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Appellate Determinacy: The Sentencing Philosophy of The United States Court of Appeals for the Third Circuit

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APPELLATE DETERMINACY: THE SENTENCING PHILOSOPHY OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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I. INTRODUCTION

THE sentencing of a criminal defendant is the culmination of society's endeavor to provide security to the citizenry from the vexing, and perhaps inexorable, problem of crime.[1] Different sentencing structures may be devised to serve an array of purposes, including retribution, incapacitation, deterrence of the defendant and others, and rehabilitation of the offender.[2] The genealogy of sentencing in the United States is an object lesson in the pendulum theory of history. The principal historic vacillation has been between adoption of retribution, or of rehabilitation, as the leading edge of sentencing policy.

The United States has experienced three primary epochs of sentencing philosophy and may well be in the nascent phase of a fourth generation.[3] Prior to the late nineteenth century, the princi-

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1. [C]rime is embedded in the culture — and in this particular culture, and at this particular time. The situation is organic to society; it is part of the very cell structure, the nucleus. It is like a virus that seizes control of some part of the organism and its genetic structure; and cannot be destroyed with any of our present instruments of cure.

Of course, there are great pressures on the criminal justice system — pressures to *do* something, to provide some relief. The frantic activity of the eighties, which continues into the nineties — the furious building of prisons, the stiff laws, the cries for more, more, more in the way of punishment — what has the upshot been? The effect on crime: imperceptible.

LAWRENCE M. FRIEDMAN, CRIME AND PUNISHMENT IN AMERICAN HISTORY 460 (1993).

2. *See* United States v. Bergman, 416 F. Supp. 496, 498-500 (S.D.N.Y. 1976) (discussing various sentencing principles); *see also* ARTHUR W. CAMPBELL, LAW OF SENTENCING § 2:1, at 17-19 (2d ed. 1991) (stating that sentencing theories of intimidation, indignation, elimination, incapacitation, reformation, disapprobation, expiation, retaliation, retribution and education are embraced within rationales of deterrence, incapacitation, rehabilitation or retribution); WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., CRIMINAL LAW 23-26 (2d ed. 1986) (stating that theories of punishment are (1) prevention, (2) restraint, (3) rehabilitation, (4) deterrence, (5) education, and (6) retribution).

3. For a detailed recitation of the history of sentencing, *see generally* SANDRA

pal aim of sentencing, to the extent articulated, was retribution.[4] Punishments were determinate; persons convicted were sentenced to and served the full term of incarceration established by the legislature.[5]

The late nineteenth and early twentieth century witnessed the ascendancy of rehabilitation as the chief function of the criminal sentence. Legislatures promulgated indeterminate sentencing schemes to facilitate rehabilitation of the offender:

> Statutes specified the penalties for crimes but nearly always gave the sentencing judge wide discretion to decide whether the offender should be incarcerated and for how long, whether restraint, such as probation, should be imposed instead of imprisonment or fine. This indeterminate-sentencing system was supplemented by the utilization of parole, by which an offender was returned to society under the "guidance and control" of a parole officer.
>
> Both indeterminate sentencing and parole were based on concepts of the offender's possible, indeed probable, rehabilitation, a view that it was realistic to attempt to rehabilitate the inmate and thereby to minimize the risk that he [or she] would resume criminal activity upon his [or her] return to society. It obviously required the judge and the parole officer to make their respective sentencing and release decisions upon their own assessments of the offender's amenability to rehabilitation. As a result, the

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SHANE-DUBOW ET AL., SENTENCING REFORM IN THE UNITED STATES: HISTORY, CONTENT AND EFFECT 1-12 (National Institute of Justice 1985) [hereinafter SENTENCING REFORM] (giving historical overview of sentencing and punishment); CAMPBELL, *supra* note 2, §§ 1:1-1:3, at 1-15 (detailing western traditions, eighteenth and nineteenth century developments and modern trends in sentencing).

4. United States v. Grayson, 438 U.S. 41, 45-46 (1978) (noting that prior to late nineteenth century, retribution and punishment were primary purposes of incarceration); *see also* Williams v. New York, 337 U.S. 241, 247-48 (1949) (noting rigidity of fixed penalties and movement away from retribution as primary goal of punishment). Punishment in colonial times was married in large part to religion. "Sinners were to be punished and brought back into the fold." FRIEDMAN, *supra* note 1, at 31. Rather than utilizing imprisonment as the norm, punishments were public and were designed "to teach a lesson, so that the sinful sheep would want to get back to the flock." *Id.* at 37.

Following the American Revolution, penitentiaries were employed to punish the offender, with rehabilitation acknowledged to be a secondary by-product of incarceration. *Id.* at 77-82; CAMPBELL, *supra* note 2, § 1:2, at 7; SENTENCING REFORM, *supra* note 3, at 2-3.

5. *Grayson*, 438 U.S. at 45; *see also Williams*, 337 U.S. at 248 (alluding to "rigidly fixed punishments" once used in sentencing).

court and the officer were in positions to exercise, and usually did exercise, very broad discretion.[6]

The third era of United States sentencing philosophy began in the late 1960s and early 1970s spurred by cries for a return to determinate sentencing, with retribution rather than rehabilitation as the dominant rationale.[7] The attack on the indeterminate/rehabilitative model rested in part upon empirical data suggesting that efforts to reform convicts had failed to ameliorate recidivism.[8] Opposing political forces further contributed to the demise of the former system. Conservatives lobbied against undue leniency in the actual time served by offenders and called for increasingly retributive sentences.[9] The political left criticized the disparity in sentences, often based upon the race of the defendant, that resulted from judicial discretion.[10] At the federal level, Congress, in

6. Mistretta v. United States, 488 U.S. 361, 363 (1989) (citation omitted); *see also Williams*, 337 U.S. at 248 ("Retribution is no longer the dominant objective of the criminal law. Reformation and rehabilitation of offenders have become important goals of criminal jurisprudence."). Congress, in the legislative history to the 1984 Sentencing Reform Act, Pub. L. No. 98-473, stated:

> The sentencing provisions of current law were originally based on a rehabilitation model in which the sentencing judge was expected to sentence a defendant to a fairly long term of imprisonment. The defendant was eligible for release on parole after serving one-third of his term. The Parole Commission was charged with setting his release date if it concluded that he [or she] was sufficiently rehabilitated. At present, the concepts of indeterminate sentencing and parole release depend for their justification exclusively upon this model of "coercive" rehabilitation — the theory of correction that ties prison release dates to the successful completion of certain vocational, educational, and counseling programs within the prisons.

S. REP. NO. 225, 98th Cong., 1st Sess. 40 (1983) (footnote omitted), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3223.

7. SENTENCING REFORM, *supra* note 3, at 6-9; *see also* CAMPBELL, *supra* note 2, § 1.3, at 9-15 (noting criticism of indeterminate sentencing and rise of determinate sentencing).

8. *Mistretta*, 488 U.S. at 365 ("Rehabilitation as a sound penological theory came to be questioned and, in any event, was regarded by some as an unattainable goal for most cases."). The legislative history of the Sentencing Reform Act of 1984 cited to the following analyses as illustrations of the ineffectiveness of correctional treatment: DAVID F. GREENBURG, MUCH ADO ABOUT LITTLE: THE CORRECTIONAL EFFECTS OF CORRECTIONS (1974) (unpublished summary of effectiveness studies prepared by Committee for Study of Incarceration); DOUGLAS LIPTON ET AL., THE EFFECTIVENESS OF CORRECTIONAL TREATMENT: A SURVEY OF TREATMENT EVALUATION STUDIES (1975); Martinson, *What Works: Questions and Answers About Prison Reform*, 1947 PUB. INTEREST 22; James Robison & Gerald Smith, *The Effectiveness of Correctional Programs*, 17 CRIME & DELINQ. 67 (1971). S. REP. NO. 225, 98th Cong., 2d Sess. 40 & n.16 (1983), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3223 n.16.

9. Alfred Blumstein, *Sentencing Reforms: Impacts and Implications*, 68 JUDICATURE 129, 130 (1984).

10. *Id.*; S. REP. NO. 225, 98th Cong., 2d Sess. 49 (1983), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3232 ("[S]entencing in the [f]ederal courts is characterized by

1984, enacted a determinate sentencing scheme, abolishing parole release and creating an independent commission charged with promulgating mandatory sentencing guidelines.[11]

A little more than a decade after the authorization of the Federal Sentencing Commission, American society is revisiting the late nineteenth century repudiation of determinate sentencing. Critics of the Guidelines quarrel with the undue severity of sentences; the elimination of trial judges' discretion in sentencing, including the ability to consider such personal characteristics of the defendant as education, vocational skills, family and community ties, mental and emotional conditions, and drug and alcohol dependency; the complexity of the Guidelines; the failure of the Guidelines to reduce disparity; and, as in the late nineteenth century, problems of prison overcrowding.[12]

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unwarranted disparity and by uncertainty about the length of time offenders will serve in prison . . . . This disparity is fair neither to the offenders nor to the public."); AMERICAN FRIENDS SERVICE COMMITTEE, STRUGGLE FOR JUSTICE: A REPORT ON CRIME AND PUNISHMENT IN AMERICA (1971); *see* CAMPBELL, *supra* note 2, § 1:3, at 9-12 (noting discrepancy in sentences and that factors such as race and gender were influencing sentencing decisions); SENTENCING REFORM, *supra* note 3, at 7-8.

