
89-18746	radar tracking device	22(41-51)	11 months	level 22	sale
89-20865	830 rounds of ammunition	12(10-16)	10 months	level 20	sale
89-21175	3 long and short arms, and 1343 rounds of ammunition	12(10-16)	10 months	level 12	pro-tection
89-21602	dozens of long and short guns	10(6-12)	probation	level 18	sale
89-22276	14 longarms	12(10-16)	10 months	level 20	sale
89-22319	2 pistols	12(10-16)	probation	level 12	protect ion
89-22867	independent landing system	12(10-16)	10 months	level 20	sale
89-22869	independent landing system	12(10-16)	10 months	level 20	sale
89-23249	poison gas	21(37-46)	37 months	level 21	sale
89-25426	16 rifles and 1 pistol	12(10-16)	10 months	level 20	sale
89-26916	1 AK47 and ammunition	12(10-16)	probation	level 20	sale
89-28979	aircraft parts and howitzers	16(21-27)	probation	level 26	sale
90-29020	6 pistols and ammunition	13(12-18)	12 months	level 13 or level 21	sale
90-30647	radar items and other material	22(41-51)	41 months	level 22	sale
90-30648	radar items and other material	22(41-51)	41 months	level 22	sale
90-32212	6800 rounds of ammunition	12(10-16)	10 months	level 20	sale
90-33477	16 handguns and ammunition	12(10-16)	6 months	level 20	sale
90-33536	290 rounds of ammunition	12(10-16)	13 months	level 20	protect ion

TABLE -- CASE SUMMARIES FOR FIREARMS EXPORT GUIDELINE §2M5.2

USSC ID NO.	FIREARM OR AMMUNITION INVOLVED	§2M5.2 TOTAL OFFENSE LEVEL (1989)	§2M5.2 ACTUAL SENTENCE IMPOSED (1989)	§2M5.2 TOTAL OFFENSE LEVEL (1990)*	TYPE OF CONDUCT
90-34014	aircraft parts and howitzers	20(33-41)	12 months	level 20	sale
90-34018	aircraft parts and howitzers	22(41-51)	44 months	level 22	sale
90-35333	9 firearms and 2500 rounds of ammunition	12(10-16)	10 months	level 12 or level 20	gifts
90-36540	dozens of long and short arms	17(18-24)	18 months	level 25	sale
90-37319	50,000 rounds of ammunition	12(10-16)	10 months	level 20	sale
90-37340	aircraft parts	20(33-41)	33 months	level 20	sale
90-37477	5,000 rounds of ammunition	3(0-3)	3 months	level 20	sale
90-38129	4 handguns and rifles, and 1,000 rounds of ammunition	12(10-16)	probation	level 12 or level 20	sale
90-38547	50,000 rounds of ammunition	12(10-16)	10 months	level 20	sale
90-39436	2 handguns	12(10-16)	10 months	level 12	persona 1 use
90-40688	3 rifles	12(10-16)	10 months	level 12	sale
90-40930	3 firearms and ammunition	12(10-16)	10 months	level 12 or level 20	
90-41794	airplane parts	12(10-16)	10 months	level 20	sale
90-42701	airplane parts	12(10-16)	10 months	level 20	sale
90-43349	stinger missile parts	26(63-78)	78 months	level 26	sale
90-44364	37 shotguns and pistols	14(10-16)	10 months	level 22	sale
90-44869	37 shotguns and pistols	10(6-12)	6 months	level 18	sale
90-47174	97 AK47 rifles	14(15-21)	2 months	level 22	sale

TABLE -- CASE SUMMARIES FOR FIREARMS EXPORT GUIDELINE §2M5.2

USSC ID NO.	FIREARM OR AMMUNITION INVOLVED	§2M5.2 TOTAL OFFENSE LEVEL (1989)	§2M5.2 ACTUAL SENTENCE IMPOSED (1989)	§2M5.2 TOTAL OFFENSE LEVEL (1990)*	TYPE OF CONDUCT
90-47240	10 AR15 rifles	19(30-37)	36 months	level 19	intl assass-ination
90-48746	aircraft parts	14(15-21)	6 months	level 22	sale
90-50681	bomb detonation systems	17(24-36)	24 months	level 17	intl terrori sm
90-50683	bomb detonation systems	24(24-36)	96 months	level 24	intl terrori sm
90-50687	bomb detonation systems	22(24-36)	41 months	level 22	intl terrori sm
90-51885	numerous bombs, silencers, machineguns and other guns	14(15-21)	probation	level 22	sale
90-52056	bomb detonation systems	24(51-63)	120 months	level 24	intl terror
90-52581	hundreds of handguns	18(27-33)	12 months	level 18	sale
90-52619	hundreds of firearms	18(33-41)	41 months	level 18	sale
90-53145	radio transceivers	12(10-16)	probation	level 20	sale
90-53161	radio transceivers	12(10-16)	probation	level 20	sale
90-53162	radio transceivers	12(10-16)	probation	level 20	sale
90-53576	hundreds of firearms	18(27-33)	12 months	level 20	sale
90-55651	numerous grenade launchers, machine uns, automatic pistols, mortars, automatic rifles	20(37-46)	30 months	level 20	sale in ex-change for drugs
90-57590	50,000 rounds of ammunition	10(6-12)	3 months	level 20	sale
90-58936	2 handguns	12(10-16)	probation	level 12	sale
62104	1 handgun	6(0-6)	5 months	level 6	sale

Note: * assumes application of current firearms guideline §2M5.2 to actual case facts.

TABLE -- SUMMARY OF LARCENY AND RECEIPT OF STOLEN PROPERTY CASE CHARACTERISTICS

CHAPTER TWO GUIDELINE APPLIED	NUMBER OF CASES INVOLVING FELONS	NUMBER OF CASES INVOLVING N.F.A. FIREARMS	NUMBER OF CASES INVOLVING CONTROLLED SUBSTANCES	NUMBER OF CASES INVOLVING FIREARM OR DRUG CHARGES	NUMBER OF CASES TRIGGERING PROPOSED CROSS REFERENCE	TOTAL NUMBER OF CASES REVIEWED
§2B1.1 (Larceny and Theft)	8	2	3	4	11	26
§2B1.2 (Receipt of Stolen Property)	10	1	3	9	11	12
TOTAL	14	3	6	13	20*	38

* Additional cases could likely have been charged as violations of 18 U.S.C. § 922(i) (transporting or shipping stolen firearms in interstate commerce) or § 922(j) (receiving stolen firearms moving as, or constituting, interstate commerce).

TABLE -- LARCENY AND RECEIPT OF STOLEN PROPERTY GUIDELINES
SUMMARY OF CASES APPLYING ENHANCEMENT FOR STOLEN FIREARM

CASE NUMBER	GUIDELINE	DROPPED COUNTS	CRIMINAL HISTORY	TYPE OF FIREARM	INTERSTATE COMMERCE	GUIDELINE RANGE AND SENTENCE IMPOSED
13139	2B1.1	none	none	1 rifle	stolen with other property from Indian reservation residence	level 5 (0-5 months) 5 months
14682	2B1.1	none	none	1 handgun	stolen with money from Loomis security truck on interstate highway	level 16 (21-27 months) 24 months
15128	2B1.1	none	forgery, molesting standing vehicle	1 grenade	stolen with other equipment from military armory	level 9 (6-12 months) 6 months
16057	2B1.1	none	petty theft	1 9mm pistol	from federal engineering lab	level 5 (0-5 months) probation
18794	2B1.1	none	criminal trespass	1 .38 caliber handgun	from federal office building	level 5 (0-5 months) probation
19675	2B1.1	none	none	1 firearm	stolen with other property from cars located on air force base	level 10 (6-12 months) 12 months
20198	2B1.1	none	none	1 rifle	stolen along with other property from Indian reservation residence	level 6 (1-7 months) 5 months
26	2B1.1	none	none	1 handgun	vehicle in D.E.A. parking lot	level 5 (1-7 months) 3 months
30691	2B1.1	2 counts 18:2113	none	1 pistol, 1 shotgun	stolen with other property from armored car	level 18 (27-33 months) 33 months
32192	2B1.1 2K2.2	none, but stipulated to offense conduct in violation of §5861(d)	none	1 rifle 1 sawed off shotgun (possessed) 1 tear gas dispenser ammunition	1 tear gas dispenser and various items from VA Med. center 1 rifle and ammunition from KMART	level 14 (15-21 months) 15 months (grouped counts, including 2K2.2 reduction for sporting purposes)
34761	2B1.1	none	robbery escape CCW theft B/E autos B/E autos theft	various items and unstated firearm(s)	from 7 cars in national park	level 11 (27-33 months) 33 months
34777	2B1.1	none	3 DUIs	various items and unstated firearm(s)	from 7 cars in national park	level 13 (18-24 months) 20 months
35038	2B1.1	21:846 18:641 21:841	none	61 pounds of marijuana	local police evidence room	level 12 (10-16 months) 10 months (5 months CTC)

TABLE -- LARCENY AND RECEIPT OF STOLEN PROPERTY GUIDELINES
SUMMARY OF CASES APPLYING ENHANCEMENT FOR STOLEN FIREARM

CASE NUMBER	GUIDELINE	DROPPED COUNTS	CRIMINAL HISTORY	TYPE OF FIREARM	INTERSTATE COMMERCE	GUIDELINE RANGE AND SENTENCE IMPOSED
35482	2B1.1	2 counts 18:661 pled to 21:844 18:661	sale of narcotics DWI	1 9mm pistol 1 oz. marijuana 1 g. cocaine other items	cars in national park	level 9 (6-12 months) 9 months
35483	2B1.1	3 counts 18:661 21:844	none	1 9mm pistol 1 oz. marijuana 1 g. cocaine other items	cars in national park	level 10 (6-12 months) 6 months
35556	2B1.1	1 count not stated	DUI, DUS, larceny, B/E auto, shoplift, A/B, disorderly conduct, traffic violations, lewd act on a minor, shoplifting	15 AKS762 semi-automatics	Customs container	level 5 (4-10 months) 10 months
36557	2B1.1	2 counts not stated	interfering with govt. officer	2 shotguns and other mail items	from the mail, by postal employee	level 7 (1-7 months) 1 months CTC
39057	2B1.1	none	none	70 rifles	from interstate shipment	level 6 (0-6) probation
40640	2B1.1	none	unauth. use of vehicle	1 handgun, 1 shotgun	from FBI jeep, along with other items	level 6 (2-8 months) not provided
42455	2B1.1	none	3 DUI's and agg. assault	3 revolvers 2 pistols 2 derringers	along with other merchandise from a personal residence	level 7 (8-14 months) 11 months
43241	2B1.1	none	none	1 handgun, 1 shotgun	from FBI vehicle	level 8 (2-8 months) 2 months
43616	2B1.1	18:659	theft, DWS, burglary (misd.) criminal trespass (misd.)	70 rifles	from interstate shipment	level 8 (4-10 months) 10 months
45300	2B1.1	none	DUI	1 shotgun	from a truck	level 5 (0-6 months) 1 month
47666	2B1.1	none	theft of treasury check, petty larceny; 4 robbery, felony assault, 3 bad check (misd. & felony), misd. A/B all of which may be related; robbery; escape; 4 armed robbery and 10 felony bad checks (related); 4 felony bad checks; escape	1 revolver	defendant escaped from jail, stole secret service car, and took the revolver from the car trunk, later selling it to a drug dealer	level 7 (15-21 months) 21 months
58682	2B1.1	none	2 DUI, 2 shoplifting	4 pistols, 1 M-16 rifle	from a museum along with other memorabilia	level 2 (0-5 months) probation

