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Sentencing Factors Applicable to All Offense Types: Model Sentencing Guidelines §§3.1-3.6



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Model Sentencing Guidelines 3.1—Aggravating or Mitigating Role

- (a) Offense Level Adjustments: Based on the defendant's role in the offense, adjust the offense level as follows:
- (1) If the defendant was an organizer, leader, manager, or supervisor of a criminal activity that involved five or more participants, increase by one level.
 - (2) If the defendant was a minimal participant in the offense, decrease by one level.
- (b) Advisory factors to be considered in setting sentence within applicable range
- (1) Aggravating factor: The defendant was an organizer, leader, manager, or supervisor of a criminal activity that involved fewer than five participants, or was otherwise extensive.
 - (2) Mitigating factor: The defendant was a minor participant in the offense.

Application Notes:

1. A "participant" is a person who is criminally responsible for the offense, but need not have been convicted of the offense. A person who is not criminally responsible for the offense (e.g., an undercover law enforcement officer) is not a participant.
2. A "minimal participant" is a defendant who is plainly among the least culpable of those involved in the conduct of a group. A defendant's lack of knowledge or understanding of the scope and structure of the enterprise and of the activities of other participants is indicative of a role as a minimal participant.
3. A "minor participant" is a defendant who is less culpable than most other participants, but whose role could not be described as minimal.
4. In assessing whether a criminal activity or organization is "otherwise extensive," all persons involved during the course of the entire offense are to be considered. For example, a fraud that involved only three "participants" but used the unknown services of many outsiders could be considered extensive.

Drafter's Commentary

General Considerations

A consistent theme in criticisms of the Federal Sentencing Guidelines has been their purported failure to account

adequately for defendant role. This criticism may perhaps be overstated, or at the least insufficiently nuanced. After all, the Guidelines now provide for two-level, three-level, or four-level adjustments either up or down based on role in the offense.¹ Thus, the current Guidelines countenance as much as an eight-offense-level swing based on role for any defendant convicted of group criminal activity. In practical terms, this means that for a first-time offender whose otherwise applicable offense level is 24, corresponding to a range of fifty-one to sixty-three months, a four-level minimal participant reduction would lower the range to thirty-three to forty-one months, a decline of eighteen months in minimum sentence and twenty-two months in maximum sentence.² The same hypothetical defendant, if he were the recipient of a four-level aggravating role adjustment, would have his range enhanced to level 28, or seventy-eight to ninety-seven months.³ In short, for this defendant, role can change the minimum guideline sentence by almost three years and the maximum sentence by four and one-half years. In percentage terms, defendants under the current Guidelines can receive a sentence reduction of more than 30 percent if found to be a minimal participant, and a sentence increase of more than 50 percent for a four-level aggravating role enhancement. In short, whether considered in either absolute or percentage terms, role can make a very big difference in a current guideline sentence.

In light of these facts, the persistent complaint that role in the offense is insufficiently accounted for in the current system seems puzzling. However, on closer examination, the complaint is readily explainable. Part of the explanation lies in the very long sentences prescribed by the current guidelines system for drug offenses and in the relative importance of role and quantity in setting those sentences. Drug quantity can drive a guideline range very high, while role can have only a limited mitigating effect. For example, a first-time offender convicted of participation in smuggling one kilogram of heroin would have a base offense level of 32, or 121 to 151 months, based on drug quantity alone.⁴ A two-level minor role adjustment would lower the sentencing range to 97 to 121 months, and a four-level minimal role adjustment would lower the range to 78 to 97 months.⁵ Some observers think that a defendant who was,

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perhaps, a lookout for a single drug delivery or who loaned a car to a friend or relative with knowledge that it might be used in moving drugs should receive more consideration and not be obliged to serve more than six years in prison. For some, in cases like this, quantity matters too much and role too little. Similar complaints are now beginning to be heard in white-collar cases in light of recent dramatic increases in loss-driven economic crime sentences.⁶

A second reason for discontent with the current Guidelines' treatment of role is highlighted by the illustrative case in the first paragraph above. Note that, in the hypothetical, a four-offense-level decrease for minimal role produces a decline in minimum sentence of eighteen months, or about 30 percent, while a four-level increase for aggravating role produces a rise in minimum sentence of twenty-seven months, or about 50 percent. This is not an anomalous case. Under the current guidelines, a mitigating role adjustment generally has less effect on sentence than an aggravating role adjustment of the same number of offense levels. This asymmetry results from the logarithmic structure of the current guidelines sentencing table, which is a consequence of the Sentencing Reform Act's so-called 25 percent rule.⁷ On the current sentencing table, beginning at Offense Level 12, each two-offense-level step up the table produces a roughly 25 percent increase in minimum sentence. The compounding effect of successive 25 percent increases produces ever-wider ranges as one ascends the seriousness scale. Thus, beginning at Offense Level 12, from any given point on the table, a movement up the offense level scale of x levels will produce a larger effect on sentence range than a movement of x levels down the offense scale.