11. 18 U.S.C. §§ 3551-3586 (1994); 28 U.S.C. §§ 991-998 (1994) (establishing Sentencing Commission and defining its duties). The legislative history of the Sentencing Reform Act accepted that the rehabilitation approach to sentencing had failed. S. REP. NO. 225, 98th Cong., 2d Sess. 40 (1983), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3223. The Sentencing Commission presumed the purpose of punishment to be the control of crime. UNITED STATES SENTENCING COMMISSION, GUIDELINES MANUAL, Ch. 1, Pt. A, at 3 (Nov. 1994) [hereinafter U.S.S.G.]. The Commission found it unnecessary to choose between two prevailing theories: a "just desserts" principle, under which punishment is tailored to the offender's culpability and to the harm to the victims, and a "crime control" theory, where sentences are gauged to lessen the probability of future crime either by incapacitating the defendant or deterring others. *Id.* at 4. In the Commission's view, in most sentencing determinations, either philosophy yields the same result. *Id.*

The Guidelines generally reject rehabilitation as the object of the sentence. 28 U.S.C. § 994(k) (1994) ("The Commission shall insure that the [G]uidelines reflect the inappropriateness of imposing a sentence to a term of imprisonment for the purpose of rehabilitating the defendant or providing the defendant with needed educational or vocational training, medical care, or other correctional treatment."). *But see* 18 U.S.C. § 3553(a)(2)(D) ("The court, in determining the particular sentence to be imposed, shall consider . . . the need for the sentence imposed . . . to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.").

United States District Judge Marvin Frankel first proposed the concept of sentencing guidelines. MARVIN E. FRANKEL, CRIMINAL SENTENCES: LAW WITHOUT ORDER (1972). By 1995, 22 states had created sentencing commissions and guidelines were in effect in 17 of those states. Michael Tonry, *Twenty Years of Sentencing Reform: Steps Forward, Steps Backward*, 78 JUDICATURE 169, 171 (1995).

12. *See, e.g.*, Marc Miller, *Rehabilitating the Federal Sentencing Guidelines*, 78 JUDICATURE 180 (1995) (noting hostile reactions to Guidelines and that criticisms and suggestions have been offered by number of professionals that address areas of judicial concern). Judicial criticisms of the Guidelines are collected in United States v. Harrington, 947 F.2d 956, 968-70 (Edwards, J., concurring) (providing

In any sentencing era, the sentence imposed and actually served in a given case is the end product of several players: the legislature, the prosecutor, the victim, the defense counsel, the defendant, the parole office, the trial judge and in some cases, the jury. Yet, save for the handful of cases selected for review by the United States Supreme Court, in most federal cases the final arbiter of the sentence is the court of appeals.

This Article assesses the evolution of the sentencing philosophy of the United States Court of Appeals for the Third Circuit. It concludes that in the wake of the historic fluctuation between rehabilitation and retribution as the overarching goal of sentencing, and the alternating indeterminate and determinate sentencing schemes used to effectuate these goals, the Third Circuit has not veered from its philosophy of "appellate determinacy."

II. THIRD CIRCUIT DECISIONS BEFORE THE SENTENCING GUIDELINES

The creation of the United States Court of Appeals for the Third Circuit in 1891[13] coincided with the ascendancy of rehabilitation as the principal mission of sentencing. From its inception until the institution of the Sentencing Guidelines in 1987, the Third Circuit's review of sentencing decisions displayed unwavering loyalty to three tenets. First, if the district court's sentence is contrary to the punishment established by Congress, the court of appeals will reverse the sentence regardless of how sound the reasons lodged for departure from the statutory penalty. Second, even if the punishment is consonant with the legislative prescription, the Third Circuit will reverse if the process giving rise to the sentence is flawed. Finally, assuming the sentence comports with the statutory scheme and is imposed through appropriate procedures, the Third Circuit will not reverse the district court's selection of the sentence, notwithstanding the court of appeals' view as to the sentence's severity or compatibility with the aims of sentencing. Every decision during the first century of the Third Circuit's existence was determined under these three principles.

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appendix of cases and authorities). *See also* SENTENCING REFORM, *supra* note 3, at 9-12 (noting criticisms of determinate sentencing); José A. Cabranes, *Reforming the Federal Sentencing Guidelines: Appellate Review of Discretionary Sentencing Decisions*, 1 HARV. LATINO L. REV. 177 (1994) (criticizing Federal Sentencing Guidelines as incomprehensible).

13. The Court of Appeals was created by the Circuit Court of Appeals Act, also known as the Evarts Act, ch. 517, stat. 826 (1891).

A. *Tenet #1: The Court Will Reverse Any Sentence Contrary to the Punishment Fixed by Congress*

The first aspect of appellate determinacy practiced by the Third Circuit before the Sentencing Guidelines was its persistent reversal of any district court sentence that was contrary to the legislative prescription, regardless of how meritorious the sentencing court's reasons for departing from the statutory scheme to accomplish rehabilitation of the offender. The court stated the rationale for this tenet in *Ruiz v. United States*:[14]

> Fixing the limits of the punishment to be imposed for crime is a legislative function. It is the duty of the district court to impose the sentence which it regards as appropriate within the limits thus fixed and if it does so its action will not be disturbed on appeal. But where the sentence imposed is at variance with the statutory requirements, it may be corrected to conform to the provisions of the statute. . . .[15]

Reversal is guaranteed if the sentence imposed is greater than that authorized by Congress. *D'Allessandro v. United States*[16] provided a routine illustration of this aspect of Third Circuit jurispru-

14. 365 F.2d 500 (3d Cir. 1966).

15. *Id.* at 502 (citation omitted). The Third Circuit in *Ruiz* reversed a sentence of life imprisonment as the penalty for the commission of second degree murder because, under the Virgin Islands Code, "the punishment of life imprisonment may be imposed only for first degree murder." *Id.* at 501-02; *see also* Virgin Islands v. Douglas, 812 F.2d 822, 828-29, 833 (3d Cir. 1987) (holding that district court erred in imposing mandatory minimum sentence for attempted rape where statute providing minimum sentence for rape makes no reference to punishment for attempted rape); United States v. Gomberg, 715 F.2d 843, 851 (3d Cir. 1983) (stating that Congress did not intend that defendant, sentenced under Comprehensive Drug Abuse Prevention and Control Act, 21 U.S.C. §§ 801-971, for engaging in continuing criminal enterprise, receive separate sentences for conspiracy and underlying predicate offenses), *cert. denied*, 465 U.S. 1078 (1984); United States v. Gomez, 593 F.2d 210, 213 (3d Cir.) (en banc) (holding that Comprehensive Drug Abuse Prevention and Control Act, 21 U.S.C. §§ 801-971, does not authorize separate sentences for convictions for possession of controlled substance with intent to distribute and actual distribution of controlled substance when convictions relate to same single drug transaction), *cert. denied*, 441 U.S. 948 (1979); Virgin Islands v. Henry, 533 F.2d 876, 878-79 (3d Cir. 1976) (holding that district court erred by imposing separate sentence under Virgin Islands Habitual Criminal Statute rather than imposing increased sentence for underlying felony giving rise to prosecution), *overruled on other grounds by* United States v. Busic, 639 F.2d 940 (3d Cir.), *cert. denied*, 452 U.S. 918 (1981); United States v. Noble, 155 F.2d 315, 318 (3d Cir. 1946) (holding that imposition of consecutive sentences on each of four counts of violation of Second War Powers Act was not authorized by statute where counts charge single offense).

16. 90 F.2d 640 (3d Cir. 1937).

dence. In that case, the court overturned the trial court's imposition of a five-year sentence for conspiracy to transport a woman with the intent that she be induced to engage in prostitution, because the maximum sentence assigned by Congress for the offense was two years.[17]

More interesting was the court's disposition in *United States v. Mazzei*.[18] Mazzei, a Pennsylvania state senator, was convicted of extortion in violation of the Hobbs Act.[19] In addition to sentencing Mazzei to incarceration and imposing a fine, the district court ordered Mazzei removed from office as a Pennsylvania state senator.[20] The Third Circuit reversed the portion of the sentence removing Mazzei from office, finding that Congress had not authorized such punishment under the Hobbs Act.[21] The district court had relied upon a Pennsylvania statute requiring public officials to forfeit office upon conviction of extortion.[22] The Pennsylvania statute expressly provided that " 'the sentence imposed by the court shall include the direction for the removal from office of such person.' "[23] The court of appeals rejected the government's contention that even where Congress did not authorize removal, the sentencing court had inherent authority to enforce the policy of the Pennsylvania statute.[24] To the contrary, the court reasoned that the district court's sentencing power is limited to the punishment prescribed by Congress.[25]

The Third Circuit's fidelity to the legislative will has extended not only to sentences exceeding congressional limits; it also has caused the court unfailingly to reverse sentences that fall beneath the statutory minimum, no matter how compelling the justification.