TABLE -- LARCENY AND RECEIPT OF STOLEN PROPERTY GUIDELINES
SUMMARY OF CASES APPLYING ENHANCEMENT FOR STOLEN FIREARM

CASE NUMBER	GUIDELINE	DROPPED COUNTS	CRIMINAL HISTORY	TYPE OF FIREARM	INTERSTATE COMMERCE	GUIDELINE RANGE AND SENTENCE IMPOSED
58965	2B1.1	none	none	1 .44 caliber revolver	from a residence	level 5 (0-6 months) probation
22255	2B1.2 2K2.1	jury convict of §922(g), 18:371/ 18:2315 RSP convictn was non-guidelin e	house burglary, stabbing/ escape, attempted B/E and attempted B/E	7 antique firearms 8 additional firearms	stolen from personal residences in at least 29 burglaries (additional property stolen worth almost $500,000)	level 20 (41-51 months) 180 months
23734	2B1.2	18:371, 21:846, 18:2312, 18:922g 18:922g 18:1952 7:2023 pled to §922(i)	CCW, possessn.of meth., house burglary, 2 DWIs, theft, possessn. of meth.	26 grams of methamphetamine 5 handguns (3 of them stolen)	stolen along with numerous other items from vehicles, and residential burglaries	level 6 (12-18 months) 18 months
24504	2B1.2	2 counts 18:553	unauth. use of vehicle	1 shotgun	4 thefts of vehicles, one with shotgun in it	level 15 (21-27 months) 22 months
.14	2B1.2	3 counts of 18:371/ 18:2113	none	1 pistol, 1 shotgun	stolen with money from armored car	level 12 (10-16 months 16 months
30484	2B1.2	18:641; 21:841; 21:846; 18:371	forgery; delivery of cannabis	61 pounds of marijuana	local police evidence room	level 12 (12-18 months) 12 months
34634	2B1.2	none	5 RSP, fraud, 2 bookmkng theft, working lottery	1 handgun	firearm and hundreds of thousands of dollars in clothing stolen from Japan Air Lines by their truck driver, and sold to defendant	level 15 (30-37 months) 30 months
37743	2B1.2 2K2.1	pled to §922(a)6	petty larceny, 2 bad check, grand larceny	1 Uzi, 2 rifles, 2 shotguns	1 firearm purchased with bad check, all firearms purchased for other persons who then returned them for credit	level 12 (21-27 months) 12 months
37814	2B1.2	pled to §922(j)	burglary, theft, theft	6 handguns	stolen from UPS packages mailed interstate	level 7 (2-8 months) 2.5 months "the guideline for §922(j) is §2B1.2"

TABLE -- LARCENY AND RECEIPT OF STOLEN PROPERTY GUIDELINES
SUMMARY OF CASES APPLYING ENHANCEMENT FOR STOLEN FIREARM

CASE NUMBER	GUIDELINE	DROPPED COUNTS	CRIMINAL HISTORY	TYPE OF FIREARM	INTERSTATE COMMERCE	GUIDELINE RANGE AND SENTENCE IMPOSED
42421	2B1.2	pled to 21:841	damage to property	pharmaceutical drugs equivalent to 473.24 grams (heroin equivalency) and worth $1,000,000	from interstate trucking shipment (he was truck driver who got 10% of take)	level 13 (12-18 months) 3 months CTC
44501	2B1.2 2K2.1	jury convict of §922(g), §924(e), 2 counts §5861(d) 3 counts §922(i)	misd. RSP misd. possess. firearms, house B/E escape w/ violence, criminal mischief, attempted petty larceny, house burglary, bank robbery	1 short barrel rifle 1 short barrel shotgun 2 handguns	stolen (along with other property) from personal residences and carried interstate	level 19 (57-71 months) 180 months (mandatory minimum) firearms possession counts grouped with RSP counts
48690	2B1.2	pled to §922(i) and §924(a)	Canadian convictions for B/E, theft	1 knife, 50 rounds of .22 caliber ammunition, 1 .32 revolver, 3 rounds .32 caliber ammunition	stolen from pickup truck	level 5 (0-6 months) 4 months "the guideline used for §922(i) is §2B1.2"
[illegible]02	2B1.2	pled to §922(g) and 18:2314	petty larceny, 3rd degree burglary, 3rd degree burglary	1 Uzi 2 rifles 2 shotguns	purchased fraudently from various dealers and redeemed for cash	level 12 (15-21 months) 12 months

TABLE -- COMPARISON OF OFFENSE LEVELS UNDER
CURRENT FIREARMS GUIDELINES AND PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)
AND OTHER NON-FIREARMS GUIDELINES

LEVEL	PROPOSED FIREARMS GUIDELINES	STATUTORY MAXIMUM	CURRENT FIREARMS GUIDELINES	STATUTORY MAXIMUM	OTHER OFFENSE GUIDELINES	STATUTORY MAXIMUM
37			Career Offender and Armed Career Criminal (where §922(g) is predicate and is considered crime of violence) (4B1.1(A))	10 years	Drug trafficking (50-150kg cocaine) (2D1.1) (level 36)	10 year mand.min. (21:841)
34			Armed Career Criminal with N.F.A. firearm or crime of violence (4B1.4)	15 year mandatory minimum	Drug trafficking (15-50kg cocaine) (2D1.1)	10 year mand.min. (21:841)
					Career offender; statutory maximum of 25 years or more (4B1.1(B))	25 years or more
32			Armed Career Criminal (level 33) (4B1.4)	15 year mandatory minimum	Drug trafficking (5-15kg cocaine) (2D1.1)	10 year mand.min. (21:841)
					Career offender; statutory maximum of 20-25 years (4B1.1(C))	20-25 years
					Assault with Intent to Commit Murder; permanent or life-threatening injury (2A2.1)	20 years (18:113)
30					Drug trafficking (3.5-5kg cocaine) (2D1.1)	5 year mand.min. (21:841)
					Career offender; statutory maximum of 15-20 years (level 29) (4B1.1(D))	15-20 years
					Robbery; bank; weapon discharged; (2B3.1) (level 29) * additional mandatory consecutive 5-year sentence typically applies	25 years (18:2113) (18:924c)

TABLE -- COMPARISON OF OFFENSE LEVELS UNDER
CURRENT FIREARMS GUIDELINES AND PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)
AND OTHER NON-FIREARMS GUIDELINES

LEVEL	PROPOSED FIREARMS GUIDELINES	STATUTORY MAXIMUM	CURRENT FIREARMS GUIDELINES	STATUTORY MAXIMUM	OTHER OFFENSE GUIDELINES	STATUTORY MAXIMUM
28					Drug trafficking (2-3.5kg cocaine) (2D1.1)	5 year mand.min. (21:841)
					Robbery; bank; weapon used (2B3.1) *additional mandatory consecutive 5-year sentence typically applies	25 years (18:2113)
					Assault with Intent to Commit Murder; no serious bodily injury (2A2.1)	20 years (18:113)
					Money laundering; $1-2 million (2S1.1)	20 years (18:1956)
26	Average total offense level felon with two or more prior violent or drug convictions (2K2.1(a)(2) options 3/5)	10 year 15 year mand. min. if 3 prior			Drug trafficking; 500g-2kg cocaine (2D1.1)	5 year minimum (21:841)
					Extortion; weapon used; serious bodily injury (2B3.2)	20 years (18:875)
					Robbery; bank; weapon possessed (2B3.1) (level 27) * additional mandatory consecutive 5-year sentence typically applies	25 years (18:2113) (18:924c)
					Product tampering; attempt; risk of injury (level 25) (2N1.1)	10 years (18:1365)
					Laundering money instruments; knew proceeds unlawful drugs; (2S1.1)	20 years (18:1956)

TABLE -- COMPARISON OF OFFENSE LEVELS UNDER
CURRENT FIREARMS GUIDELINES AND PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)
AND OTHER NON-FIREARMS GUIDELINES

LEVEL	PROPOSED FIREARMS GUIDELINES	STATUTORY MAXIMUM	CURRENT FIREARMS GUIDELINES	STATUTORY MAXIMUM	OTHER OFFENSE GUIDELINES	STATUTORY MAXIMUM
24	Base offense level felon with two or more prior violent or drug convictions (2K2.1(a)(2))	10 years 15 year mand.min. 3 priors	Providing or Possessing Contraband in Prison (§2P1.2) (level 23) mandatory consecutive	10 years	Drug trafficking; 400-500g cocaine (2D1.1)	20 years (21:841)
	Average total offense level felon with two or more prior violent or drug convictions (2K2.1(a)(2) option 1)	10 years 15 year mand.min. 3 priors			Fraud; endangering financial institution (2F1.1)	20 years+ (18:1344)
					Alien with one aggravated felony (2L1.2)	15 years (8:1326)
					Robbery; not bank; weapon possessed (2B3.1) (level 25) * additional mandatory consecutive 5-year sentence typically applies	15 years (18:2111) (18:924c)
					Trafficking in material exploiting a minor; value $.8-1.5 mill. (2G2.2)	10 years (18:2252)
					Career offender; statutory maximum of 10-15 years (4B1.1(E))	10-15 years
22	Average total offense level N.F.A. firearms (2K2.1(a)(1) option 5)	10 years	Exporting handguns, rifles, shotguns; without license; 11 or more firearms (2M5.2)	10 years (22:2778)	Drug trafficking; 300-400g cocaine (2D1.1)	20 years (21:841)
	Average total offense level felon with one prior violent or drug conviction (2K2.1(a)(3) options 3/5)	10 years			Robbery; post office; less than $10,000 (2B3.1)	5 years (18:2115)
					Bribe to influence elected official; value $20-40,000 (2C1.1)	15 years (18:201)
					Money derived from unlawful drug activity (2S1.2)	10 years (18:1957)

TABLE -- COMPARISON OF OFFENSE LEVELS UNDER
CURRENT FIREARMS GUIDELINES AND PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)
AND OTHER NON-FIREARMS GUIDELINES