The model guidelines proposed here cannot entirely eliminate either of the foregoing problems with role adjustments under the current guideline, but they do ameliorate both difficulties. The asserted imbalance between defendant role and substance quantity in drug cases probably could not be entirely eliminated, even if one were disposed to do so, without a thoroughgoing reconsideration by Congress and the Sentencing Commission of the place of drug quantity in both statutory and guidelines drug sentencing rules. That reconsideration is beyond the scope of this project. That said, the model role guideline set out above together with the model sentencing grid would give somewhat greater effect to role relative to quantitative considerations.

First, because the ranges on the simplified grid are, in general, significantly wider than those on the current Guidelines' Sentencing Table, a one-level adjustment for aggravating or mitigating role will generally represent a larger shift in sentencing range than the maximum four-level role adjustment would under the current system. For example, a defendant in Level 5 of the Model Sentencing Table would be subject to a sentencing range of five to eight years. A one-level downward adjustment for minimal role on the model grid would produce a sentencing range of two to five years, and a one-level upward adjust-

ment for aggravating role would generate a sentence of eight to eleven years.⁸ An analogous defendant in Offense Level 26 of the existing guidelines would have a sentencing range of sixty-three to seventy-eight months, or about five to six and one-half years.⁹ A four-level downward adjustment for minimal role would produce a range of forty-one to fifty-one months (three years, five months to four years, three months), while a four-level upward adjustment would generate a range of 97 to 121 months (eight years, one month to ten years, one month).¹⁰ In this case, role adjustments under the model system have a slightly greater effect on sentencing range both up and down. This would not always be the case for every possible defendant, but the basic pattern holds across the population of defendants.

In addition, note that because the model sentencing table employs sentencing ranges of more constant width than the current guidelines, the effect of upward role adjustments more often matches the effect of downward adjustments. In the example in the preceding paragraph, the effect of a downward role adjustment on sentencing range is exactly equal to the effect of an upward adjustment. A one-level adjustment either up or down on the model grid changes the minimum and maximum sentence in the applicable range by three years. Again, this will not always be the case because the width of sentencing ranges does increase at three points in each Criminal History Category (from a width of six months to a width of one year, from a width of one year to a width of three years, and from a width of three years to a width of five years).¹¹ Still, the model sentencing table makes downward and upward role adjustments far more symmetrical than is presently the case.

Second, and again because of the increased width of the model grid's sentencing ranges, a judge in the proposed system would have increased discretion to consider the mitigating or aggravating effects of defendant role when setting a sentence within range. A judge who concludes that a defendant played an aggravating role in the crime, albeit not enough to have convinced a jury to award a mandatory one-level upward adjustment, could increase the defendant's sentence to the top of the range, which could mean an increase of three to five years in the middle or upper ranges of the sentencing table. Conversely, a judge convinced of the defendant's minor participation could sentence at the bottom of the range, once again a decision involving three to five years of prison time for defendants at offense level 4 or higher on the model sentencing table.

Consideration of Role in Setting Sentences within Range

Implicit in the foregoing discussion is a point that bears emphasis. As structured, Model Sentencing Guidelines §3.1 provides larger upward and downward sentence adjustments for defendants at the most and least severe poles of the role distribution than is the case under the

existing Guidelines. However, this model system is designed to account for role primarily within the parameters of the enlarged sentencing ranges. Thus, a defendant who might currently be enhanced two levels for a managerial role in a criminal undertaking involving fewer than five participants would, under the model system, receive no adjustment in sentencing level. Rather, the prosecution could, pursuant to Section 3.1(b)(1), argue that the defendant's aggravating role should move the court to sentence at the upper end of the applicable range. The same would be true of defendants seeking leniency based on a role that might, under current law, be categorized as "minor" rather than "minimal."