17. *Id.* at 640-41.

18. 521 F.2d 639 (3d Cir.) (en banc), *cert. denied*, 423 U.S. 1014 (1975).

19. *Id.* at 640 (citing Hobbs Act, 18 U.S.C. § 1951 (1970)). The Hobbs Act proscribed "[t]he obtaining of property from another, without his [or her] consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 U.S.C. § 1951(b)(2). The Hobbs Act prohibits affecting commerce by extortion. *Id.* § 1951(a). Senator Mazzei had required a lessor of office space for the Bureau of State Lotteries and the Department of Labor and Industry to pay 10% of the gross rents to a senate finance re-election committee. *Mazzei*, 521 F.2d at 640-41.

20. *Mazzei*, 521 F.2d at 645-46 (noting sentence of district court).

21. *Id.*

22. *Id.* (noting reliance of district court on statute and citing 65 PA. CONS. STAT. ANN. § 121 (Supp. 1974)).

23. *Id.* at 646 (quoting 65 PA. CONS. STAT. ANN. § 121).

24. *Id.* The Third Circuit also repudiated the argument that removal could be imposed as a condition of release pending appeal or be enforced as a collateral consequence of the conviction. *Id.*

25. *Id.*

In *Virgin Islands v. David*,[26] the trial judge refused to impose the mandatory minimum prison sentence required by the Virgin Islands Habitual Criminal Information Act (Act).[27] The Act specified that any person found guilty of a felony in the Virgin Islands who had a previous felony conviction must be incarcerated for not less than ten years.[28] It was undisputed that the defendant was a "habitual criminal" within the meaning of the statute.[29] The trial judge refused, however, to sentence the defendant to the minimum penalty because the prosecutors had not been uniformly seeking to apply the Act to repeat offenders.[30] In the trial judge's opinion, the government appeared to be using the prospect of the mandatory minimum to extract favorable plea bargains.[31]

The Third Circuit did not betray its view as to the propriety of utilizing the specter of a mandatory sentence as a plea bargaining tool. Instead, the court of appeals' reversal rested entirely on its interpretation of the legislative will.[32] The Third Circuit first noted that the statute did not demand that the government invoke the Act in every case to which it could apply.[33] Rather, the prosecutor had discretion to seek the mandatory minimum, discretion which was limited only by the constitutional proscription of selective enforcement based upon " 'race, religion, or other arbitrary classification.' "[34] Because neither the defendant nor the trial judge raised

26. 741 F.2d 653 (3d Cir. 1984).

27. *Id.* at 653-55 (noting district court's refusal to comply with statute and citing V.I. CODE ANN. tit. 14, § 61(a) (Supp. 1982)).

28. *Id.*

29. *Id.* at 654.

30. *Id.* at 654-55.

31. *Id.* at 655 (noting claim by district judge that Act was used as "tool" in arranging plea bargains). The Act required the government to file a habitual criminal information in order to trigger the mandatory sentencing provisions. *See id.* at 654 (citing V.I. CODE ANN. tit. 14, § 62 (Supp. 1982); *see also id.* (noting filing of habitual criminal information pursuant to V.I. CODE ANN. tit. 14, §§ 61-62 (Supp. 1982) and noting no deficiency in filing or service of habitual criminal information). The trial judge's critique is one that has been similarly lodged by opponents of current Sentencing Guidelines. For a further discussion of the views of Sentencing Guidelines opponents, see *supra* note 12 and accompanying text.

32. *See id.* at 656 (finding "no reason for a district court judge to refuse to apply this statute, which was properly enacted by the Virgin Islands legislature").

33. *Id.* at 655 (noting prosecutor is not "bound to invoke the statute in every case").

34. *Id.* (quoting Oyler v. Boles, 368 U.S. 448, 456 (1961)); *see also* Virgin Islands v. Harrigan, 791 F.2d 34, 36 (3d Cir. 1986) (holding absent racial discrimination, no equal protection violation from prosecutor's decision to file habitual criminal information against defendant accused of grand larceny despite past internal policy of not filing information in cases involving grand larceny); Virgin Islands v. Ramos, 730 F.2d 96, 98 (3d Cir. 1984) (finding that sentencing pursuant to Habitual Criminal Act does not constitute cruel and unusual punishment where

an allegation of unconstitutional selective enforcement, the court of appeals held that the trial judge erred by failing to impose the ten-year minimum term mandated by the Act.[35]

Perhaps the most striking instance of the Third Circuit's adherence to the sanctity of legislatively-prescribed punishment was *United States v. Martinez-Zayas*.[36] Martinez-Zayas was convicted of possession with intent to distribute cocaine in violation of 21 U.S.C. § 841(a).[37] In the Anti-Drug Abuse Act of 1986, Congress provided that anyone convicted of violating § 841(a) who possessed more than five kilograms of cocaine must be sentenced to a minimum of ten years imprisonment without parole.[38] Despite the fact that Martinez-Zayas was convicted of possession with intent to distribute twelve kilograms of cocaine, the trial judge sentenced her to only five years imprisonment.[39] The court elected not to impose the mandatory minimum because Martinez-Zayas did not fall within the realm of drug kingpins Congress attempted to reach in the Anti-Drug Abuse Act.[40] Instead, the court noted that the defendant subsisted on welfare and was a mid-level drug dealer in an operation spearheaded by her boyfriend.[41]

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sentence was neither disproportionate to crime nor inconsistent with sentence that defendant could have received absent habitual criminal charge); *cf.* United States v. Hawkins, 811 F.2d 210, 215-17 (3d Cir.) (holding that sentencing under Armed Career Criminal amendment to 18 U.S.C. app. § 1202(a) (repealed 1986), which imposed minimum sentence for possession of gun by person who has three previous convictions for robbery or burglary, does not violate equal protection; it neither creates suspect classification nor impinges upon fundamental interest, and it has rational relationship to legitimate government purpose of reduction of robberies and burglaries committed by career criminals), *cert. denied*, 484 U.S. 833 (1987).

35. *David*, 741 F.2d at 656. The Third Circuit instructed the trial judge to be guided in resentencing by the court's directions in Virgin Islands v. George, decided the same day. *Id.* (citing Virgin Islands v. George, 741 F.2d 643 (3d Cir. 1984)). In *George*, the court of appeals upheld the defendant's contention that his privilege against self-incrimination had been violated. *George*, 741 F.2d at 645. During the sentencing proceeding, the trial judge, without advising George of his right to remain silent, asked whether he had been previously convicted of a felony and used George's admission to enhance the sentence. *Id.* at 648. The Third Circuit prescribed the colloquy required in a habitual offender proceeding before a trial judge could accept the defendant's admission that he had been previously convicted of a felony for purposes of the habitual offender statute. *Id.* at 650 & n.4. *George* exemplifies the second tenet of the Third Circuit's sentencing philosophy. For a further discussion of the second tenet of the Third Circuit's sentencing philosophy, see *infra* notes 51-71 and accompanying text.

36. 857 F.2d 122 (3d Cir. 1988).

37. *Id.* at 124 (citing 21 U.S.C. § 841(a) (Supp. 1986)).

38. 21 U.S.C. § 841(b)(1)(A).

39. *Martinez-Zayas*, 857 F.2d at 124.

40. *Id.*

41. *Id.* at 126.

Granting the government's petition for a writ of mandamus, the Third Circuit reversed the trial judge's refusal to apply the ten-year mandatory minimum sentence.[42] The Third Circuit reasoned that both the language and the legislative history of the Anti-Drug Abuse Act of 1986 manifested Congress' intent to make drug quantity the lone trigger for imposition of the ten-year mandatory minimum.[43] The court of appeals acknowledged that the district court's finding that Martinez-Zayas was not a major drug trafficker is customarily a proper factor to consider in sentencing.[44] It further accepted that employing drug quantity as the dispositive criterion unfairly subjects lower-level dealers to the mandatory minimum sentence.[45] Indeed, the court observed, application of the mandatory sentencing scheme in the instant case relegated Martinez-Zayas to the same penalty as the nation's major drug distributors.[46] While questioning the fairness of this result, the court of appeals nonetheless directed the district court to vacate the sentence and resentence defendant to the mandatory ten-year minimum.[47]

The reasoning in *Martinez-Zayas* exemplifies the Third Circuit's unwillingness to supplant the legislative judgment with the court's own sentencing philosophy. The opinion professes the court of appeals' view that "[a]lthough Congress should provide guides and establish limits to a court's exercise of sentencing discretion, statutory withdrawal of all judicial discretion may lead to unfair results."[48] The court further critiqued the resultant "transfer[ring of] the sentencing function from the court to the prosecutor."[49] Yet, despite the fact that the trial court's refusal to sentence defendant to a ten-year minimum squared with the Third Circuit's sentencing philosophy, the court of appeals subordinated its views to the judgment of the legislature, concluding that "[a]lthough we question the soundness of this approach in cases like this one, we are not 'licensed to attempt to soften the clear import of Congress' chosen

42. *Id.* at 124, 132.