LEVEL	PROPOSED FIREARMS GUIDELINES	STATUTORY MAXIMUM	CURRENT FIREARMS GUIDELINES	STATUTORY MAXIMUM	OTHER OFFENSE GUIDELINES	STATUTORY MAXIMUM
					Extortion; weapon used (2B3.2)	20 years (18:875)
20	Base offense level felon with one prior violent or drug conviction (2K2.1(a)(3))	10 years			Drug trafficking; 200-300g cocaine (2D1.1)	20 years (21:841)
	Average total offense level N.F.A. firearms (2K2.1(a)(1) option 3)	10 years			Financing extortionate credit (2E2.1)	20 years (18:892)
	Average total offense level felon with one prior violent or drug conviction (2K2.1(a)(3) option 1)	10 years			Laundering monetary instruments (2S1.1)	20 years (18:1956)
					Robbery; unarmed (2B3.1)	15 years (18:2112)
					Aggravated assault; weapon discharge (2A2.2)	3-5 years (18:111)
18	Base offense level N.F.A. firearms (2K2.1(a)(1))		Base offense level N.F.A. firearms (2K2.1(a)(1) and 2K2.2(a)(1) (1990))	10 years	Drug trafficking; 100-200g cocaine (2D1.1)	20 years (21:841)
	Average total offense level N.F.A. firearms (2K2.1(a)(1) option 1)		Average total offense level N.F.A. firearms (2K2.1(a)(1) and 2K2.2(a)(1) (1990))	10 years	Burglary; residence; firearm taken (2B2.1)	15 years (18:1153)
					Bribe to influence elected official (2C1.1)	15 years (18:201)
					Transportation for prostitution; persons ages 12-16 (2G1.2)	10 years+ (18:2423)
					Threatening communications; intent to carry out (2A6.1)	5 years (18:876)

TABLE -- COMPARISON O. .NSE LEVELS UNDER
CURRENT FIREARMS GUIDELINES AND PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)
AND OTHER NON-FIREARMS GUIDELINES

LEVEL	PROPOSED FIREARMS GUIDELINES	STATUTORY MAXIMUM	CURRENT FIREARMS GUIDELINES	STATUTORY MAXIMUM	OTHER OFFENSE GUIDELINES	STATUTORY MAXIMUM
16	Average total offense level felon (2K2.1(a)(4) option 3/5)	10 years	Base offense level N.F.A. firearms (2K2.1(a)(1) and 2K2.2(a)(1) (1989))	10 years	Drug trafficking; 50-100g cocaine (2D1.1)	20 years (21:841)
			Average total offense level N.F.A. firearms (2K2.2(a)(1) (1990))	10 years	Burglary; non-residential; planned; $10-50,000 (2B2.2)	5-10 years (18:1153)
					Broadcasting obscene material to person between 6am and 11pm (2G3.2)	2 years (18:1464)
					Product tampering; threat (2N1.2)	5 years (18:1365)
					Aiding tax fraud; $500-800,000 (2T1.4)	3 years (26:7206)
14	Base offense level felon (§2K2.1(a)(4))	10 years	Exportation of handguns, rifles, shotguns; without export license; 10 or fewer (2M5.2)	10 years (22:2778)	Drug trafficking; 25-50g cocaine (2D1.1)	20 years (21:841)
	Average total offense level felon (2K2.1(a)(4) option 1)	10 years			Receiving stolen vehicles; organized scheme (2B1.2)	3-5 years (18:553)
	Average total offense level engaging in business of distribution (2K2.1(a)(5)(A) options 1/3/5)	5 years			Burglary of other structures; planned (2B2.2)	5 years (18:2115)
	Average total offense level interstate distribution (2K2.1(a)(5)(E) options 1/3/5)	5 years			Contraband cigarettes; tax evaded $200-350,000 (2E4.1)	5 years (18:2342)
					Aiding tax fraud; sophisticated; $20-40,000 (2T1.4)	3 years (26:7206)

TABLE -- COMPARISON OF OFFENSE LEVELS UNDER
CURRENT FIREARMS GUIDELINES AND PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)
AND OTHER NON-FIREARMS GUIDELINES

LEVEL	PROPOSED FIREARMS GUIDELINES	STATUTORY MAXIMUM	CURRENT FIREARMS GUIDELINES	STATUTORY MAXIMUM	OTHER OFFENSE GUIDELINES	STATUTORY MAXIMUM
12			Base offense level felon (§2K2.1(a)(2) (1989))	10 years	Drug trafficking; less than 25g cocaine (2D1.1)	20 years (21:841)
			Average total offense level N.F.A. firearms (2K2.1(a)(1) (1989)	10 years	Threatening communications (2A6.1)	2-5 years (18:876)
			Average total offense level felon with two or more prior violent or drug convictions (2K2.1(a)(2) (1989))	10 years	Insider trading; $20-40,000 (2F1.2)	(15:78j)
					Eavesdropping; economic gain	5 years (18:2511)
					Obscene phone communications (2G3.2)	2 years (18:1464)
10			Average total offense level felon with one prior violent or drug conviction (§2K2.1(a)(2) (1989)	10 years	Drug trafficking; 1-2.5kg marijuana (2D1.1)	20 years (21:841)
			Average total offense level felon (2K2.1(a)(2) (1989))	10 years	Insider trading; gain $5-10,000 (2F1.2)	(15:78j)
					Contraband cigarettes; tax evaded $20-40,000 (2E4.1)	3-5 years (18:2344)
					Altering vehicle i.d. numbers; value $5-10,000 (2B6.1)	5 years (18:511)
					Obstruction of correspondence; $5-10,000; (2B1.1)	5 years (18:1702)

TABLE -- COMPARISON OF OFFENSE LEVELS UNDER
CURRENT FIREARMS GUIDELINES AND PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)
AND OTHER NON-FIREARMS GUIDELINES

LEVEL	PROPOSED FIREARMS GUIDELINES	STATUTORY MAXIMUM	CURRENT FIREARMS GUIDELINES	STATUTORY MAXIMUM	OTHER OFFENSE GUIDELINES	STATUTORY MAXIMUM
8	Average total offense level miscellaneous offenses (2K2.1(a)(6) option 5)	5-10 years	Average total offense level engaging in business of distribution (1989)	10 years	Drug trafficking; 250g-1kg marijuana (2D1.1)	20 years (21:841)
			Base offense level (7) larceny, burglary, robbery, or other theft of destructive device or firearm; under $100 in value (2B1.1, 2B1.2, 2B2.1, 2B2.2, 2B3.1)		Threatening communication; single act; no intent to carry out threat (2A6.1)	2-5 years (18:876)
					Forgery; $5-10,000 (2B5.2)	1-5 years
					Larceny; planned; $1-2,000 (2B1.1)	1-10 years (18:641)
6	Base offense level miscellaneous offenses (2K2.1(a)(6))	5-10 years	Base offense level miscellaneous offenses (1989)	5-10 years	Drug trafficking; less than 250g marijuana (2D1.1)	20 years (21:841)
	Average total offense level miscellaneous offenses (2K2.1(a)(6) options 1/3)	5-10 years	Average total offense level interstate distribution (1989)	5 years	Gambling offenses; misc. (2E3.3)	2 years (15:1172)
			Average total offense level miscellaneous offenses (1989)	5-10 years	Trademark infringement; less than $2,000 (2B5.4)	5 years (18:2318)
					Obstructing correspondence (2H3.3)	5 years (18:1702)

Notes:

+ The maximum penalty for this offense was increased in the 1990 Crime Bill, but the offense level has not been altered correspondingly.

TABLE -- COMPARISON OF OFFENSE LEVELS UNDER
CURRENT FIREARMS GUIDELINES AND PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)
AND OTHER NON-FIREARMS GUIDELINES

LEVEL	PROPOSED FIREARMS GUIDELINES	STATUTORY MAXIMUM	CURRENT FIREARMS GUIDELINES	STATUTORY MAXIMUM	OTHER OFFENSE GUIDELINES	STATUTORY MAXIMUM
37			Career Offender and Armed Career Criminal (where §922(g) is predicate and is considered crime of violence) (4B1.1(A))	10 years	Drug trafficking (50-150kg cocaine) (2D1.1) (level 36)	10 year mand.min. (21:841)
34			Armed Career Criminal with N.F.A. firearm or crime of violence (4B1.4)	15 year mandatory minimum	Drug trafficking (15-50kg cocaine) (2D1.1)	10 year mand.min. (21:841)
					Career offender; statutory maximum of 25 years or more (4B1.1(B))	25 years or more
32			Armed Career Criminal (level 33) (4B1.4)	15 year mandatory minimum	Drug trafficking (5-15kg cocaine) (2D1.1)	10 year mand.min. (21:841)
					Career offender; statutory maximum of 20-25 years (4B1.1(C))	20-25 years
					Assault with Intent to Commit Murder; permanent or life-threatening injury (2A2.1)	20 years (18:113)
30					Drug trafficking (3.5-5kg cocaine) (2D1.1)	5 year mand.min. (21:841)
					Career offender; statutory maximum of 15-20 years (level 29) (4B1.1(D))	15-20 years
					Robbery; bank; weapon discharged; (2B3.1) (level 29) * additional mandatory consecutive 5-year sentence typically applies	25 years (18:2113) (18:924c)

TABLE -- COMPARISON OF OFFENSE LEVELS UNDER
CURRENT FIREARMS GUIDELINES AND PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)
AND OTHER NON-FIREARMS GUIDELINES

LEVEL	PROPOSED FIREARMS GUIDELINES	STATUTORY MAXIMUM	CURRENT FIREARMS GUIDELINES	STATUTORY MAXIMUM	OTHER OFFENSE GUIDELINES	STATUTORY MAXIMUM
28					Drug trafficking (2-3.5kg cocaine) (2D1.1)	5 year mand.min. (21:841)
					Robbery; bank; weapon used (2B3.1) *additional mandatory consecutive 5-year sentence typically applies	25 years (18:2113)
					Assault with Intent to Commit Murder; no serious bodily injury (2A2.1)	20 years (18:113)
					Money laundering; $1-2 million (2S1.1)	20 years (18:1956)
26	Average total offense level felon with two or more prior violent or drug convictions (2K2.1(a)(2) options 3/5)	10 year 15 year mand. min. if 3 prior			Drug trafficking; 500g-2kg cocaine (2D1.1)	5 year minimum (21:841)
					Extortion; weapon used; serious bodily injury (2B3.2)	20 years (18:875)
					Robbery; bank; weapon possessed (2B3.1) (level 27) * additional mandatory consecutive 5-year sentence typically applies	25 years (18:2113) (18:924c)
					Product tampering; attempt; risk of injury (level 25) (2N1.1)	10 years (18:1365)
					Laundering money instruments; knew proceeds unlawful drugs; (2S1.1)	20 years (18:1956)

TABLE -- COMPARISON OF OFFENSE LEVELS UNDER
CURRENT FIREARMS GUIDELINES AND PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)
AND OTHER NON-FIREARMS GUIDELINES