Jury vs. Judge Fact-Finding for Role in the Offense

Incorporating considerations of role into a model system that relies on jury fact-finding more heavily than the current Guidelines presents several challenges. First, any determination of a defendant's role in a criminal activity involving multiple participants inevitably involves difficult proof problems. Criminal conspiracies rarely have mission statements or organization charts. Likewise, defendants and witnesses who may have played a major role before being caught may be eager to minimize their roles or maximize those of others once authorities step in. Thus, proving the scope, objectives, and membership of a criminal group, and the precise roles of each of its members, and defending against such proof, is often challenging.

Second, even if there is ample evidence about a group's activities, assessing relative culpability within the criminal group is necessarily subjective, involving unquantifiable decisions about who is more or less responsible for collective decisions and actions and the harms caused thereby. To take a recurring example, is one who personally smuggles drugs across an international border more or less criminally responsible than the person who gave him the drugs to smuggle or the person who received the drugs from him once smuggled? Some might respond reflexively that a "courier" is, of course, less culpable than those who supplied or received the drugs. Others might argue, with equal vigor, that the international drug trade cannot function without couriers, who, far from being minor players, are indispensable members of the trafficking conspiracy and can thus never be considered minor. Still others might contend that whether a courier should be treated as a less culpable minor or minimal participant depends on factors such as whether the courier is a repeat player, how much money he receives for his services, what knowledge he has of the larger group, and whether he sometimes performs other functions for the group.

The proof problems associated with assessing role argue for involving juries only at the ends of the role spectrum—that is, asking them to identify only the very most and very least culpable members of a criminal group—and leaving to judges determinations of more subtle gradations

in between. Model Guideline §3.1 divides the fact-finding labor in just this way.

As to the decisions the Model Guidelines do ask juries to make, the inevitable subjectivity of a role determination argues for providing some measurable parameters, such as number of participants, into the jury's consideration. Nonetheless, role cannot be entirely quantified at either the more or less serious poles. If role is to play a part in setting sentencing ranges, juries must be allowed to make some comparative decisions. These decisions, like many others consigned to juries, will not be entirely consistent from case to case, but we should have faith in jurors' ability to make commonsense judgments about the relative culpability of participants in the case before them.

Model Sentencing Guidelines §3.2 Abuse of Trust

If the defendant abused a position of public or private trust in the course of committing or concealing the offense, increase by one level. This adjustment may not be employed if an abuse of trust is included in the base offense level or an applicable specific offense characteristic. The adjustment may be employed in addition to an adjustment under Model Sentencing Guidelines §3.1 (Aggravating or Mitigating Role).

Drafter's Commentary

The "abuse of special skill" provision of former U.S.S.G. §3B1.3 is removed as being too broadly applicable and too tenuously related to a proper measurement of culpability.

Model Sentencing Guidelines §3.3 Causing or risking injury

- (a) If the offense involved one or more of the following circumstances, increase the offense level by one level:
- (1) The offense resulted in substantial bodily injury or serious bodily injury to a person other than the defendant;
 - (2) The defendant consciously subjected another person to a substantial and unjustifiable risk of death or serious bodily injury, or aided and abetted another participant in the offense in doing so, in the course of committing the offense or in the course of fleeing from a law enforcement officer in connection with the offense;
 - (3) The defendant possessed a dangerous weapon (including a firearm) in connection with the offense or was aware that another participant in the offense did so.
- (b) [OPTION ONE] If the offense (i) involved more than one of the foregoing circumstances; (ii) involved substantial bodily injury, or a substantial and unjustifiable risk of substantial bodily injury, to more than one victim; or (iii) resulted in serious bodily injury to a person other than the defendant, the court, in addition to increasing the offense level by one level as specified in Section (a), [shall/should ordinarily] impose a sentence above the midpoint of the applicable guideline range.

- (b) [OPTION TWO] If the offense (i) involved more than one of the foregoing circumstances; (ii) involved substantial bodily injury, or a substantial and unjustifiable risk of substantial bodily injury, to more than one victim; or (iii) resulted in serious bodily injury to a person other than the defendant, the court, in addition to increasing the offense level by one level as specified in Section (a), [should/may] take the presence of more than one of the specified aggravating factors, or injury or risk of injury to more than one victim, into account in setting the defendant's sentence within the applicable sentencing range.
- (c) If the offense involved bodily injury to one or more victims, such injury or injuries should be considered by the court as an aggravating factor when setting the defendant's sentence within the applicable range.