43. *Id.* at 130-32.

44. *Id.* at 132 (noting that consideration of such factors as role in drug operation in sentencing is generally within discretion of trial judge). The court observed, however, that in this case, district judges were "expressly barred" from the exercise of such discretion by Congress. *Id.*

45. *Id.*

46. *Id.* at 133.

47. *Id.* at 132-33, 137 (recognizing presentencing court's decision and acknowledging court's questioning of sentencing approach in such cases).

48. *Id.* at 132 n.5.

49. *Id.* at 133.

words whenever [we believe] those words lead to a harsh result.' "[50] At no time prior to the institution of the Sentencing Guidelines has the Third Circuit attempted to appropriate such license.

B. *Tenet #2: The Court Will Reverse If Procedural Errors Infect the Sentence*

Even if the punishment comports with the will of Congress, the Third Circuit will vacate the sentence if it is the product of procedural error. The domain of potential procedural problems was significantly narrowed in *Williams v. New York*,[51] where the Supreme Court held that the Federal Constitution does not limit the sentencing judge to consideration of evidence that is presented in open court.[52] Nonetheless, in *Moore v. United States*,[53] the court of appeals ruled that due process requires that a sentence must be vacated where the trial judge relies upon erroneous information contained in a presentence investigation report.[54]

The *Moore* court observed that in order to preserve fairness in the criminal system, it is essential that the background data upon which the sentence is based be reliable, for "[u]nderlying the gathering of such information about an accused is the philosophy of individualized punishment, which is based on the thought that it is appropriate to tailor a sentence as closely as possible to the circumstances of a particular defendant."[55] The court of appeals' willingness to intrude on the discretion of the trial judge was not premised upon second-guessing the sentence necessary to rehabilitate the defendant. Rather, the *Moore* reasoning rested upon constitutional considerations. In *Townsend v. Burke*,[56] the Supreme Court held that sentences based upon untrue assumptions concerning the defendant's criminal record violate the Due Process Clause of the

50. *Id.*; *see also* United States v. Wallace, 269 F.2d 394, 398 (3d Cir. 1959) (finding that sentencing of defendant under Youth Corrections Act "calls attention to appellant's need for rehabilitation," but legislation exempting from Act offenses for which there is mandatory penalty is "within the power of Congress to establish" and "not for the courts to disturb").

51. 337 U.S. 241 (1949).

52. *Id.* at 250-51. 18 U.S.C. § 3661 provides that "[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence." 18 U.S.C. § 3661 (1994).

53. 571 F.2d 179 (3d Cir. 1978).

54. *Id.* at 183-84 & n.7.

55. *Id.* at 182 (citing Williams v. New York, 337 U.S. 241, 247 (1949)).

56. 334 U.S. 736 (1948).

Constitution.[57] Accordingly, the Third Circuit ruled that the lower court was required to hold a hearing on Moore's contention that his presentence report contained false information; if the hearing confirmed Moore's allegation, due process required that Moore be resentenced.[58]

The court of appeals also has overturned sentences where a defendant is improperly resentenced to a longer term after successfully overturning the original conviction upon appeal. In *United*

57. *Townsend*, 334 U.S. at 741; *see also* United States v. Tucker, 404 U.S. 443, 444-45, 449 (1972) (remanding for reconsideration of sentence where trial judge, in determining sentence, considered two convictions obtained when defendant was unrepresented by counsel in violation of Gideon v. Wainwright, 372 U.S. 335 (1963)).

58. *Moore*, 571 F.2d at 184-85. Two issues arise with respect to challenges to information utilized in sentencing. The first issue is the reliability of the information. *Compare* United States v. Metz, 470 F.2d 1140, 1142-43 (3d Cir. 1972) (holding that pending indictments are sufficiently reliable to warrant consideration by sentencing judge), *cert. denied*, 411 U.S. 919 (1973) *with* United States v. Baylin, 696 F.2d 1030, 1032 (3d Cir. 1982) (holding that trial judge erred in enhancing sentence based upon governmental agreement not to prosecute defendant on related charges) *and* United States v. Weston, 448 F.2d 626, 633-34 (9th Cir. 1971) (vacating sentence based upon unsworn statements by informant), *cert. denied*, 404 U.S. 1061 (1972). The second issue is whether the sentencing judge relied upon the challenged information. United States v. Allen, 494 F.2d 1216, 1218 (3d Cir.) (refusing to vacate sentence based upon statements in letter where trial judge expressly stated that he was not relying on letter in imposing sentence), *cert. denied*, 419 U.S. 852 (1974).

The Third Circuit also has been insistent upon the need to afford defendants the opportunity for a hearing concerning facts relied upon in sentencing. *See* Virgin Islands v. Richardson, 498 F.2d 892, 894-95 (3d Cir. 1974) (remanding for resentencing where defendant's counsel was not given opportunity to explain hearsay allegations that while awaiting trial, defendant tried to light prison guard on fire); *cf.* Del Piano v. United States, 575 F.2d 1066, 1066-70 (3d Cir. 1978) (entitling prisoner to de novo sentencing proceeding where he establishes that initial sentence was based upon improper information and original sentencing judge has died; to resentence based upon initial record would deprive defendant of common-law right of allocution as well as "deprive the judge of the opportunity to evaluate the total person who stands at the bar of justice"), *cert. denied*, 442 U.S. 944 (1979).

Indeed, the Third Circuit was one of only two federal courts of appeals that ruled that a trial judge may not impose a more severe sentence because of the court's belief that defendant had lied at trial; to do so, the court felt, would punish the defendant without an opportunity to be heard. United States v. Grayson, 550 F.2d 103, 105-08 (3d Cir. 1976), *rev'd*, 438 U.S. 41 (1978). The United States Supreme Court reversed, reasoning that the defendant's willingness to commit perjury is a proper factor to consider in individualizing the sentence to defendant's potential rehabilitation. United States v. Grayson, 438 U.S. 41, 51-52 (1978) (noting agreement among most circuits that defendant's truthfulness is probative of rehabilitation prospects). The Court rejected defendant's claim that enhancing the sentence for supposed perjury offended due process by punishing him for a crime for which he was not indicted, tried or convicted. *Id.* at 52-54. It further dismissed the argument that consideration of conduct at trial unconstitutionally chilled defendant's right to testify in his own behalf. *Id.* at 54-55.

States v. Carrasquillo,[59] defendant was sentenced to concurrent three year prison terms after she entered a conditional guilty plea to two counts of an indictment charging her with distribution of heroin in violation of 21 U.S.C. § 841(a)(1) and aiding and abetting such distribution in violation of 18 U.S.C. § 2.[60] After the judgment was reversed on appeal, the defendant pled guilty to a second information arising out of the same incident and was sentenced to twelve years imprisonment.[61] The trial court increased the second sentence as a result of Carrasquillo's continued involvement in drug-related activities and her continued abuse of narcotics in the period following her initial conviction.[62]

The court of appeals vacated the sentence, finding it violated the constitutional limits on resentencing following successful appeals established by *North Carolina v. Pearce*.[63] In *Pearce*, the Supreme Court determined that neither the Double Jeopardy nor the Equal Protection Clause of the Constitution is contravened if there are "events subsequent to the first trial that may have thrown new light upon the defendant's life, health, habits, conduct, and mental and moral propensities' " that merited a more severe sentence following the conviction.[64] However, the defendant's right to be free from deprivations of liberty without due process of law is invaded where an enhanced sentence is imposed in retaliation for the challenge to the initial conviction.[65] To ensure that the increased sentence is not a product of vengeance, the Supreme Court established a prophylactic rule requiring the trial judge to set forth affirmatively the reasons for imposing a more extreme sentence, reasons which "must be based upon objective information concerning identifiable conduct on the part of the defendant occurring after the time of the original sentencing proceeding."[66]

While careful not to accuse the trial judge of retaliating against Carrasquillo for successfully contesting her first conviction, the court of appeals found that the reasons articulated for extending Carrasquillo's sentence were not based upon discrete conduct oc-

59. 732 F.2d 1160 (3d Cir. 1984).

60. *Id.* at 1161.

61. *Id.*

62. *Id.* at 1161-62. The trial judge averred that the second sentence was not longer than the initial sentence but was a "restructuring" of that sentence. *Id.* at 1161. On appeal, the government conceded that the second sentence was lengthier. *Id.* at 1162.

63. 395 U.S. 711 (1969).

64. *Id.* at 723 (quoting Williams v. New York, 337 U.S. 241, 245 (1949)).

65. *Id.* at 723-24.