LEVEL	PROPOSED FIREARMS GUIDELINES	STATUTORY MAXIMUM	CURRENT FIREARMS GUIDELINES	STATUTORY MAXIMUM	OTHER OFFENSE GUIDELINES	STATUTORY MAXIMUM
24	Base offense level felon with two or more prior violent or drug convictions (2K2.1(a)(2))	10 years 15 year mand.min. 3 priors	Providing or Possessing Contraband in Prison (§2P1.2) (level 23) mandatory consecutive	10 years	Drug trafficking; 400-500g cocaine (2D1.1)	20 years (21:841)
	Average total offense level felon with two or more prior violent or drug convictions (2K2.1(a)(2) option 1)	10 years 15 year mand.min. 3 priors			Fraud; endangering financial institution (2F1.1)	20 years+ (18:1344)
					Robbery; not bank; weapon possessed (2B3.1) (level 25) * additional mandatory consecutive 5-year sentence typically applies	15 years (18:2111) (18:924c)
					Trafficking in material exploiting a minor; value $.8-1.5 mill. (2G2.2)	10 years (18:2252)
					Career offender; statutory maximum of 10-15 years (4B1.1(E))	10-15 years
22	Average total offense level N.F.A. firearms (2K2.1(a)(1) option 5)	10 years	Exporting handguns, rifles, shotguns; without license; 11 or more firearms (2M5.2)	10 years (22:2778)	Drug trafficking; 300-400g cocaine (2D1.1)	20 years (21:841)
	Average total offense level felon with one prior violent or drug conviction (2K2.1(a)(3) options 3/5)	10 years			Robbery; post office; less than $10,000 (2B3.1)	5 years (18:2115)
					Bribe to influence elected official; value $20-40,000 (2C1.1)	15 years (18:201)
					Money derived from unlawful drug activity (2S1.2)	10 years (18:1957)
					Extortion; weapon used (2B3.2)	20 years (18:875)

TABLE -- COMPARISON OF OFFENSE LEVELS UNDER
CURRENT FIREARMS GUIDELINES AND PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)
AND OTHER NON-FIREARMS GUIDELINES

LEVEL	PROPOSED FIREARMS GUIDELINES	STATUTORY MAXIMUM	CURRENT FIREARMS GUIDELINES	STATUTORY MAXIMUM	OTHER OFFENSE GUIDELINES	STATUTORY MAXIMUM
20	Base offense level felon with one prior violent or drug conviction (2K2.1(a)(3))	10 years			Drug trafficking; 200-300g cocaine (2D1.1)	20 years (21:841)
	Average total offense level N.F.A. firearms (2K2.1(a)(1) option 3)	10 years			Financing extortionate credit (2E2.1)	20 years (18:892)
	Average total offense level felon with one prior violent or drug conviction (2K2.1(a)(3) option 1)	10 years			Laundering monetary instruments (2S1.1)	20 years (18:1956)
					Robbery; unarmed (2B3.1)	15 years (18:2112)
					Aggravated assault; weapon discharge (2A2.2)	3-5 years (18:111)
18	Base offense level N.F.A. firearms (2K2.1(a)(1))		Base offense level N.F.A. firearms (2K2.1(a)(1) and 2K2.2(a)(1) (1990))	10 years	Drug trafficking; 100-200g cocaine (2D1.1)	20 years (21:841)
	Average total offense level N.F.A. firearms (2K2.1(a)(1) option 1)		Average total offense level N.F.A. firearms (2K2.1(a)(1) and 2K2.2(a)(1) (1990))	10 years	Burglary; residence; firearm taken (2B2.1)	15 years (18:1153)
					Bribe to influence elected official (2C1.1)	15 years (18:201)
					Transportation for prostitution; persons ages 12-16 (2G1.2)	10 years+ (18:2423)
					Threatening communications; intent to carry out (2A6.1)	5 years (18:876)

TABLE -- COMPARISON OF OFFENSE LEVELS UNDER
CURRENT FIREARMS GUIDELINES AND PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)
AND OTHER NON-FIREARMS GUIDELINES

LEVEL	PROPOSED FIREARMS GUIDELINES	STATUTORY MAXIMUM	CURRENT FIREARMS GUIDELINES	STATUTORY MAXIMUM	OTHER OFFENSE GUIDELINES	STATUTORY MAXIMUM
16	Average total offense level felon (2K2.1(a)(4) option 3/5)	10 years	Base offense level N.F.A. firearms (2K2.1(a)(1) and 2K2.2(a)(1) (1989))	10 years	Drug trafficking; 50-100g cocaine (2D1.1)	20 years (21:841)
			Average total offense level N.F.A. firearms (2K2.2(a)(1) (1990))	10 years	Burglary; non-residential; planned; $10-50,000 (2B2.2)	5-10 years (18:1153)
					Broadcasting obscene material to person between 6am and 11pm (2G3.2)	2 years (18:1464)
					Product tampering; threat (2N1.2)	5 years (18:1365)
					Aiding tax fraud; $500-800,000 (2T1.4)	3 years (26:7206)
14	Base offense level felon (§2K2.1(a)(4))	10 years	Exportation of handguns, rifles, shotguns; without export license; 10 or fewer (2M5.2)	10 years (22:2778)	Drug trafficking; 25-50g cocaine (2D1.1)	20 years (21:841)
	Average total offense level felon (2K2.1(a)(4) option 1)	10 years			Receiving stolen vehicles; organized scheme (2B1.2)	3-5 years (18:553)
	Average total offense level engaging in business of distribution (2K2.1(a)(5)(A) options 1/3/5)	5 years			Burglary of other structures; planned (2B2.2)	5 years (18:2115)
	Average total offense level interstate distribution (2K2.1(a)(5)(E) options 1/3/5)	5 years			Contraband cigarettes; tax evaded $200-350,000 (2E4.1)	5 years (18:2342)
					Aiding tax fraud; sophisticated; $20-40,000 (2T1.4)	3 years (26:7206)

TABLE -- COMPARISON OF OFFENSE LEVELS UNDER
CURRENT FIREARMS GUIDELINES AND PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)
AND OTHER NON-FIREARMS GUIDELINES

LEVEL	PROPOSED FIREARMS GUIDELINES	STATUTORY MAXIMUM	CURRENT FIREARMS GUIDELINES	STATUTORY MAXIMUM	OTHER OFFENSE GUIDELINES	STATUTORY MAXIMUM
12			Base offense level felon (§2K2.1(a)(2) (1989))	10 years	Drug trafficking; less than 25g cocaine (2D1.1)	20 years (21:841)
			Average total offense level N.F.A. firearms (2K2.1(a)(1) (1989)	10 years	Threatening communications (2A6.1)	2-5 years (18:876)
			Average total offense level felon with two or more prior violent or drug convictions (2K2.1(a)(2) (1989))	10 years	Insider trading; $20-40,000 (2F1.2)	(15:78j)
					Eavesdropping; economic gain	5 years (18:2511)
					Obscene phone communications (2G3.2)	2 years (18:1464)
10			Average total offense level felon with one prior violent or drug conviction (§2K2.1(a)(2) (1989)	10 years	Drug trafficking; 1-2.5kg marijuana (2D1.1)	20 years (21:841)
			Average total offense level felon (2K2.1(a)(2) (1989))	10 years	Insider trading; gain $5-10,000 (2F1.2)	(15:78j)
					Contraband cigarettes; tax evaded $20-40,000 (2E4.1)	3-5 years (18:2344)
					Altering vehicle i.d. numbers; value $5-10,000 (2B6.1)	5 years (18:511)
					Obstruction of correspondence; $5-10,000; (2B1.1)	5 years (18:1702)

TABLE -- COMPARISON OF OFFENSE LEVELS UNDER
CURRENT FIREARMS GUIDELINES AND PROPOSED FIREARMS GUIDELINE §2K2.1 (1991)
AND OTHER NON-FIREARMS GUIDELINES

LEVEL	PROPOSED FIREARMS GUIDELINES	STATUTORY MAXIMUM	CURRENT FIREARMS GUIDELINES	STATUTORY MAXIMUM	OTHER OFFENSE GUIDELINES	STATUTORY MAXIMUM
8	Average total offense level miscellaneous offenses (2K2.1(a)(6) option 5)	5-10 years	Average total offense level engaging in business of distribution (1989)	10 years	Drug trafficking; 250g-1kg marijuana (2D1.1)	20 years (21:841)
					Threatening communication; single act; no intent to carry out threat (2A6.1)	2-5 years (18:876)
					Forgery; $5-10,000 (2B5.2)	1-5 years
					Larceny; planned; $1-2,000 (2B1.1)	1-10 years (18:641)
6	Base offense level miscellaneous offenses (2K2.1(a)(6))	5-10 years	Base offense level miscellaneous offenses (1989)	5-10 years	Drug trafficking; less than 250g marijuana (2D1.1)	20 years (21:841)
	Average total offense level miscellaneous offenses (2K2.1(a)(6) options 1/3)	5-10 years	Average total offense level interstate distribution (1989)	5 years	Gambling offenses; misc. (2E3.3)	2 years (15:1172)
			Average total offense level miscellaneous offenses (1989)	5-10 years	Trademark infringement; less than $2,000 (2B5.4)	5 years (18:2318)
					Obstructing correspondence (2H3.3)	5 years (18:1702)

Notes:

+ The maximum penalty for this offense was increased in the 1990 Crime Bill, but the offense level has not been altered correspondingly.

EXAMPLES OF GUIDELINES THAT REQUIRE A DETERMINATION OF THE DEFENDANT'S BELIEF, INTENT, PLAN, OR FORESEEABILITY OF CONDUCT

1B1.3 Relevant Conduct -- includes conduct that was "reasonably foreseeable by the defendant" (commentary).

2A5.2 Interference with Flight Crew Member or Flight Attendant -- "if the defendant intentionally endangered" "if the defendant recklessly endangered".

2A6.1 Threatening Communications -- "If the defendant engaged in any conduct evidencing an intent to carry out such threat", "conduct involved a single instance evidencing little or no deliberation".

2C1.3 Conflict of Interest -- "If the offense involved actual or planned harm to the government"

2F1.1 Fraud and Deceit -- "if the offense involved the conscious or reckless risk of serious bodily injury".

2K1.3 Unlawfully Trafficking In, Receiving, or Transporting Explosives -- "explosives that the defendant knew or had reason to believe were stolen", "distributed explosives ... to a person the defendant had reason to believe intended to transport".

2K1.4 Arson; Property Damage by Use of Explosives -- "the offense was intended to cause death or serious bodily injury".

2K1.6 Shipping, Transporting or Receiving Explosives with

Felonious Intent or Knowledge -- "committed the offense with intent to commit another offense".