Application Notes:

1. Do not apply an enhancement described in this Guideline if the conduct resulting in the imposition of the enhancement is an element of the offense of conviction or if the offense guideline in Chapter Two, or another adjustment in Chapter Three, calls for an equivalent or greater increase in offense level on the basis of the same conduct.
2. The term "in connection with" in (a)(3) means the dangerous weapon had a purpose or effect with respect to the offense; its presence or involvement cannot be accidental, coincidental or entirely unrelated to the crime; instead, the weapon at least must facilitate, or have the potential of facilitating, the offense. See *Smith v. United States*, 508 U.S. 223, 238 (1993)."
3. If the court finds more than one of the factors in Model Sentencing Guidelines § 3.3(b), such a finding would warrant (but not require) imposition of the maximum sentence provided by the applicable guideline.
4. The term "serious bodily injury" means bodily injury which involves—(A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty. See 18 U.S.C. § 1365(h)(3) (cited in 18 U.S.C. § 113(b)(2)).
5. The term "substantial bodily injury" means bodily injury which involves—(A) a temporary but substantial disfigurement; or (B) a temporary but substantial loss or impairment of the function of any bodily member, organ, or mental faculty. See 18 U.S.C. § 113(b)(1); U.S.S.G. § 2A2.3.
6. The term "bodily injury" means any significant injury; e.g., an injury that is painful and obvious, or is of a type for which medical attention ordinarily would be sought. See U.S.S.G. § 1B1.1, comment. n.1(B).
7. The term "dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury.

Drafter's Commentary

General Considerations

This Model Guideline serves as a generally applicable provision addressing any case where the offense caused or risked physical injury to other persons, but as to which the statute or guideline governing the offense does not, or need not, account for such injury or risk of injury. This general provision will cover anomalous individual cases in which an ordinarily nonviolent crime results in injury or generates risk and no provision is made in either statute or guideline for such an unusual event. It will also permit elimination of rarely used special provisions such as those in the existing fraud and theft guideline, U.S.S.G. § 2B1.1, aimed at the few cases where a property crime involves physical injury or the risk thereof.¹² Retention of these provisions in a guideline devoted to customarily nonviolent property crimes seemed distracting and unnecessary. A general provision applicable to all crime types is more efficient.

In addition, it seemed advantageous to consolidate in a single guideline a number of provisions related to infliction of injury or creation of risk. For example, the current Guidelines contain a separate provision for reckless endangerment during flight, U.S.S.G. § 3C1.2, which involves risk creation and should rationally be consolidated with other rules involving the same consideration.

Notes on Definitions

Because the wider sentencing ranges of the Model Sentencing Guidelines generate a substantial sentence increase for each step up the offense level scale, this guideline provides no increase in offense level for the infliction of "bodily injury." The term "bodily injury," as that term is used in the current guidelines, U.S.S.G. § 1B1.1 app. note 1(B), has sometimes been construed to embrace very minor injuries of a type that would barely require first aid, much less serious medical attention or hospitalization. See, e.g., *United State v. Pandiello*, 184 F.3d 682 (7th Cir. 1999) (applying bodily injury enhancement to robbery guideline in case where robbery victim sustained red welt on the forehead that was "painful and obvious," but did not require medical attention). Nonetheless, pursuant to Model Sentencing Guidelines § 3.3(c), infliction of bodily injury would remain a consideration in setting the defendant's sentence within the guideline sentencing range.

The definition of "dangerous weapon" in Model Sentencing Guidelines § 3.3 app. note 6 differs from the current definition in U.S.S.G. § 1B1.1, app. note 1(D), in that it does not include simulated weapons such as toy guns or a hand wrapped in a towel. Use of such simulated weapons would still suffice to satisfy the "taking by intimidation" element of robbery and similar offenses. See *United States v. Ray*, 21 F.3d 1134 (D.C. Cir. 1994) (noting distinction between simple bank robbery which can be committed with a simulated weapon, 18 U.S.C. § 2113(a), and aggravated bank robbery pursuant to 18 U.S.C.

§ 2113(d), which requires an actual dangerous weapon. However, as noted in *Ray*, there is a difference in dangerousness between a robber carrying a toy pistol and a robber wielding a real one, and for the purposes of this Model Guideline, we have elected to treat the two situations differently for sentencing purposes.