66. *Id.* at 726.

curring after her initial conviction.[67] To the contrary, Carrasquillo's drug abuse was a continuation of the addictive condition that had existed at the time she was first sentenced and hence could not support a more prolonged sentence under the constitutional standards set forth in *Pearce*.[68]

In both *Moore* and *Carrasquillo*, the court took pains to articulate that it was not attempting to trammel upon the trial court's discretionary sentencing power. In *Moore*, the court endorsed the "traditional view . . . that a district court possesses wide-ranging discretion,"[69] but reasoned that the courts of appeal do not inappropriately invade that discretion by scrutinizing the judicial process by which the punishment is fixed.[70] Likewise, in *Carrasquillo*, the Third Circuit empathized with the "uncharted seas" voyaged by a sentencing judge confronted with a drug-addicted defendant and acknowledged the "severe limitations" on appellate review of original sentences that fall within statutory maximums.[71] Just as *Moore* dealt with the process rather than the product of the punishment, *Carrasquillo* raised an issue distinct from the appropriateness of the penalty levied. The *Carrasquillo* court was enforcing the constitutional limits on punishments following a successful appeal. The avowedly limited nature of the incursion on the trial court's judgment, which the Third Circuit's procedural review represents, is confirmed by examination of those cases in which the court is squarely asked to review the discretionary punishment selected by the sentencing judge where the sentence is consistent with the legislative will and procedural regularity.

C. *Tenet #3: The Court of Appeals Will Not Reverse a Sentence That Comports with the Legislative Scheme and Is Imposed Through Proper Procedures*

The Third Circuit has had the greatest theoretical opportunity

67. United States v. Carrasquillo, 732 F.2d 1160, 1162 n.3 (3d Cir. 1984) (noting that court does not suggest that increased sentence was motivated by vindictiveness but also noting that defendant's drug addiction was continuation of her old behavior).

68. *Id.* at 1166. The court of appeals observed that had the trial court rested its decision on the fact that Carrasquillo had been arrested three times since the original conviction, the subsequent criminal activity would have supported a lengthier sentence. *Id.* at 1163. The sentencing judge, however, had expressly stated that he was not considering those three arrests as evidence of defendant's guilt on those charges, all of which were terminated by *nolle prosequi*. *Id.* at 1163.

69. Moore v. United States, 571 F.2d 179, 181 (3d Cir. 1981).

70. *Id.* at 181-82.

71. *Carrasquillo*, 732 F.2d at 1166.

to express its philosophy in reviewing punishments, within statutory bounds and imposed through proper procedures, which the court considers at variance with the rehabilitative goal of sentencing. Yet without exception, the court of appeals has refused to second guess a sentence that comports with required procedures and the statutory scheme, regardless of the court's view as to the severity of the sentence or its consistency with the aims of sentencing. The earliest and most prescient articulation of this aspect of the Third Circuit's philosophy of appellate determinacy is set forth in *Camorata v. United States*:[72] "In imposing sentences much latitude is accorded trial courts, and with sentences imposed within the terms of the statutes, appellate courts have little or nothing to do."[73]

The Third Circuit has steadfastly refused to quarrel with the district courts' rejection of claims that a sentence will impose undue hardship upon the defendant or his family. In *United States v. Swartz*,[74] a physician was hospitalized for heart irregularity before beginning to serve his one-year prison term for tax evasion. The district court denied defendant's motion to suspend the sentence or to order immediate parole despite evidence from medical witnesses that if incarcerated, defendant would probably die within the year because of his heart condition as well as past medical history of diabetes, angina, uremia and hypertension.[75] The Third Circuit affirmed the district court's refusal to suspend the sentence, reasoning that because the sentence was within the five-year statutory maximum for tax evasion, "this Court is powerless to modify or reduce it."[76]

In *United States v. Fessler*,[77] the court of appeals affirmed the district court's unwillingness to reduce a five-year prison term im-

72. 2 F.2d 650 (3d Cir. 1924).

73. *Id.* at 651; *see also* United States v. Tucker, 404 U.S. 443, 447 (1972) ("[A] sentence imposed by a federal district judge, if within statutory limits, is generally not subject to review."); United States v. Rosenberg, 806 F.2d 1169, 1173 (3d Cir. 1986) (same), *cert. denied*, 481 U.S. 1070 (1987); United States v. Dickens, 695 F.2d 765, 782 n.26 (3d Cir. 1982), *cert. denied*, 460 U.S. 1092 (1983).

While the *Camorata* court refused to question the district court's sentence, it did hold that it was an abuse of discretion to refuse to permit the defendant to withdraw his guilty plea when he learned that the court intended to impose a sentence based upon information concerning defendant's complicity in a crime charged in a count to which he had not pleaded guilty. *Id.* Hence, *Camorata* is consistent with Tenet #2 as well as Tenet #3 of appellate determinacy.

74. 464 F.2d 1298 (3d Cir. 1972).

75. *Id.* at 1299.

76. *Id.* The court further noted that defendant failed to prove that existing government medical facilities could not provide him with treatment comparable to private institutions. *Id.*

77. 453 F.2d 953 (3d Cir. 1972).

posed as a result of defendant's conviction for assaulting a postal employee with intent to rob. Defendant argued that the sentence was excessive in light of the fact that incarceration would relegate his epileptic wife and stepchild to the public welfare rolls.[78] Because the sentence was within the statutory limits, the court again declined to scrutinize the determination of the sentencing judge.[79]

The Third Circuit also has refused to reverse the trial court's disregard of the jury's plea for leniency. In *United States v. Lee*,[80] following twelve hours of deliberation, the jury found defendant guilty of embezzling and unlawfully opening first class mail in violation of 18 U.S.C. §§ 1709 and 1703(a). With its verdict slip, the jurors submitted a separate note signed by each of the jurors urging the court "to exercise extreme leniency."[81] Rejecting the defendant's contention that the trial judge abused his discretion by ignoring the jurors' plea and imposing a one-year prison sentence, the court of appeals reasoned simply that "[t]he sentence was within the statutory limitation, and we may not review it."[82]

While the just-discussed opinions did not reveal the Third Circuit's opinion as to the sentences under review, the court of appeals has refused to reverse sentences even in cases where it overtly disagrees with the sentence handed down by the trial judge. In *Virgin Islands v. Venzen*,[83] defendant was convicted of three counts of passing forged checks in the amounts of $42, $68 and $68. The trial court imposed *consecutive* sentences of seven years imprisonment on each count. Although noting that the sentences constituted a "harsh aggregation," the court ruled that defendant was not sub-

78. *Id.* at 954 n.5.

79. *Id.* at 954-55; *see also* United States v. Donaldson, 797 F.2d 125, 129 (3d Cir. 1986) (holding that there was no abuse of discretion to deny defendant's request for one year to pay assessment upon conviction for forging endorsement on check in light of defendant's unemployment and indigency).

The *Fessler* court distinguished its opinion in United States v. Ginzburg, 398 F.2d 52 (3d Cir. 1968), *cert. denied*, 403 U.S. 931 (1971). In that case, the court had reversed the trial court's refusal to afford defendant a hearing on his motion for reconsideration of a sentence. The *Fessler* court pointed out that the reversal in *Ginzburg* was based upon the trial court's abuse of discretion in refusing to hold a hearing and did not entail review of the district court's sentence. *Fessler*, 453 F.2d at 954. The Third Circuit's distinction of *Ginzburg* exemplifies the difference between cases falling within Tenet #2 and Tenet #3.

80. 532 F.2d 911 (3d Cir.), *cert. denied*, 429 U.S. 838 (1976).

81. *Id.* at 913.

82. *Id.* at 916. The court of appeals also held that the trial court had not erred by refusing to question the jurors to determine whether the plea for leniency was a condition of the verdict of guilt, relying upon the general rule that a jury's sentencing recommendation "does not affect the validity of the verdict and may be disregarded as surplusage." *Id.* at 914.

83. 424 F.2d 521 (3d Cir. 1970).

jected to cruel and unusual punishment under either the United States Constitution or the Organic Act of the Virgin Islands.[84] Because each of the sentences was within the maximum of thirty years imprisonment that could have been ordered, the court believed itself powerless to review the prison term imposed.[85] The court even rejected the invitation of the Supreme Court to make "gentle intimations of the necessity for [possible reduction of a sentence] to the District Court,"[86] electing instead to point out that its disposition of the appeal did not preclude the sentencing court from using its discretion to reduce the sentence upon proper motion by the defendant under Federal Rule of Criminal Procedure 35.[87]

Perhaps the most dramatic instance of the court subordinating its views to the discretion of the trial judge is *United States v. Smith*.[88] Defendant appealed from the district court's refusal to reduce his twelve-year prison sentence despite the fact that following conviction, defendant cooperated with the government in prosecuting a bribery conspiracy.[89] The Third Circuit squarely admitted that it "probably would have come to a different conclusion" than the trial judge;[90] nonetheless, it affirmed the denial of the motion to reduce the sentence, finding that whether or not to reduce the sentence in light of defendant's cooperation was within the court's discretion.[91] It observed that while a trial judge certainly may reduce a sentence for post-conviction cooperation, no authority mandates that the court do so.[92]

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84. *Id.* at 523; *see also* Virgin Islands v. Cruz, 478 F.2d 712, 719 (3d Cir. 1973) ("While this sentence is a long one, it is within the limits determined by the legislature and, therefore, not subject to review here.").

