



MEMORANDUM

TO: Bill Smith, Esquire
Attorney for John Doe

FROM : Meredith Patti, Esquire
Mary Cate Rush, Chief Statistician

DATE: August 5, 2014

SUBJECT: **DOE - DATA ANALYSIS**

Title 18 U.S.C. §3553(a)(6) directs that the “need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct” be considered when imposing sentence. To this end, we were retained to prepare a data analysis to determine comparative sentences imposed on defendants most similar to Mr. Doe.

Mr. Doe pleaded guilty to violating one count of 18 U.S.C. § 1343 and will be sentenced in United States District Court for the District of Columbia. It is our understanding that he will be scored according to USSG §2B1.1 (2013 Manual), is a Criminal History Category I, and will not receive a substantial assistance downward departure pursuant to USSG §5K1.1. Further, it is our understanding that the loss amount attributable to Mr. Doe is \$162,421.37. Finally, we understand that Mr. Doe’s Total Offense Level is in dispute and will be a 14 or a 16 if the Abuse of Position of Trust enhancement is applied.

THE USSC DATABASE

The United States Sentencing Commission (USSC) maintains a comprehensive, computerized data collection system of federal sentencing information. Pursuant to 28 U.S.C. § 994(w) each chief judge of a district is required to ensure that within 30 days after entry of judgment in a criminal case the sentencing court submits a report of the sentence to the Commission that includes: (1) the judgment and commitment order; (2) the statement of reasons (including the reasons for any departures or variances); (3) any plea agreement; (4) the indictment or other charging document; (5) the presentence report; and (6) any other information the Commission needs.

This collection contains information on federal criminal cases sentenced under the Sentencing Guidelines and Policy Statements of the Sentencing Reform Act of 1984. The data

files included in this study contain all cases received by the USSC that were sentenced between October 1, 1998 and September 30, 2013. United States Federal Courts handled over 1 million criminal cases between the fiscal years 1999 and 2013¹. The USSC estimates that 99% of all cases are included in this dataset.

DATA ANALYSIS

- STEP 1:** Selected cases to include only those where the information related to a defendant's guideline calculation(s) represented known court findings. That is, only those cases where the Court either agreed with the probation officer's calculations of the sentencing guidelines or where the court clearly documented any changes it made to a defendant's guideline calculation. Total cases = 941,794. (This represents approximately 86% of all cases.)
- STEP 2:** From this pool of 941,794 cases, selected those where the defendant was scored according to USSG §2F1.1/.§2B1.1. This produced 113,077 cases.
- STEP 3:** From this pool of 113,077 cases, deleted those where the defendant was not a Criminal History I. This produced 77,258 cases.
- STEP 4:** From this pool of 77,258 cases, deleted those that contained missing or incomplete sentencing information. This produced 77,134 cases.
- STEP 5:** From this pool of 77,134 cases, deleted those that contained missing or incomplete information regarding loss. This produced 77,118 cases.
- STEP 6:** From this pool of 77,118 cases, deleted those where the defendant did not enter into a plea agreement. This produced 73,327 cases.
- STEP 7:** From this pool of 73,327 cases, deleted those where the defendant received a downward departure pursuant to USSG §5K1.1. This produced 61,063 cases.
- STEP 8:** From this pool of 61,063 cases, isolated those cases where the defendant violated only 18 U.S.C. §1343 by deleting those cases where the defendant was not convicted of 18 U.S.C. §1343. Note that in those cases where the defendant violated 18 U.S.C. §1343 but also had an additional statute of conviction these cases were also excluded. This produced 2,568 cases.

¹ The FY 2013 data was the most recent available when this analysis was completed. Data is now available through FY 2014.

STEP 9: Set up loss categories reflective of the 2013 Federal Sentencing Guidelines USSG §2B1.1 loss table and determined how many of these 2,568 defendants were in each loss category. Calculated how many defendants in each category were sentenced to a term of imprisonment versus those receiving a probationary or fine only sentence. For those who received a term of imprisonment, the average sentence length was determined. (See Chart A). In 9 cases the defendant was sentenced to “Time Served” and therefore these cases were excluded from Chart A because the precise length of time the defendant served in prison is unknown. Consequently, Chart A is based on 2,559 defendants.

Chart A - Analysis of Guilty-Pleading Criminal History Category I Defendants Who Violated 18 U.S.C. §1343 (and no other statute) (Excludes USSG §5K1.1 Defendants) National FY 1999-2013				
Loss Amount	Total Cases	Probation/ Fine Only	Prison	Average Prison Length
0 - \$30,000	n=517	405 (78.3%)	112 (21.7%)	5.5 MO
> \$30,000 - \$70,000	n=296	146 (49.3%)	150 (50.7%)	10.1 MO
> \$70,000 - \$120,000	n=271	61 (22.5%)	210 (77.5%)	11.6 MO
> \$120,000 - \$200,000	n=250	42 (16.8%)	208 (83.2%)	16.6 MO²
> \$200,000 - \$400,000	n=381	40 (10.5%)	341 (89.5%)	21.0 MO
> \$400,00 - \$1 Million	n=395	28 (7.1%)	367 (92.9%)	28.3 MO
Over \$1 Million	n=449	15 (3.3%)	434 (96.7%)	56.1 MO
All Cases	n=2,559	737 (28.8%)	1,822 (71.2%)	27.4 MO

² This 16.6 month average is based only on the defendants who received a term of imprisonment. The average sentence imposed for the 250 defendants in this loss category (counting probation as zero months) reveals an average sentence imposed of 13.8 months.