2K2.3 **Receiving, Transporting, Shipping, or Transferring a Firearm With Intent to Commit Another Offense , or With Knowledge that It Will Be Used In Committing Another Offense** -- "the offense the defendant intended or knew was to be committed with the firearm".

2K2.5 **Possession of Firearms and Dangerous Weapons in Federal Facilities** -- "If the defendant possessed the firearm or other dangerous weapon with intent to use it in the commission of another offense".

2K3.2 **Feloniously Mailing Injurious Articles** -- "If the offense was committed with intent (A) to kill or injure any person, or (B) to injure the mails or other property".

2M6.1 **Unlawful Acquisition, Alteration , Use, Transfer, or Possession of Nuclear Material, Weapons, or Facilities** -- "If the offense was committed with the intent to injure the United States or to aid a foreign nation".

2M6.2 **Violation of Other Federal Atomic Energy Agency Statutes, Rules, and Regulations** -- "If the offense was committed with the intent to injure the United States or to aid a foreign nation".

2Q1.6 **Hazardous or Injurious Devices on Federal Lands** -- "If the intent was to violate the Controlled Substances Act", "If the intent was to obstruct the harvesting of timber".

2S1.1 **Laundering of Monetary Instruments** -- "If the defendant

knew", pending amendment would change language to, "If the defendant knew or believed".

2S1.3 **Failure to Report Monetary Transactions; Structuring Transactions to Evade Reporting Requirements** -- "reasonably should have believed that the funds were criminally derived property", "defendant knew or believed that the funds were criminally derived property", pending amendment would delete first phrase.

2T1.9 **Conspiracy to Impair, Impede or Defeat Tax** -- "If the offense involved the planned or threatened use of violence", "if the conduct was intended to encourage persons other than or in addition to co-conspirators to violate the internal revenue laws".

3A1.1 **Vulnerable Victim** -- "If the defendant knew or should have known that the victim of the offense was unusually vulnerable".

3A1.2 **Official Victim** -- "the defendant or a person for whose conduct the defendant is otherwise accountable, knowing or having reasonable cause to believe that the person was a law enforcement officer".

Table 1: **Change in Federal Imprisonment Resulting from Proposed 1991 Amendments to the U. S. Sentencing Guidelines (As of April 12, 1991)**

	Sentences	Total Months of Imprisonment
1989 - 1990 Actual	28,131	1,114,073

Amendments

Amendment	Sentences Affected	Total Months of Imprisonment If Adopted	Percent Change in Total Imprisonment
7B - 2B3.1 Robbery with Firearm - 924(c)	311	1,115,859	0.16%
8A - 2B3.2 Extortion	21	1,114,260	0.02%
21 - 2K1.1-3,6 Explosives	52	1,114,915	0.08%
2K2.1 - 5 Firearms	1390	1,139,097	2.25%
Total with Amendments	1,774	1,141,938	2.50%

(3)

APPENDIX

SUMMARY OF EXPLOSIVE MATERIALS QUANTITIES APPEARING IN ACTUAL CASES UNDER §2K1.1 - §2K1.6

MODEL GUIDELINE REVISED EXPLOSIVE MATERIALS TABLE

Less than 25 pounds:	15 cases	(add 0 points)
25 - 99 pounds:	3 cases	(add 1 point)
100 - 249 pounds:	5 cases	(add 2 points)
250 - 499 pounds:	2 cases	(add 3 points)
500 - 999 pounds:	2 cases	(add 4 points)
1000 - 4999 pounds:	4 cases	(add 5 points)
More than 5000 pounds:	1 case	(add 6 points)
TOTAL CASES:	32 cases	

ORIGINAL PROPOSED GUIDELINE EXPLOSIVE MATERIALS TABLE

Less than 25 pounds:	15 cases	(add 0 points)
25 - 49 pounds:	2 cases	(add 1 point)
50 - 74 pounds:	1 case	(add 2 points)
75 - 99 pounds:	0 cases	(add 3 points)
100 - 124 pounds:	3 cases	(add 4 points)
125 - 149 pounds:	0 cases	(add 5 points)
150 - 174 pounds:	0 cases	(add 6 points)
175 - 199 pounds:	0 cases	(add 7 points)
More than 200 pounds:	11 cases	(add 8 points)
TOTAL CASES:	32 cases	

Note: ATF recommended a table starting at 25 pounds, and increasing 2 points for each 50 pound increase in material.

Note: Actual weight of explosive material was not always provided, and was estimated on the basis of information available in the PSI.

CASE FILE SUMMARIES

EXPLOSIVE MATERIALS GUIDELINE

Sec. 2K1.6 (1987)

APPENDIX O

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE
2K1.6 89-12077 #800	371 re: 844(d)(i) 842(h)(i) 1952 924(b) 641 26:5861(d) (e) and 641, 642	none	1987	18 base 18 total (57-71)	57 mths	VI car. crim. 12 pts	Y	N	numerous (over 25 lbs.)	criminal murder for hire

Defendant, a high-ranking member of the Hell's Angels, was tried on an eight count superseding indictment and found guilty of conspiracy to transport explosives in interstate commerce with intent to kill, injure, or damage property. Although the PSR recommended a 4 point upward adjustment due to the defendant's role in the offense the court refrained from imposing such an adjustment. Defendant's prior offenses include three counts of felon in possession of a firearm, false imprisonment, income tax evasion, and possession of narcotics, dangerous drugs, marijuana, and narcotics for sale. The explosives within the object offense include C-4 military explosives, Dupont Tovex 220 Dynamite, White Phosphorous Smoke Grenades, TNT, Kinetics Kinipak "Boulder Busters," Atlas 40% Gelatin Dynamite Tubes, Military rockets, Claymore Mines, Percussion-military type Blasting Caps, Grenades, Military M60 and M27 Ignition Devices, and AR 15's with Drop-in Automatic Sears and fragmentation Grenades. These weapons were to be used against persons associated with the Outlaws Motorcycle Club.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	3	2		29(140-175)	29(140-175)	29(140-175)				(b)(1),(2),(4)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE
2K1.6 89-06-15398 #801	371 re: 844(d)(i) 842(h)(i) 1952 924(b) 641 26:5861(d) (e)	none	1987	18 base 18 total (33-41)	36 mnths	5 pts III	Y	N	numerous (over 25 lbs.)	criminal murder for hire scheme

Defendant, a member of the Hell's Angels, was tried on an eight count superseding indictment and found guilty of conspiracy to transport explosives in interstate commerce with intent to kill, injure, or damage property. Defendant's prior offenses include a concealed weapon charge, two counts of rape with force, 5 counts of oral copulation, assault, assault with great bodily harm, and false imprisonment. All but the concealed weapon offense occurred on the same date. The explosives within the object offense include C-4 military explosives, Dupont Tovex 220 Dynamite, White Phosphorous Smoke Grenades, TNT, Kinetics Kinipak "Boulder Busters," Atlas 40% Gelatin Dynamite Tubes, Military rockets, Claymore Mines, Percussion-military type Blasting Caps, Grenades, Military M60 and M27 Ignition Devices, and AR 15's with Drop-in Automatic Sears and fragmentation Grenades. These weapons were to be used against persons associated with the Outlaws Motorcycle Club. Co-defendant of case #15398 above.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	3	1		29(108-135)	25(70-87)d	29(70-87)				(b)(1),(2),(4)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	ENT/ USE
2K1.6 89-11556 #802	844(d), 876	(2)844(d) 846	1987	18 base 16 total (21-27)	27 mths	0 pts I	none	N	1 booby trapped toolbox	criminal

Defendant mailed a booby trapped toolbox to the person who had been given the defendant's former job. As sent to the intended victim the toolbox would have produced noise and possible injury to the opener of the box. The defendant had removed the gunpowder from the shotgun shells used in the trap. If he had not taken this action the trap could have caused death. Defendant also mailed several threatening letters. All of threats caused the other person to quit.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	none	none		16(21-27)	16(21-27)	16(21-27)				(b)(4)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE
2K1.6 89-20813 #803	844(d) 26:5861(c)	*	1987	18 base 23 total (51-63)	60 mths	2 pts II	Y	N	4 pipe bombs	criminal

* Defendant pled guilty to Count I of an 8 count indictment. Pursuant to the plea agreement the other charges were dropped. These other charges included 844(d), 26:5861(c), two counts of 26:5861(d), and two counts of 26:5861(j). Following his plea a 2 count indictment charging that the defendant sent a threatening letter and requested the murder of a person who aided the authorities with respect to his prosecution. In exchange for the dismissal of these charges the defendant pled guilty to count 2 of the original indictment. Defendant planted pipe bombs in the home of the ex-wife of the person who recruited him to do so. His prior criminal record consists of a rape charge for which he was convicted at the age of 17.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	none	none		22(46-57)	22(46-57)	22(46-57)				(b)(4)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	ENT/ USE
2K1.6 89-08928 **#804**	*	none	1987	18 total (27-33)	30 years	0 pts I	N	N	**	criminal

* Defendant was charged and convicted on 12 counts: I-842(a)(3)(A) & 844(a); II-844(d); III-922(g)(5) & 924(a)(1)(B); IV-26:5861(d) & 5871; V-26:5861(d) & 5871; VI-26:5861(d) & 5871; VII-26:5861(i) & 5871; VIII-26:5861(i) & 5871; IX-26:5861(i) & 5871; X-1543; XI-1544; and, XII-1546(a).
** Defendant was an expert bombmaker who possessed items which are innocuous when separate yet deadly when crafted into as bomb. Such items include solder, soldering gun, 3 kidde fire extinguishers, thermometers with mercury removed, aluminum powder, wire, batteries, flash bulbs, epoxy, gift wrap, colorless liquid, glass test tube, latex gloves, hacksaw, hacksaw blade, lead shot, stationary cards, smokeless gun powder, circuit tester, plastic baggies, contact cement, gas burner, screwdrivers, pliers, masking tape, electrical tape, matches, paper bags, first aid cream, and cardboard box.
Defendant was an international terrorist communist associated with the Japanese Red Army. He intended to plant an antipersonnel explosive set to explode on the second anniversary of United States retaliation against Libya. (cross reference should be applied)

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	none	none		18(27-33)	18(27-33)	18(27-33)				(b)(4)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE
2K1.6 89-16391 **#805**	844(d)	none	1987	20 base 18 total (27-33)	66 mths	0 pts I	N	N	one not described bomb	criminal murder

Defendant was sentenced under guideline § 2A2.1(a). Defendant was in contact with an undercover agent in attempting to arrange for the use of a bomb against the male friend of woman who refused his advances. The court departed upward because the defendant's criminal history does not accurately reflect the seriousness of his conduct or his dangerousness to society.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	none	none		18(27-33)	18(27-33)	18(27-33)				(b)(4)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	ENT/ USE
2K1.6 89-18767 #806	844(d) 844(i) 924(c)(1) 26:5861(d) 5871	none	1987	20 base 24 total (63-78)	138 m	0 pts I	N	N	foot-long pipe bomb	criminal
Defendant was sentenced under guideline § 2A2.1. Defendant planted the device in the residence of his ex-wife's fiance. The device exploded when the victim turned on his bathroom light. Sixty months of the defendant's sentence will be served pursuant to the mandatory penalty provisions of 924(c)(1). (cross reference)										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	none	none		22( )	22( )	22( )				