85. *Venzen*, 424 F.2d at 523. The court of appeals did reverse the portion of the district court's sentence directing the parole board not to consider releasing defendant on parole until he had served 10 years of the 21-year prison term. The court held that this aspect of the sentence invaded the discretion that the legislature had vested in the parole board and hence exceeded the power of the trial judge. *Id.*

86. *Id.* (citing Yates v. United States, 356 U.S. 363, 366 (1958)).

87. *Id.*

88. 839 F.2d 175 (3d Cir. 1988).

89. *Id.*

90. *Id.* at 180.

91. *Id.* at 181. The Court also rejected defendant's submission that the trial court erred by: a) using immunized testimony against defendant; b) giving defendant a sentence disproportionate to his co-defendants; and c) failing to reduce the sentence due to defendant's poor health and professional and financial hardship. *Id.* at 178-79.

92. *Id.* at 180. While the majority construed the trial judge's opinion as balancing defendant's cooperation against the severity of the crime, Judge Becker, dissenting, believed that the district court had refused to entertain evidence of substantial post-conviction cooperation as a factor in reducing sentences. *Id.* at

D. *Summary*

In the almost 100 years prior to the institution of the Sentencing Guidelines, the Third Circuit hewed to its proclamation in *Camorata* that, "with sentences imposed within the term of the statutes," and through regular procedures, the court of appeals has "little or nothing to do."[93] In no instance did it vacate or modify a sentence merely because it offended the court of appeals' sentencing philosophy. While the first century of the Third Circuit's sentencing decisions was marked by its fidelity to appellate determinacy, the occasion to recast its historic role was thrust upon the court by Congress' passage of the Sentencing Reform Act of 1984.[94]

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183 (Becker, J., dissenting). Judge Becker considered this blanket refusal a violation of statutory law as well as contrary to policies designed to secure cooperation. However, Judge Becker subscribed to the majority's view that the trial judge retains discretion whether to reduce a sentence after considering defendant's cooperation, and indicated that he would have joined the majority's opinion declining to reverse if he were persuaded that the trial judge had at least considered the defendant's cooperation. *Id.* at 185 (Becker, J., dissenting).

The Third Circuit has not adopted a general procedural requirement that the district court set forth the reasons for each sentence imposed. United States v. Fischbach & Moore, Inc., 750 F.2d 1183, 1193 (3d Cir. 1984), *cert. denied*, 470 U.S. 1029 (1985); United States v. Del Piano, 593 F.2d 539, 540 (3d Cir.) (per curiam), *cert. denied*, 442 U.S. 944 (1979). Judge Adams unsuccessfully urged the court to exercise its supervisory power to require trial judges to explain the reasons for the sentence imposed. *Del Piano*, 593 F.2d at 540-53 (Adams, J., concurring); United States v. Bazzano, 570 F.2d 1120, 1130-38 (3d Cir. 1977) (Adams, J., concurring), *cert. denied*, 436 U.S. 917 (1978). The court did exert its supervisory power to require district courts to make specific findings as to fact issues relevant to the restitution provisions of the Victim and Witness Protection Act of 1982, 18 U.S.C. §§ 3579, 3580 (1982). United States v. Hunter, 52 F.3d 489, 494 (3d Cir. 1995); United States v. Palma, 760 F.2d 475, 480 (3d Cir. 1985). The Sentencing Reform Act of 1984 requires the court to "state in open court the reasons for its imposition of the particular sentence" after the effective date of the Act. 18 U.S.C. § 3553(c) (1994). *See* United States v. King, 53 F.3d 589, 591-92 (3d Cir. 1995) (holding that downward departure under sentencing "practice" does not state sufficient reasons for departure); United States v. Harris, 44 F.3d 1206, 1212 (3d Cir.) (holding that where sentencing court orders upward departure because criminal history category underrepresents seriousness of defendant's past criminal conduct or likelihood of committing future crimes, sentencing court is not required "to go through a ritualistic exercise in which it mechanically discusses each criminal history category it rejects en route to the category that it selects" but "the sentencing court's reasons for rejecting each lesser category [must] be clear from the record as a whole"), *cert. denied*, 115 S. Ct. 1806 (1995); United States v. Hickman, 991 F.2d 1110 (3d Cir. 1993) (holding that sentencing court is obligated to proceed through categories sequentially when departing from Guidelines).

93. 2 F.2d 650, 651 (3d Cir. 1924).

94. 18 U.S.C. § 3551 (1994); 28 U.S.C. §§ 991-998 (1994).

III. THIRD CIRCUIT DECISIONS UNDER THE SENTENCING GUIDELINES

The Sentencing Reform Act established the United States Sentencing Commission, an independent commission in the judicial branch of the government,[95] to promulgate determinate sentencing guideline ranges for persons convicted of federal crimes.[96] The trial judge is bound by these Guidelines in sentencing,[97] although the court may deviate from the Guideline sentence if aggravating or mitigating factors exist that the Sentencing Commission did not adequately consider in promulgating the Guidelines.[98] The defendant serves the entire sentence, subject only to credit earned by good behavior while incarcerated.[99]

In addition to repudiating the preexisting indeterminate sentencing scheme, Congress chartered the jurisdiction of the circuit courts over sentencing appeals.[100] The defendant or the Government may appeal a sentence imposed "in violation of law"[101] or "as a result of an incorrect application of the sentencing guidelines."[102] Either party is permitted to appeal from the trial court's departure from the guideline range;[103] the reviewing court is to determine whether the sentence was "unreasonable."[104] Finally, the court of appeals is empowered to review sentences in offenses for which there is no sentencing guideline if the sentence imposed was

95. 28 U.S.C. § 991(a).

96. 28 U.S.C. § 994(a)(1).

97. United States v. King, 53 F.3d 589, 592 (3d Cir. 1995) (holding that it was error to utilize sentencing "practice" rather than individualized, case-by-case application of Guidelines governing downward departure for defendant's cooperation); United States v. DeRiggi, 45 F.3d 713, 716-17 (2d Cir. 1995) (holding that trial court may not disregard Guidelines to impose lesser punishment under general purposes of sentencing set forth in 18 U.S.C. § 3553(a) (1994)); United States v. Chiarelli, 898 F.2d 373, 385 (3d Cir. 1990) (stating that district court must follow Guidelines regardless of philosophical disagreement).

98. 18 U.S.C. § 3553(b) (1994).

99. 18 U.S.C. § 3624(a), (b) (1994).

100. 18 U.S.C. § 3742 (1994). This was not the first instance in which the court's role was mandated by statute. The Dangerous Special Offender Statute, 18 U.S.C. § 3575 (1970), repealed by the Sentencing Reform Act, provided for enhancement of sentences for recidivists and professional criminals. The statute defined the scope of appellate review of enhanced sentences: "Review of the sentence shall include review whether the procedure employed was lawful, the findings made were clearly erroneous, or the sentencing court's discretion was abused." 18 U.S.C. § 3576.

101. 18 U.S.C. § 3742 (a)(1), (b)(1).

102. 18 U.S.C. § 3742(a)(2), (b)(2).

103. 18 U.S.C. § 3742(a)(3), (b)(3).

104. 18 U.S.C. § 3742(e)(3).

"plainly unreasonable."[105]

The legislative history makes clear that in authorizing appellate courts to scrutinize the reasonableness of departures from the Guidelines, Congress tempered the traditional obeisance to the discretion of the trial judge:

> The sentencing provisions of the reported bill are designed to preserve the concept that the discretion of a sentencing judge has a proper place in sentencing and should not be displaced by the discretion of an appellate court. At the same time, they are intended to afford enough guidance and control of the exercise of that discretion to promote fairness and rationality, and to reduce unwarranted disparity, in sentencing.
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> . . .
>
> It is an anomaly to provide for appellate correction of prejudicial trial errors and not to provide for appellate correction of incorrect or unreasonable sentences.[106]
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> . . .
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> [I]t is inevitable that some of the sentences outside the guidelines will appear to be too severe or too lenient. Appellate review of sentences is essential to assure that the guidelines are applied properly and to provide case law development of the appropriate reasons for sentencing outside the guidelines.[107]

Thus, the Sentencing Reform Act invited courts of appeals to exert a more expansive role in assessing whether a departure from the Sentencing Guidelines is "unreasonable."

The one unmistakable consequence of the Sentencing Reform Act has been an explosion of appeals. Between December of 1989 and August of 1994, 1230 of the 2044 appeals in criminal cases docketed in the Third Circuit raised sentencing issues.[108] The dra-

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105. 18 U.S.C. § 3742(e)(4).