- As described in Chart A, in these 250 cases where the loss amount was >\$120,000 - \$200,000, 42 defendants (16.8%) were sentenced to a period of probation and 208 defendants (83.2%) were sentenced to a term of imprisonment. The average sentence imposed on these 208 defendants was 16.6 months.
- We further analyzed the 250 defendants in Mr. Doe's loss category (>\$120,000 - \$200,000) and tallied the total number of cases where the defendant received a sentence below the applicable guideline range, within the applicable guideline range, or above the applicable guideline range. Our findings are as follows (Chart B):

Chart B - Analysis of Guilty-Pleading Criminal History Category I Defendants Who Violated 18 U.S.C. §1343 (only) Excludes USSG §5K1.1 Defendants Loss Amount of >\$120,000 - \$200,000 National - FY 1999-2013		
Category	No. of Cases	Percentage
Below Guideline Range	104	41.6%
Within Guideline Range	143	57.2%
Above Guideline Range	3	1.2%
Total	250	100.0%

- For the 104 defendants who received a sentence below their guideline range, the average number of months they were sentenced below the guideline minimum was 11 months.

POSITION OF THE GOVERNMENT

- It is our understanding that the Government believes that a 2-level increase for Abuse of a Position of Trust under USSG §3B1.3 is applicable and Mr. Doe's Total Offense Level should be 16. Therefore, we further analyzed the 250 defendants in Mr. Doe's loss category and determined that 51 of these defendants had a Total Offense Level of 16. For these 51 cases, we tallied the total number of cases where the defendant received a sentence below the applicable guideline range, within the applicable guideline range, or above the applicable guideline range. Our findings are as follows (Chart C):

Chart C - Analysis of Guilty-Pleading Criminal History Category I Defendants Who Violated 18 U.S.C. §1343 (only) Excludes USSG §5K1.1 Defendants Loss Amount of >\$120,000 - \$200,000 Total Offense Level 16 National - FY 1999-2013		
Category	No. of Cases	Percentage
Below Guideline Range	23	45.1%
Within Guideline Range	27	52.9%
Above Guideline Range	1	2.0%
Total	51	100.0%

- In these 51 cases, 3 defendants (5.9%) were sentenced to a period of probation and 48 defendants (94.1%) were sentenced to a term of imprisonment. The average sentence imposed on these 48 defendants was 18.4 months.³
- For the 23 defendants with a Total Offense Level of 16 who received a sentence below their guideline range, the average number of months they were sentenced below the guideline minimum was 9.9 months.

³ This 18.4 month average is based only on the defendants who received a term of imprisonment. The average sentence imposed for these 51 defendants (counting probation as zero months) reveals an average sentence imposed of 17.3 months.

POSITION OF MR. DOE

- It is Mr. Doe's position that a 2-level increase for Abuse of a Position of Trust under USSG §3B1.3 should not be applied and his Total Offense Level should be 14. Therefore, we further analyzed the 250 defendants in Mr. Doe's loss category and determined that 90 of these defendants had a Total Offense Level of 14. For these 90 cases, we tallied the total number of cases where the defendant received a sentence below the applicable guideline range, within the applicable guideline range, or above the applicable guideline range. Our findings are as follows (Chart D):

Chart D - Analysis of Guilty-Pleading Criminal History Category I Defendants Who Violated 18 U.S.C. §1343 (only) Excludes USSG §5K1.1 Defendants Loss Amount of >\$120,000 - \$200,000 Total Offense Level 14 National - FY 1999-2013		
Category	No. of Cases	Percentage
Below Guideline Range	46	51.1%
Within Guideline Range	44	48.9%
Above Guideline Range	0	N/A
Total	90	100.0%

- In these 90 cases, 23 defendants (25.6%) were sentenced to a period of probation and 67 defendants (74.4%) were sentenced to a term of imprisonment. The average sentence imposed on these 67 defendants was 12.9 months.⁴
- For the 46 defendants with a Total Offense Level of 14 who received a sentence below their guideline range, the average number of months they were sentenced below the guideline minimum was 12 months.

⁴ This 12.9 month average is based only on the defendants who received a term of imprisonment. The average sentence imposed for these 90 defendants (counting probation as zero months) reveals an average sentence imposed of 9.6 months.