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE
2K1.3 89-16391 #807	844(d)	none	1987	20 base 18 total (27-33)	66 mths	0 pts I	N	N	one not described bomb	criminal
Defendant was sentenced under guideline § 2A2.1(a). Defendant contracted with an undercover agent in attempting to arrange for the use of a bomb against the male friend of a woman who refused his advances. The defendant wanted the man killed and the woman kidnapped and brought to him and he may then kill her. The court departed upward because the defendant's criminal history does not accurately reflect the seriousness of his conduct or his dangerousness to society. Guideline 2A2.1 (solicitation to commit murder) was used. (cross reference)										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	none	none		18(27-33)	18(27-33)	18(27-33)				(b)(4)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K1.3 56466 #808	18§842(h)	none	1989	6 base 10(6-12)	6 mos*	I 1 pt.	N	N	500 lbs. of dynamite and blasting caps	sale/use
Defendant pleaded guilty to a one count indictment charging receiving, transporting, and storing explosives knowing said explosives had been stolen. He received a six point upward adjustment because he knew or had reason to believe the explosives were stolen. A two point reduction was granted for acceptance of responsibility. The defendant was involved in the sale and the use of the explosives. *CTC										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	none	none		10(6-12)	10(6-12)	15( )				(b)(1),(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K1.3 52197 #809	842(i)(1) & 844(a)	842(b)	1989	6 base 14(21-27)	21 mos.	III 4 pts	Y	N	see below	possess
Defendant pleaded guilty to Count II of a two-count indictment. His offense level was reduced for acceptance of responsibility and increased by ten pursuant to §2K1.3(b)(4) which was invoked as the defendant was a person prohibited from receiving explosives under the statute of conviction. His prior offenses include delivery of amphetamines. The explosives were stolen from the defendant's place of work where he was given access to them. He denied having taken any explosives but those which the authorities discovered. A great deal more explosives were missing from his place of work. The explosives involved in the count of conviction included 10 5-lb. sticks of Ireco, 60% Vibrogel, Dynamite; 5 Hercules electric blasting caps.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	1	1		21(46-57)	21(46-57)	21(46-57)				(b)(1),(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K1.3 53785 #810	§§842(h) & 844(a)	none	1989	6 base 10(10-16)	10 mos	III 3 pts	Y	N	perforating charges, primer cord, bolt cutters, 46 DuPont electric detonators	possess
Defendant pleaded guilty to Count II of an indictment which was the only count on which he was charged. His offense level was reduced for acceptance of responsibility and increased pursuant to §2K1.3(b)(2) for knowing or having reason to know the explosives were stolen. The defendant drove the getaway car for two partners who burglarized Atlas Wireline Services. He also stored the explosives in his home. His prior offenses include possession of less than 2 oz.'s of marijuana.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	none	none		13(18-24)	13(18-24)	13(18-24)				(b)(1),(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K1.3 53786 #811	§§842(h) & 844(a)	none	1989	6 base 10 (6-12)	9 mos	I 0 pts	N	N	perforating charges, primer cord, detonators	possess.
Defendant pleaded guilty to Count I of a two-count indictment. His offense level was reduced for acceptance of responsibility and increased, pursuant to §2K1.3(b)(2), six points as he knew the explosives were stolen. In fact, the defendant burglarized Atlas Wireline in obtaining the explosives equipment. The equipment was what he admitted stealing; they were found at the home of a codefendant.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	none	none		13(18-24)	13(18-24)	13(18-24)				(b)(1),(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K1.3 55545 #812	§842a3A	none	1989	6 base 4 (0-6)	none	I 1 pt.	Y	N	see below	possess/ use

Defendant pleaded guilty to a one-count indictment. The offense level was reduced for acceptance of responsibility. His priors include distribution of cocaine, burglary, and felonious assault. Defendant was traveling on a boat which held numerous weapons and explosives including: one Smith and Wesson .44 revolver, one Smith & Wesson .357 magnum revolver with speed loader, one Colt .45 pistol with two magazines, one Colt AR-15 .223 rifle with three magazines and scope, one Ruger .22 carbine with two magazines, one strum Ruger, mini-14, .223 rifle with three magazines, one 12-gauge shotgun, one Uzi 9mm rifle, 2,817 pieces of gun ammunition, 2 cylinders each with 24.67 g.s of explosive material with safety fuse, 25 cylinders each with 16 g.s, 9 cylinders with 5 g.s, and 146 cylinders with 4 g.s. The defendant confessed to owning two of the shotguns, the Ruger .22 rifle, and 189 of the cylinder containers. He was stopped twice by the Coast Guard. The second time he had more explosives than the first. The defendant claimed he was moving to Florida by boat. 25 pounds.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	2	2		23(46-57)	23(46-57)	23(46-57)				(b)(1)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K1.3 56469 #813	§842	none	1989	6 base 10(6-12)	none	I 0 pts	N	N	5 blasting caps 1/2 block of C4 explosives	sale

Defendant pleaded guilty to a one-count indictment. His offense level was reduced for acceptance of responsibility and increased, pursuant to §2K1.3(b)(2), for having reason to believe the explosives he sold had been previously stolen. The defendant acquired the blasting caps from work in the construction industry and the explosives from an acquaintance who worked for the military. The defendant sold the explosives to an undercover agent. The defendant received a downward departure upon a motion by the government due to substantial assistance given the law enforcement authorities.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	none	none		12(10-16)	12(10-16)	12(10-16)				(b)(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K1.3 56493 #814	§842(h)	none	1989	6 base 10(6-12)	8 mos	I 1 pt.	Y	N	500 lbs. of dynamite and blasting caps	sale

Defendant pleaded guilty to a one-count indictment. The offense level was reduced for acceptance of responsibility and increased, pursuant to §2K1.3(b)(2), because the defendant knew the explosives were stolen. In fact the defendant and a friend stole the explosives by breaking into a storage facility of Halliburton Geophysical. Defendant's prior record includes an aggravated assault on a police officer at the age of 17.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	none	none		10(6-12)	10(6-12)	12( )				(b)(1),(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K1.3 57886 #815	§§842(h) & 844(a)	none	1989	6 base 14(15-21)	21 mos	I 1 pt.	N	N	see below	sale/ criminal

Defendant pleaded guilty to one-count superseding indictment. His offense level was reduced for acceptance of responsibility and increased, pursuant to §2K1.3(b)(2), for knowing the explosives were stolen and, pursuant to §2K1.3(b)(3), for knowingly distributing explosives to a person prohibited by State law or ordinance from receiving such explosives. Defendant broke into Elting Construction to steal the hereinafter listed explosives. He sold them to others and used the explosives by planting a bomb at a County Health and Science Center in Salem, Oregon for "political" reasons. The defendant stole 4,000 lbs. of Hercules Unigel dynamite, 4 spools of Hercules E-Cord Primacord, and 2 cases of Atlas electric blast caps.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	none	none		19(30-37)	19(30-37)	21( )				(a)(5);(b)(1), (2),(8)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K1.3 58679 #816	18 §1716	none	1989	6 base 4 (0-6)	none	I 0 pts	N	N	firecrackers	criminal
Defendant pleaded guilty to a one-count indictment. His offense level was lowered for acceptance of responsibility. He delivered an envelope with an audio-cassette player to the residence of an acquaintance. The cassette player was booby-trapped with 4 cadmium batteries, 4 flashbulbs, and five firecrackers.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	none	none		16(21-27)	16(21-27)	16(21-27)				(b)(4)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K1.3 60313 #817	§842(a)(1)	none	1989	6 base 4 (0-6)	none	I 0 pts	N	N	8,460 lbs. of Class B and C explosives; 1,330 lbs. of compressed black powder	manuf/ sale
Defendant pleaded guilty to a one-count indictment. His offense level was reduced for acceptance of responsibility. The defendant operated an explosives manufacturing plant which made such items as M-80's. He knowingly failed to have the facility licensed as he knew it could not meet government standards. It cost $73,000 to evacuate the area surrounding the facility and the defendant's home, where some explosive materials were stored, and to remove all illegally stored explosives.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	none	none		16(21-27)	16(21-27)	16(21-27)				(a)(4);(b)(1)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	FIREARM TYPE/#/LOADED	INTENT/ USE
2K1.3 59057 #818	§922(g) & §924(a)(2)	II:§§842b & 844a III:§842i & 844a	1989	6 base 14(27-33)	27 mos	IV 8 pts	Y	N	DuPont anfo-nitrate; dynamite; .22 5-shot revolver	sale/ possess
Defendant pleaded guilty to Count I of a three-count indictment. The offense level was reduced for acceptance of responsibility and increased, pursuant to §2K1.3(b)(4), for receiving explosives while a prohibited person. His prior offenses include manslaughter, use of a dangerous weapon, and compounding a felony. He reportedly found over 1,000 lbs. of explosives in an abandoned mine. He tried to sell the explosives yet was unsuccessful. He called the police and told them of the whereabouts, amounts, and locations of the explosives.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	1	1		23(70-87)	23(70-87)	23(70-87)				(b)(1)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVES TYPE/WEIGHT	INTENT/ USE
2K1.3 57597 #819	1716	none	1988	6 base 8 total (2-8)	none	0 pts I	N	N	9 M11582, ground burst simulators	training
Defendant, a U.S. soldier in Panama, mailed smoke grenades, ground burst simulators and military maps from Panama. Charged with misdemeanor mailing non mailable matter. Adjustment for stolen materials. Court departed down.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	none	none		12(10-16)	12(10-16)	12(10-16)				(a)(5)(b)(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVES TYPE/WEIGHT	INTENT/ USE
2K1.3 58252 #820	842(h)	none	1987	6 base 10 total (6-12)	none	0 pts I	N	N	2 sticks of dynamite	sale
Defendant stole dynamite from his employer and gave it to a friend. The friend held the dynamite for a multiple convicted felon cousin who sold dynamite.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991 OPTION 4	1991 OPTION 5		OFFENSE CHARACTERISTIC
	none	none		10(6-12)	10(6-12)	12(10-16)				(a)(4)(b)(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	(ENT/ USE
2K1.3 89-07664 #823	842(a)(1) 659	26:5861(d 5871 842(j) 844(b) (5) 659	1987	6 base 8 total (2- 8)	9 mths	1 pt I	Y	N	100,000 pieces of quarter sticks and M-80s; 750 lbs. of various explosives	sale
Defendant was not licensed to deal or store explosive materials. Defendant was an illicit wholesaler of the above-mentioned explosives. The defendant had formerly been convicted of illegally storing fireworks. Four of the months to which the defendant was sentenced were imposed pursuant to the § 659 violation which occurred prior to the effective date of the guidelines. Explosives were seized in search of his home which also recovered a 9mm Stem machine gun. Over 5000 pounds total.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	none	none		16(21-27)	16(21-27)	16(21-27)				(a)(4);(b)(1)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE
2K1.3 89-08366 # 824	842(a)(1)	none	1987	6 base 8 total (2- 8)	2 mths.	1 pt. I	N	N	1 box of No. 6 non-electric fuse caps; 1 box of Dupont Tovex explosives	sale
Defendant did not have a license to deal or sell explosives. Defendant legally purchased explosives as an employee of his father's business but sold a portion of the purchase to some 11 year old juvenile boys one of whom was discovered by his mother to possess the explosive. Some of the blasting caps had teeth marks where juveniles had crimped the caps. Defendant had been convicted of DWI and other minor offenses which usually involved alcohol.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	none	none		10(6-12)	10(6-12)	10(6-12)				(a)(4)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE
2K1.3 89-09923 #825	842(f)	Cts. I-III; manufactured devices	1987	6 base 4 total (0- 6)	0	0 pts I	N	N	mortar propellant	possess.
Defendant violated law with respect to the storage and manufacture of explosives. He manufactured ammunition and a destructive device. Defendant was described as an "eccentric."										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	none	none		4(0-6)	4(0-6)	4(0-6)				none