106. S. REP. NO. 225, 98th Cong., 1st Sess. (1984), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3333-34. One impediment to appellate review in the pre-Guidelines era was the fact that the trial judge generally was not required to state the reasons for choosing the sentence. Under the Sentencing Reform Act, however, the trial judge is required to specify the reasons for the departure from the Sentencing Guidelines. 18 U.S.C. § 3553(c) (1994). For a further discussion of pre-Guidelines sentencing, see *supra* note 92.

107. S. REP. NO. 225, 98th Cong., 1st Sess. (1984), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3333-34.

108. These statistics are based upon information provided by P. Douglas Sisk, Clerk of the United States Court of Appeals for the Third Circuit, through the

matic quantitative increase in appeals under the Sentencing Reform Act, however, was not accompanied by a correspondent qualitative revolution or evolution in the role of the Third Circuit. Instead, the court has remained faithful to the three tenets of appellate determinacy marking the first century of its existence.

A. *Third Circuit Review of Refusals to Depart from the Sentencing Guidelines*

The Federal Sentencing Guidelines are designed to present a structured range that the district courts must apply to the typical or "heartland" cases.[109] At the same time, the legislature recognized the Sentencing Commission's inability to foresee every circumstance which might confront the courts. Accordingly, Congress conferred discretion upon the district courts to depart upward or downward from the Guidelines where "there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission."[110] However, departures from the Guideline range are to be the exception,

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court's automated docketing system. *See* Appendix A. Because the automated system was activated in 1990, statistics are not available for the period between November 1, 1987, when the Guidelines became effective, and November of 1989. The number of appeals raising sentencing issues is derived from the litigant's attorney, upon filing the notice of appeal, designating the case as a purely Guidelines case or a hybrid case raising both sentencing issues and issues pertaining to the underlying conviction. Of the 1230 sentencing appeals, 490 were docketed as raising purely sentencing issues and 740 as hybrid appeals.

No statistics on the number of sentencing appeals exist for the pre-Guidelines era. Based upon research conducted in preparation for this article, it is conservatively estimated that the Third Circuit issued fewer than 300 reported opinions on sentencing in the 96 years preceding creation of the Sentencing Guidelines.

The rise in sentencing appeals no doubt explains much of the overall increase in criminal appeals in the Third Circuit. Data compiled by Ellen Hannum, research librarian for The William Hastie Library of the United States Court of Appeals for the Third Circuit demonstrates a rise in the number of criminal appeals from 32 in 1940 to 582 in 1993. *See* Appendix B. This represents an increase in the percentage of criminal appeals on the docket from 9% in 1940 to 20% in 1993.

Other reported statistics mirror a marked increase in sentencing appeals following institution of the Guidelines. *Third Circuit One of Fastest Courts to Dispose of Cases*, N.J. LAW., Sept. 5, 1994, at 5 (noting 84% increase over six years in criminal appeals per federal panel); *Sentencing Overload Hits the Circuits: Appellate Judges Stagger Under Guidelines-Generated Appeals*, NAT'L L.J., Apr. 5, 1993, at 1 (finding that between 1988 and 1992, 23,000 Guidelines' appeals representing almost half of all federal appellate cases); Albert W. Alschuler, *The Failure of Sentencing Guidelines: A Plea for Less Aggregation*, 58 U. CHI. L. REV. 901, 906 n.17 (1991) (noting that federal appellate courts probably decide about 1000 cases each year concerning application of Guidelines).

109. U.S.S.G., *supra* note 11, Ch. 1, Pt. A, intro. cmt. 4; *id.* § 5K2.0.

110. 18 U.S.C. § 3553(b); U.S.S.G., *supra* note 11, § 5K2.0.

not the rule.[111]

The Third Circuit has remained steadfast in its deference to the judgment of Congress and to the sentencing discretion of the district court by holding that a refusal to depart from the Guidelines is not reviewable on appeal unless the trial judge erred in assessing the power to depart.[112] The seminal case on refusals to depart is *United States v. Denardi*.[113] In *Denardi*, the district court identified as mitigating factors the defendant's cooperation with the government, the absence of a prior criminal record, exemplary work history, and devotion to friends and family. In addition, the defendant argued that a sentence within the Guideline range would work a severe hardship on his family.[114] Yet, the court refused to exercise its acknowledged power to deviate from the Guideline range.[115]

The court of appeals refused to second guess the district court's rebuff of the request to depart. To the contrary, in keeping with its pre-Guidelines fidelity to the intent of Congress, the court of appeals held that it entirely lacked jurisdiction over the appeal. The court found no basis for appellate jurisdiction in any of the four subsections of the Sentencing Reform Act authorizing appeals by defendant[116] and dismissed the appeal for want of jurisdiction.[117]

Similarly, the Third Circuit has found that it lacks jurisdiction where the trial judge has departed from the Guidelines, but a party is dissatisfied with the modest extent of the departure. In *United*

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111. S. REP. NO. 225, 98th Cong., 1st Sess. (1984), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3235.

112. United States v. Veksler, 62 F.3d 544, 551 (3d Cir. 1995); United States v. Miller, 59 F.3d 417, 423 (3d Cir. 1995).

113. 892 F.2d 269 (3d Cir. 1989).

114. *Id.* at 271.

115. *Id.*

116. 18 U.S.C. § 3742(a) (1994).

117. *Denardi*, 892 F.2d at 272. Judge Becker, dissenting, argued that the court had jurisdiction under its statutory power to accept defense appeals from sentences imposed in violation of law. *Id.* at 274 (Becker, J., dissenting) (citing 18 U.S.C. § 3742(a)(1)). In Judge Becker's view, a refusal to depart may violate 18 U.S.C. § 3553(a), which requires that a sentence imposed by a district court "be sufficient, but not greater than necessary to meet the four purposes of sentencing" set forth in § 3553(a)(2) — punishment, deterrence, protection of the public, and providing defendant with needed educational or vocational training, medical care, or other correctional treatment. *Id.* at 277 (Becker, J., dissenting). Reversal of a refusal to depart would be warranted only where application of the Guidelines in the particular case results in a sentence "plainly unreasonable" in light of the various statutory considerations listed in § 3553(a). *Id.* (Becker, J., dissenting).

States v. Parker,[118] the Guidelines range applicable to defendant's conviction for knowingly and intentionally distributing a controlled substance was six to twelve months imprisonment.[119] The Government filed a motion under Guidelines section 5K1.1 requesting a downward departure because defendant had provided substantial assistance in the investigation or prosecution of another person. The trial court then sentenced defendant to probation, but as a condition of probation ordered that defendant reside for six months in the Greater Philadelphia Center for Community Corrections. Although permitted to work, defendant was required to return to the Center each evening. On appeal, defendant argued that confinement in the Center was equivalent to the minimum incarceration under the Guidelines and thus the court erred by failing to grant a downward departure.[120]

The court of appeals rejected defendant's contention that residence in the community corrections facility with work release privileges was equivalent to imprisonment, finding instead that the district court had departed from the Guidelines. Hence, defendant's appeal amounted to a complaint about the inadequacy of the downward departure. As the court lacked jurisdiction to hear appeals from refusals to depart, the Third Circuit reasoned, "[i]t surely follows from [*Denardi*] that we could not possibly have jurisdiction to hear an appeal by the defendant where there has been some downward departure."[121]

While it lacks jurisdiction to review a district court's refusal to depart, the court of appeals will exercise jurisdiction where the trial judge erroneously believed that the Guidelines precluded departure. Jurisdiction exists to review claims that the sentence was imposed in violation of law or as a result of incorrect application of the Guidelines.[122] In such cases, the court is not purporting to criti-

118. 902 F.2d 221 (3d Cir. 1990).

119. *Id.*

120. *Id.* at 222.

121. *Id.*; United States v. Miele, 989 F.2d 659, 668 n.11 (3d Cir. 1993); *cf.* United States v. Pekakis, 937 F.2d 110, 111-12 (3d Cir. 1991) (stating that under *Denardi*, court of appeals lacks jurisdiction over appeal from refusal to sentence defendant to home, community or halfway house detention rather than imprisonment where Guidelines § 5C1.1(c)(2) affords trial court discretion to impose substitute confinement).