Alternative Provisions

Model Sentencing Guidelines §3.3(b) is presented in alternative forms. In Option One, a judicial finding of the specified injury or risk creates a requirement (“shall”) or a presumption (“should ordinarily”) that the court will impose a sentence above the midpoint of the applicable range. In Option Two, a judicial finding of the specified risk or injury is merely a factor that the judge should or may take into account in setting the defendant’s sentence within the applicable range. The pros and cons of these competing approaches are discussed at length in the Editor’s Observations at the beginning of this Issue.¹³

Model Sentencing Guidelines §3.4 Aggravating Factors to Consider in Setting Sentence within Range

If the offense involved one or more of the following circumstances, the court [shall/may] consider them in setting the defendant’s sentence within the applicable guideline range:

- (a) Using a minor to commit a crime: If the defendant was at least twenty-one years of age at the time of the offense, and used or attempted to use a person less than eighteen years of age to commit the offense or assist in avoiding detection of, or apprehension for, the offense.
- (b) Use of body armor in drug trafficking crimes and crimes of violence: The offense of conviction was a drug trafficking crime or a crime of violence, and the defendant used body armor during the commission of the offense, or in an attempt to avoid apprehension for the offense.

Drafter’s Commentary

Both of these factors are enhancements under the existing Guidelines, U.S.S.G. §§ 3B1.4 (Use of Minor) and 3B1.5 (Body Armor). Both now call for two-offense-level upward adjustments. Because of the increased width of the sentencing ranges in the Model Grid, an upward adjustment of one full offense level would roughly double the effect of these provisions. There being no obvious argument for enhancing the effect of these factors, they are accounted for here as factors to be considered within the guideline range.

The wording of the use of a minor provision has been altered slightly here from that employed in the current Guidelines. In the current Guidelines, a defendant is eligible for this enhancement regardless of his or her own age. Thus, one minor can be enhanced for working with another minor in a criminal enterprise. It seems more reasonable to impose an enhanced sentence on adults who corrupt those younger than themselves. Further, the statute in response

to which the existing guideline was promulgated directed the Commission to “promulgate guidelines or amend existing guidelines to provide that a defendant 21 years of age or older who has been convicted of an offense shall receive an appropriate sentence enhancement if the defendant involved a minor in the commission of the offense.” Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-22, § 140008, 108 Stat. 2033 (1994). Accordingly, Model Guideline 3.4(b) requires that the defendant be at least twenty-one years of age and thus presumably be possessed of sufficient judgment and maturity to warrant imposition of additional punishment for the choice to corrupt a minor.

Model Sentencing Guidelines §3.5 Obstruction of Justice

If (i) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice during the course of the investigation, prosecution, or sentencing of the offense of conviction, and (ii) the obstructive conduct related to the defendant’s offense of conviction or a closely related offense, [OPTION ONE] the court [shall/should ordinarily] impose a sentence above the midpoint of the applicable guideline range. [OPTION TWO] the court [should/may] take that fact into account in setting the defendant’s sentence within the applicable sentencing range

Drafter’s Commentary

The enhancement for obstruction of justice under the existing Guidelines has been the focus of considerable attention among those trying to figure out how the *Blakely* and *Booker* decisions might be accommodated within a simplified federal sentencing scheme. The obstruction enhancement provokes philosophical disagreement and, particularly during the period between *Blakely* and *Booker*, seemed to pose a knotty practical problem.

The philosophical debate is between those who think it entirely appropriate to enhance a defendant’s sentence if he engages in obstructive conduct during the course of his prosecution and those who find it somehow unseemly to increase punishment for behavior that can be seen as nothing more than an understandable effort to escape criminal conviction. The divergence in views is particularly acute when the claimed obstruction consists primarily of the defendant’s own allegedly false or misleading testimony at trial. Though few commentators are willing to say so plainly, there is a strong sentiment (which can be discerned even among some judges) that imposing extra punishment for exercising the entirely human urge to talk one’s way out of trouble comes close to infringing one’s right to testify in one’s own defense, or at the least is just piling on. Others point out that, depending on what the defendant testified about, a guilty verdict does not necessarily mean that the defendant perjured himself or even that the jury disbelieved the defendant. At a minimum, say critics of the obstruction enhancement, if the

government wants increased punishment for obstructive conduct in the course of a criminal proceeding, it should be obliged to allege and prove the crime of obstruction of justice in a separate proceeding.