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE
2K1.3 89-12903 **#826**	842(a)(1)	842(a) 4 cts.	1987	6 base 10 tot. (6-12)	7 mths	0 pt I	N	N	$10,000 worth of Tovex explosives; at least 250 pounds	sale/ criminal
Defendant was not a licensed dealer or manufacturer of explosives. Defendant was with a codefendant when the codefendant was in the process of completing a sale of explosives to an undercover agent. The defendant had reason to know that the explosives were stolen. The defendant and his accomplices were heavily armed at the time of their arrest with a .44 caliber revolver, Colt-AR-15 assault rifle (with scope), .223 caliber and several clips of ammunition, loaded .22 caliber Ruger semi-automatic pistol with several clips of ammunition, Smith & Wesson .357 magnum revolver with 2 spread loaders, and a .38 caliber Taurus revolver.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	none	none		15(18-24)	15(18-24)	15(18-24)				(b),(1),(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE
2K1.3 89-19023 **#827**	842 (a)(3)(A)	none	1987	6 base 4 total (0-6)	1 mnth	1 pt I	N	Y	over 250 lbs. of explosives	sale/ criminal
Defendant possessed, sold, and used explosives while not licensed as a manufacturer or dealer. The defendant traded 2 sticks of Powermax dynamite for narcotics. He used some dynamite to bomb a portion of a landing approach at Seattle-Tacoma airport. The explosion left a large crater and damaged windows in nearby buildings. The defendant sold a portion of the dynamite to a friend who used it to bomb 2 schools and an automotive store. Defendant obtained the explosives from a friend whose father owned a construction company.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	none	none		16(21-27)	16(21-27)	17( )				(b)(4)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE
2K1.3 89-19859 **#828**	842(h)	842(i)	1987	6 base 14 total (21-27)	27 mths	5 pts III	Y	N	116 sticks of Water Gel dynamite (over 100 lbs)	sale
Defendant had previously committed second degree sexual assault. He was on probation for this offense at the time of the instant offense. Defendant also had a juvenile ITSMV assault, and theft of U.S. mail convictions. He has 14 other arrests ranging from assault to larceny - all dismissed. The Probation Officer suggested an upward departure may be warranted due to the understatement of the defendant's criminal history. Defendant attempted to sell the explosives, which he had reason to believe were stolen, to an undercover agent. Defendant was not licensed as an explosives dealer.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	1	none		24(63-78)	20(41-51)	24(63-78)				(b)(1),(2)(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ON ..RM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	ENT/ USE
2K1.3 89-20394 **#829**	§1716(h)	none	1987	6 base 4 total (0-6)	none	0 pts I	N	N	Chemicals and devices necessary to make a cigarette box explosive	criminal
Defendant possessed chemicals and devices necessary to make explosives. He also possessed numerous books and magazines which explained methods of using aliases and remaining underground. He also kept numerous publications on explosive booby traps, espionage and other covert operations. Defendant was not licensed. Defendant was in Navy and intended to use materials to make a bomb to be delivered to a woman who had "ripped him off." Total weight less than 25 pounds. This guideline was used because it was "most analogous" to a §1716(h) offense.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	none	none		18(27-33)	18(27-33)	18(27-33)				(b)(2),(b)(4)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE
2K1.3 89-21381 **#830**	842(a)(1)	none	1987	6 base 4 total (0-6)	none	0 pts I	N	N	RDX, PETN, and hexamine: 3/4 lb. assorted bomb making chemicals	possess.
Defendant manufactured explosives in his basement. Among the elements discovered were powders, fuses, primacord, and blasting caps. The defendant admitted that he had detonated some homemade explosives in the past. Defendant was not licensed. Less than 25 pounds weight.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	none	none		10(6-12)	10(6-12)	10(6-12)				

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE
2K1.3 89-23723 **#831**	836	842(a)(1)	1987	6 base 4 total (0-6)	none	0 pts I	N	N	numerous M-80s and quarter sticks	sale
Defendant sold hundreds of M-80s and quarter sticks to undercover agents over an extended period of time. Defendant was not licensed. 25-100 pounds total.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	none	none		5(0-6)	5(0-6)	11( )				(b)(1)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ON ..RM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	ENT/ USE
2K1.3 89-24227 #832	842(h) 844(a)	(2):842(h 844(a	1987	6 base 10 tot. (6-12)	6 mths	1 pt I	Y	N	simulator projectile airburst liquid; M18 hand grenades	possess.

Defendant was a sergeant in the Army National Guard. He took home and detonated some of the explosives he was issued. His prior offenses include two counts of attempted breaking and entering and one count of breaking and entering. These offenses, however, were over ten years prior to the instant offense. Hence, the defendant did not receive the full 10 point increase pursuant to guideline § 2K1.3(b)(4). Also had 3 DWI conviction. Defendant was not licensed. Explosives were less than 25 lbs.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	2	0		24(51-63)	16(21-27)	51-63)				(b)(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE
2K1.3 89-25750 #833	842(i)(1) 844(a)	842(i)(1) 842(h) 844(a)	1987	6 base 14 tot. (21-27)	27 mths	5 pts III	Y	N	170 sticks of Thermex T-100, 200 lbs.	sale

Defendant broke into abandoned farm house and stole 170 sticks of Thermex high explosives. Defendant transported explosives across state lines and stored explosives in a public housing project while attempting to sell the items. His criminal record includes felony delivery of marijuana and DWI. Defendant was not licensed.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	1	1		22(51-63)	22(51-63)	22(51-63)				(a)(2),(b)(1),(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE
2K1.3 89-25767 #834	842(i)(1) 844(a)	842(i)(1) 842(h) 844(a)	1987	6 base 14 tot. (27-33)	33 mth	9 pt IV	Y	N	170 sticks of Thermex T-100, 200 lbs.	sale

This is co-defendant in above case. Defendant broke into abandoned farm house and stole 170 sticks of Thermex high explosives. Defendant transported explosives across state lines and stored them near a hotel while attempting to sell the items. His criminal record includes burglary, terroristic threatening and DWI. Defendant also had at least 10 priors for public intoxication as well as resisting arrest, fleeing, failure to appear and disorderly conduct. Defendant was not licensed.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	2	2		26(92-115)	26(92-115)	26(92-115)				(a)(1);(b)(1),(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ON ..RM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	ENT/ USE
89-26118 #835	842(i)(1)	842(h)	1987	6 base 16 tot. (27-33)	27 mth	6 pts III	N	N	100 lbs. of unitegel high-explosives; detonating cord	sale
Defendant's prior offenses include possession of an automatic rifle, unlawful possession of firearms, and conspiracy to distribute counterfeit currency. He both stole the aforementioned explosive materials and provided a key to a co-defendant who also stole some of these explosives. The explosives were stolen from a licensed explosives manufacturing company. Defendant was not licensed. Defendant committed this offense while on federal probation. Prior offenses involve possession of automatic rifle, unlawful possession of firearm, conspiracy to distribute counterfeit currency.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	none	none		22(51-63)	22(51-63)	22(51-63)				(a)(3);(b)(1),(2),(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE
2K1.3 89-26592 #836	842(h) 844(a)	842(j) 844(b)	1987	6 base 4 total (0-6)	none	4 pts III	Y	N	4 1/2 sticks of dynamite	possess
Defendant's prior offenses include two counts of breaking, entering, and larceny and one count of attempted breaking, entering, and larceny. However, these were juvenile offenses/convictions. Defendant stole sticks of dynamite from his worksite, which was a construction company. Defendant was not licensed.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	none	none		16(27-33)	16(27-33)	16(27-33)				(a)(3);(b)(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE
2K1.3 89-26979 #837	842(a)(1)	842(j)	1987	6 base 4 total (0-6)	none	0 pt I	N	N	over 1500 M-200s and M-80s; and 300 lbs. of Class B explosives	sale
Defendant sold explosives to undercover agents over an extended period of time. Defendant was not licensed to deal in explosives. At the time of his arrest, defendant was armed with a 9mm Hungarian pistol.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	none	none		13(12-18)	13(12-18)	13(12-18)				(b)(1)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ON RM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE
2K1.3 90-30951 **#838**	842(a)(1)	none	1987	6 base 4 total (0-6)	none	0 pts I	N	N	5 blasting caps (less than 25 lbs)	sale
Defendant sold blasting caps out of his home to an undercover agent. Defendant was not licensed. Defendant obtained caps from a friend - they were not stolen.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	none	none		10(6-12)	10(6-12)	10(6-12)				(a)(4)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE
2K1.3 90-31955 **#839**	842(a)(1)	none	1987	6 base 14 tot. (15-21)	6 mths	1 pt. I	N	N	1255 sticks of Atlas Coalite dynamite and 300 Atlas electric blasting caps	sale
Defendant's prior offenses include two counts negligent homicide due to a traffic accident in which he was not intoxicated. A downward departure was granted in order to diminish the affect of the inappropriate, but required, 10 point upward adjustment due to the defendant's negligent homicide convictions. Those counts arose due to an accident caused by the defendant when he ran a stop sign while on his way to a hospital with his father, who was having a heart attack. Defendant had stolen the explosives from a former employer. Defendant was not licensed to deal explosives. More than 1000 lbs. total weight.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	none	none		21(37-46)	21(37-46)	21(37-46)				(a)(3),(b)(1),(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE
2K1.3 90-38572 **#840**	842(h)	none	1987	6 base 22 tot. (51-63)	57 mths	5 pts III	Y	N	4 sticks of 2" X 8" IRECO oil field explosives	sale
Defendant attempted to sell aforementioned explosives to an undercover agent. Defendant stole the explosives from a previous employer. His prior offenses are disorderly conduct, DWI, and credit card abuse. Although the PSR recommended enhancements for obstruction of justice and an aggravating role in the offense the sentencing court did not consider these factors in determining the applicable range. None of the defendant's prior offenses were violent, drug related, or similar to an explosives offense. Defendant was not licensed. Less than 25 pounds total weight.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	none	none		20(41-51)	20(41-51)	20(41-51)				(a)(3);(b)(2),(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE
2K1.3 90-40625 **#841**	841 842(a)(1) 844	Count II (?)	1987	6 base 14 tot. (21-27)	none	5 pts III	Y	N	numerous M-80s and M-100s; various chemicals	sale