Prosecutors (and some judges) take the less indulgent view that the right to testify does not include the right to commit perjury, and that there is a critical difference between putting the government to its proof and affirmatively seeking to mislead the jury. Moreover, they see little utility in a requirement of bringing separate obstruction charges. They recognize that such charges are rarely brought due to the time and costs associated with doing so, thus making the choice to lie on the stand virtually cost-free. Moreover, as to in-trial obstruction, the trial judge is in a uniquely good position to assess the claim of obstruction.

In a post-*Blakely/Booker* world, the practical problem posed by any effort to enhance a defendant's sentence for obstructive conduct during the course of the present case is that such conduct may well occur post-indictment or during the trial itself, thus making it difficult or impossible to identify the offending behavior, allege it to the jury, prove its obstructive character, and obtain a jury finding on whether it actually occurred. Thus, if one wants to account for obstruction in a new system in which increases in sentencing range must be the result of jury findings or defendant admissions, obstruction presents a difficulty.

In the sentencing structure advanced here, one cannot easily enhance a defendant's offense level for obstruction committed during trial, and one could not do so at all without unwieldy provisions for mid-trial notice to the defendant of the intent to seek an obstruction enhancement as part of the jury's verdict, opportunities for the defendant to rebut the claim of obstruction, special jury instructions and perhaps a bifurcated sentencing proceeding devoted to the issue, and so on. The speculative advantages of providing an offense level enhancement for obstruction are clearly outweighed by the procedural difficulties of doing so. That said, the Model Guidelines described here can address obstruction in at least two ways, both involving findings of fact by the trial judge. Model Sentencing Guidelines §3.5 suggests two approaches: A finding of obstruction might either trigger a mandatory or presumptive sentence above the

midpoint of the applicable range or simply constitute a factor the judge is advised to consider when setting a sentence within the applicable sentencing range. Again, the pros and cons of these competing approaches are discussed at length in the Editor's Observations at the beginning of this Issue.¹⁴

Model Sentencing Guidelines 3.6 Victim-Related Adjustments

[It is contemplated that the Model Guidelines would contain provisions for victim-related adjustments analogous to current U.S.S.G. §§ 3A1.1 to 3A1.4. However, the drafters of the current pilot project have not prepared text for these provisions.]

Notes

- ¹ U.S.S.G. §3B1.1 (Aggravating role) and §3B1.2 (Mitigating role) (2005).
- ² U.S.S.G. §5A (Sentencing Table) (2005).
- ³ *Id.*
- ⁴ U.S.S.G. §§2D1.1(c)(4) and 5A (2005).
- ⁵ U.S.S.G. §5A (2005).
- ⁶ For a discussion of increased white-collar sentencing levels over the past several years, see Frank O. Bowman, III, *Pour Encourage les Autres: The Curious History and Distressing Implications of the Criminal Provisions of the Sarbanes-Oxley Act and the Sentencing Guidelines Amendments That Followed*, 1 OHIO ST. J. CRIM. L. 373 (2004). For an example of a case in which some observers maintain that loss amount played a disproportionate role in comparison to role in the offense, see *United States v. Ollis*, 429 F.3d 540 (5th Cir. 2005).
- ⁷ For discussion of the "25 percent rule" and its deleterious effect on the architecture of the current Guidelines Sentencing Table, see Frank O. Bowman, III, *Beyond Band-Aids: A Proposal for Reconfiguring Federal Sentencing after Booker*, 2005 U. OF CHI. LEG. FORUM 149, 199-201.
- ⁸ See Frank O. Bowman, III, *A Simplified Sentencing Grid*, 18 FED. SENT. REP. 320 (2006).
- ⁹ U.S.S.G. §5A (Sentencing Table) (2005).
- ¹⁰ *Id.*
- ¹¹ Bowman, *Simplified Grid*, *supra* note 8.
- ¹² U.S.S.G. §2B1.1(b)(3) (two-level enhancement for theft from a person); 2(b)(12) (enhancements for firearms possession and risk of injury) (2005).
- ¹³ Frank O. Bowman, III, Editor's Observations: *'Tis a Gift to Be Simple: A Model Reform of the Federal Sentencing Guidelines*, 18 FED. SENT. REP. 301 (2006).
- ¹⁴ *Id.* at 305-306.