Defendant manufactured M-80s and M-100s in his basement. He was discovered to possess explosives and components used to manufacture them. He stated he sold approximately 70 of the explosives. Defendant's prior offenses include attempting breaking and entering and aggravated robbery. The sentencing court departed for three reasons. First, the defendant's prior convictions, which resulted in a ten point enhancement, occurred between nine and ten years before the instant offense. Since that time defendant has had no trouble with the law. Second, the explosives were not manufactured for the purpose of frightening, harming, or intimidating anyone. And third, the defendant is an alcoholic who will be receiving treatment. Defendant was not licensed. Prior convictions include attempted receipt of stolen property, attempted breaking and entering, aggravated robbery, and various driving offenses. Less than 25 pounds.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	3	3		24(63-78)	24(63-78)	74(63-78)				(b)(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE
2K1.3 90-44906 **#842**	842(a)(1)	842(a)(1) 842(a)(3) (A) 842(h)	1987	6 base 8 total (2-8)	none	1 pts I	N	N	1 ton of dynamite, water gel explosives, and booster explosives	sale

Defendant and partners attempted to sell vast quantity of explosives to undercover agents. Defendant was formerly convicted of the unlawful possession of marijuana. No reason is given in the case file for the departure. Defendant was not licensed. The explosives were taken from the Odell Geer Construction Company. The Probation Office recommended that an upward departure may be warranted because of the danger to the community of possessing and transporting these explosives in unsafe conditions in populated areas. Probation Officer recommended upward departure based on risk to community as explosives were transported a nd stored in a populated area.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	none	none		17(24-30)	17(24-30)	17(24-30)				(b)(1),(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE
2K1.3 90-49521 #843	842(h) 844(a)	none	1987	6 base 10 tot. (10-16)	13 mths	6 pts III	Y	N	675 lbs. of dynamite, primacord, fuses	possess.
Defendant admitted stealing, transporting, and concealing the aforementioned amount of dynamite, fuses, and primacord. Defendant's prior offenses include two counts of burglary of a motor vehicle and one count of carrying a concealed weapon, 2 counts of theft by taking, 2 counts of DUI, and 1 count of wanton endangerment by discharging a firearm in a parking lot. Defendant was not licensed. The explosives were taken from the Otto Culper Torpedo Company of Beattyville, Kentucky.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	2	1		28(97-121)	24(63-78)	28(97-121)				(b)(1),(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVES TYPE/WEIGHT	INTENT/ USE
§2K1.3 21530 #844	§842(a)(1) §371 §842(h)	none	1987	6 base 18 total (57-71)	64 mos.	19pts VI	Y	N	50 lb. case of dynamite, 10 boxes of blasting caps	sale
Defendant convicted following a jury trial. Defendant and another person stole explosives from a local hardware company. A girlfriend sold the explosives for $400. Defendant received 2 level increase for role in the offense. Defendant had lengthy record: 3 separate DUI habitual violator convictions; theft by receiving stolen property; burglary; furnishing alcohol to a minor; driving under suspension; theft; possession of controlled substances; theft; attempted escape. Overall, defendant had about 9 D.U.I.'s as well as several failure to appear and giving of a false name.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	1	1		25(110-137)	25(110-137)	25(110-137)				b(1),(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVES TYPE/WEIGHT	INTENT/ USE
2K1.6 20813 #845	§844(d) §5861(c) §371	6 cts §5861 §1512 §1513	1987	12 base 23 total (51-63)	60 mos.	3 pts II	4	N	4 pipe bombs	criminal
Defendant was indicted on various charges stemming from the placement of four pipe bombs in the home of his ex-wife. Two bombs exploded and destroyed the furnace and cause damage to the walls of the mobile home. While awaiting trial defendant sought to retaliate against a witness from jail by instructing another person to murder the witness. The witness was not harmed. Defendant had a rape conviction at age 17. Defendant was given 2 level increase for role. (cross reference should be used).										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	none	none		22(46-57)	22(46-57)	22(46-57)				(b)(4)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	[illegible]M	CRIM HIST	PRIOR	DRUGS	EXPLOSIVES TYPE/WEIGHT	[illegible]NT/ USE
2K1.3 20617 #846	842(a)(1)	§371 §842(h)	1988	6 base 8 total (2-8)	none	0 pts I	N	N	50 lbs. dynamite 500 blasting caps	sale
Defendant sold explosives stolen from a hardware company by her common law husband. She gave all the money to her husband. Two level decrease for role.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	none	none		13(12-18)	13(12-18)	13(12-18)				(b)(1),(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVES TYPE/WEIGHT	INTENT/ USE
2K1.3 20082 #847	§842(h) §844(j)	4 cts §842	1987	6 base 10 total (6-12)	12 mos	0 pts I	N	N	2 lbs. C-4 explosive, 5 lb. TNT	possess
Defendant was stopped by police after receiving a complaint. Defendant had two sticks of TNT in trunk of his car, a 9 mm loaded handgun and an AK-47 in the car. Defendant's home contained more dynamite and explosives taken from Ft. Dix where defendant was National Guardsman. Also, Defendant had large amount of military clothing, ordinance ammunition, smoke grenades, blasting caps and detonation cord.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	none	none		6(0-6)	6(0-6)	12(10-16)				(b)(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVES TYPE/WEIGHT	INTENT/ USE
2K1.3 43861 #848	4 CTS 371 842(h)	1 ct.	1987	6 base 14 total (15-21)	11 mos	0 pts I	N	Y	numerous (see below)	possess.
Defendant and another individual burglarized a Coal Co. and stole explosives. Defendant later dumped his explosives in the river. The other defendant went back and stole more explosives, distributing some to minors. Explosives stolen included numerous boosters, blasting caps, delays,ignition starters, and dynamite. Estimated at least 250 pounds. Defendant was unlawful use of controlled substances and thus a prohibited person.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	none	none		19(30-37)	19(30-37)	19(30-37)				(a)(3)(b)(1),(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	ON ..RM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVES TYPE/WEIGHT	ENT/ USE
2K1.3 43865 #849	371 cts. 842(h)	6 cts 842	1987	6 base 18 total (30-37)	16 mos.	3 pts. II	Y	Y	numerous (see above #43861)	sale

This is co-defendant of case above (#43661). This defendant's use of controlled substances. Defendant burglarized and transported stolen explosives with help of minor and sold explosives to underage person. Prior convictions for burglary; theft by unlawful taking; delivery of cocaine; other changes related to the instant offense.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	2	1		29(97-121)	25(63-78)					(b)(1),(2),(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVES TYPE/WEIGHT	INTENT/ USE
2K1.3 43866 #850	371 842(h)	842	1987	6 base 14 (total) (15-21)	none	0 pts I	N	N	Numerous (see above #43865).	possess

This is co-defendant of two cases above (#43861) and #43865). This defendant helped transport some stolen explosives.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	none	none		9(4-10)	9(4-10)					(b)(1),(b)(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVES TYPE/WEIGHT	INTENT/ USE
2K1.3 44794 #851	842(h) 927(g)(1)	4 cts 842	1987	6 base 17 total (37-46)	37 mos	9 pts IV	Y	N	2 sticks 2 blasting caps	sale

Defendant, on probation at time of the offense, stole dynamite from a quarry where he worked and sold them to undercover agent. Defendant's criminal history includes five separate larceny convictions; criminal and trespass; poss. of cocaine, assault 2nd; 4 probation violations.

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	1	1		24(77-96)	24(77-96)					(a)(2);(b)(1),(2),(3)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVES TYPE/WEIGHT	INTENT/ USE
2K1.3 46761 #852	842(a)(1)	none	1988	6 base 4 total (0-4)	none	0 pts I	N	N	51 M-1000, explosive devices (60-70 lbs)	sale
Defendant manufactured M-1000 explosive devices in his basement. He was not licensed. He sole the manufactured explosives. The defendant confessed to his entire involvement.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	none	none		11(8-14)	11(8-14)					(a)(4);(b)(1)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVES TYPE/WEIGHT	INTENT/ USE
2K1.3 22492 #853	§842(h)	2 cts	1987	6 base 22 total (41-51)	36 mos.	1 pt. I	Y	Y	8 sticks C-4 explosive 9 blasting caps, fuses and fuse lighters	unknown
A search of defendant's home discovered stolen explosives and several firearms: 2 semiautomatic pistols; 2.12 guage shotguns; a .357 magnum revolver; and a .303 caliber rifle. The explosives were stolen from the U.S. military. Also found a $20.00 counterfeit photographic plate. Defendant had prior distributed of amphetamine conviction. Less than 25 pounds total weight.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC
	1	1		22(41-51)	22(41-51)					(a)(2), (b)(2)

USSG # CASE #	CT. OF CONVICTN	DROPPED COUNT	USSG VERSION	OFFENSE LEVEL	PRISON TERM	CRIM HIST	PRIOR	DRUGS	EXPLOSIVE TYPE/WEIGHT	INTENT/ USE
2K1.3 34293 #854	922(a)(1) (A)	26:5861(c 5861(f	1987	6 base 4 total (0-6)	none	0 pts I	Y	Y	one pipe bomb	possess.
Defendant was found in possession of several firearms, a pipe bomb, 7 lbs. of marijuana, and traces of cocaine. The drug offenses were prosecuted by the state. The defendant admitted manufacturing the pipe bomb in Idaho. Defendant was not licensed. Although the statute to which defendant pled guilty is related to firearms he was sentenced under the explosives guideline. No explanation is offered in the PSR. Perhaps the defendant stipulated to the facts of his explosives offense at the time of his plea to the firearms count. Defendant's priors included disorderly conduct and DWI. The cross reference and statute of conviction should result in this being sentenced under 2K2.1. The result below is as determined under 2K1.3.										

APPLICATION OF PROPOSED GUIDELINE	A.C.C. FELONIES	C.O. FELONIES		1991 OPTION 1	1991 OPTION 2	1991 OPTION 3	1991	1991		OFFENSE CHARACTERISTIC