122. 18 U.S.C. § 3742(a)(1), (a)(2) (1994); United States v. Spiropoulos, 976 F.2d 155, 160 n.2 (3d Cir. 1992) (noting that appellate review of sentences imposed because of mistake of law or incorrect application of Guidelines is permitted and distinguishable from situations where appellate court is asked to review discretionary refusal to depart). In United States v. Georgiadis, 933 F.2d 1219 (3d Cir. 1991), the court rejected the argument that in order to permit the court of appeals

cize the wisdom of the district court's rejecting departure. Rather, as in its pre-Guidelines practice, the Third Circuit seeks to guarantee that the punishment imposed is consistent with the sentencing scheme prescribed by Congress.[123]

The court of appeals' attempt to enforce the intent of Congress without trammeling upon the discretion of the district court is exemplified by *United States v. Gaskill*.[124] In *Gaskill*, defendant applied for a downward departure from the Guideline range applicable to his conviction for fraudulent use of social security numbers to obtain things of value. Defendant argued that departure was warranted because his wife had suffered serious mental illness following the birth of their fourth child, which resulted in the loss of her career as a businesswoman, estrangement from the children, defendant's resignation from the presidency of a company, impoverishment as a result of the loss of jobs and defendant's wife's spending sprees brought on by her manic-depressive condition, and ultimately defendant's use of false social security numbers to obtain credit.[125] Because of his wife's affliction, defendant performed all household chores and administered his wife's medication. The district court "reluctantly" denied defendant's request

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to determine whether it has jurisdiction, a district court refusing departure must expressly state on the record that it knows it has authority to depart but has declined to do so. *Id.* The court of appeals determined that the provision of the Sentencing Reform Act requiring the judge to "state in open court the reasons for its imposition of the particular sentence," is met when the court indicates the applicable Guidelines range and how it was chosen. *Id.* at 1223 (citing 18 U.S.C. § 3553(c)). The Sentencing Reform Act requires more specific statements only where: a) a sentence is within a Guidelines range which exceeds 24 months, in which case the court must give reasons for imposing the sentence at a particular point within that range, 18 U.S.C. § 3553(c)(1) (1994), or b) if the sentence falls outside the applicable guideline range. 18 U.S.C. § 3553(c)(2).

123. *See* S. REP. No. 225, 98th Cong., 2d Sess. *reprinted in* 1984 U.S.C.C.A.N. 3182, 3334 ("Appellate review of sentences is essential to assure that the Guidelines are applied properly."). The same rule obtains where a defendant complains of the extent of the trial court's downward departure. While the court will not generally accept jurisdiction over challenges to the extent of the departure, United States v. Parker, 902 F.2d 221, 222 (3d Cir. 1990), the court has jurisdiction to review appeals contending that the refusal to depart further violates the Guidelines. In United States v. Spiropoulos, 976 F.2d 155 (3d Cir. 1992), the district court moderated its departure for defendant's substantial assistance to the government where the target died while the Government investigation was still in progress. *Id.* at 160. The court of appeals accepted jurisdiction over defendant's appeal to determine whether the Guidelines permitted the trial court to temper its departure based upon the fruitlessness of defendant's cooperation. *Id.* at 160 n.2. It held that the trial court's consideration of the usefulness of defendant's assistance in assessing the amount of the departure was consistent with the Sentencing Reform Act and the Guidelines. *Id.* at 161.

124. 991 F.2d 82 (3d Cir. 1993).

125. *Id.* at 83-84.

for a downward departure on the belief that care of a family member is a common circumstance already taken into account by the Guidelines.

The Third Circuit accepted jurisdiction over the appeal because the district court asserted that it lacked the authority to depart under the Guidelines, rather than refused to exert an acknowledged power to depart.[126] The court of appeals understood both the Sentencing Reform Act[127] and the policy statement in the Guidelines[128] to ordinarily preclude reliance upon family responsibilities to support a sentence outside the Guideline range.[129] The court concluded, however, that the statute and policy statement do not serve as an absolute bar to departures premised upon family responsibilities; rather, they restrict departures to extraordinary circumstances.[130] It then found that the circumstances of defendant's position were far from ordinary and, unlike cases where incarceration is inevitable even with a departure, deviation from the Guideline range could serve to preserve the family unit.

While reversing the district court's refusal to depart because of its misapprehension of congressional intent, the Third Circuit was careful not to invade the province of the trial judge. Rather than mandating departure, the court remanded for resentencing, concluding that "alternatives to imprisonment as well as departures from the Guidelines are matters within the discretion of the district

126. *Id.* at 84.

127. 28 U.S.C. § 994(e) provides in pertinent part: "[t]he Commission shall assure that the [G]uidelines . . . reflect the general inappropriateness of considering the . . . family ties and responsibilities . . . of the defendant."

128. Section 5H1.6 of the Guidelines provides: "[f]amily ties and responsibilities . . . are not ordinarily relevant in determining whether a sentence should be outside the applicable [G]uideline range."

129. *Gaskill*, 991 F.2d at 84-85; *see also* United States v. Reilly, 33 F.3d 1396, 1424 (3d Cir. 1994) (affirming refusal of district court to allow downward departure based upon averment that businesses owned by defendant's family would be barred from all government contracts; "It is unfortunate that [a codefendant's] family may suffer both personally and financially due to his conviction. However, we see nothing extraordinary in the fact that [codefendant's] conviction may harm not only his business interests but also those of his family members."); United States v. Shoupe, 929 F.2d 116, 121 (3d Cir.) (ruling that mere fact that defendant regularly paid child support, and frequently spoke to and visited young son residing with his former wife is not extraordinary family tie and responsibility justifying sentencing departure), *cert. denied*, 502 U.S. 943 (1991).

130. *Gaskill*, 991 F.2d at 85. While the *Gaskill* court rested its analysis on the intent of Congress, the Third Circuit did express its view that departures appropriately introduce flexibility to safeguard against untoward rigidity in the Sentencing Guidelines. The court also noted that policy statements are not subject to formal legislative review, and thus do not have the same degree of authority as the Guidelines. *Id.* at 86 (citing Edward R. Becker, *Flexibility and Discretion Available to the Sentencing Judge Under the Guidelines Regime*, FED. PROBATION, Dec. 1991, at 10-13).

court."[131] Thus, the Third Circuit's refusal-to-depart jurisprudence displays the same elements of appellate determinacy as its pre-Guidelines decisions.

B. *Third Circuit Review of Departures from Sentencing Guidelines*

The Sentencing Reform Act assigned the courts of appeals the potentially unrestrained role as the arbiter of the reasonableness of departures from the Sentencing Guidelines. The Third Circuit has adopted the following model for review of departures:

> First, we determine whether the circumstances upon which the district court relied to justify the departure were adequately considered by the Sentencing Commission. This requires a two-fold inquiry: we exercise plenary review over the district court's determination that the Guidelines do not adequately take a particular factor into consideration, and we apply a clearly erroneous standard of review to determine whether the facts support the sentencing court's rationale. Second, we must determine whether the sentence imposed was reasonable. This also demands a two-fold inquiry: we consider whether the factors on which the court relied were appropriate and whether the degree of departure was appropriate. In this determination, we permit the district courts to exercise a substantial amount of discretion.[132]

Rather than reflect an evolution in its sentencing philosophy, each of the four prongs of the Third Circuit's test for departures from the Sentencing Guidelines is animated by one or more of the tenets of appellate determinacy that it consistently followed prior to institution of the Guidelines.

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131. *Gaskill*, 991 F.2d at 86; *see also Shoupe*, 988 F.2d 440, 447-48 n.11 (3d Cir. 1993) (holding that district court erred in believing it was not authorized to depart downward based upon allegation that criminal history significantly over-represents true criminal history of defendant; "The government argues forcefully that . . . [defendant's] criminal history category does not significantly over-represent the seriousness of his prior offenses . . . . We express no view on this question, leaving it to the district court."); United States v. Cheape, 889 F.2d 477, 480-81 (3d Cir. 1989) (holding that district court erred in believing it could not premise departure on fact that defendant committed offense because of coercion or duress not amounting to defense to crime; "Although it is not obliged to do so, the district court has the power to depart if Klinefelter proves coercion or duress by a preponderance of the evidence.").

132. United States v. Felton, 55 F.3d 861, 866 (3d Cir. 1995); United States v. Seale, 20 F.3d 1279, 1287 (3d Cir. 1994); United States v. Kikumura, 918 F.2d 1084, 1098 (3d Cir. 1990); United States v. Ryan, 866 F.2d 604, 610 (3d Cir. 1989).

1. *Were the Circumstances Justifying Departure Adequately Considered by the Sentencing Commission?*

The first part of the Third Circuit's departure methodology engages the court in plenary review over whether the factors relied upon for the departure were adequately taken into consideration by the Sentencing Commission. This initial inquiry is designed to assure that the district court adhered to the intent of Congress. The Sentencing Reform Act limits departures from the range prescribed by the Sentencing Guidelines to cases where "the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission."[133] Evidence of the Sentencing Commission's rationale is documented by Policy Statements in the Sentencing Guidelines which: a) identify certain factors that the Commission was unable to fully take into account in promulgating the Guidelines;[134] b) specify certain offender characteristics as "not ordinarily relevant" to departures;[135] and c) clarify that even where a factor has been taken into account in the Guidelines, the trial court may depart "if the court determines that, in light of unusual circumstances, the guideline level attached to that factor is inadequate."[136]

The Third Circuit has acknowledged that the legislature circumscribed the court of appeals' power to contrive legitimate bases for departures. Congress prescribed that "[i]n determining whether a circumstance was adequately taken into consideration [by the Sentencing Commission], the court shall consider only the Sentencing Guidelines, policy statements, and official commentary of the Sentencing Commission."[137] As a consequence, the Third Circuit's application of the first prong of its departure tests is, as in Tenet #1 of its pre-Guidelines practice, an endeavor to divine and enforce the intent of Congress.[138]

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133. 18 U.S.C. § 3553(b) (1994).

134. U.S.S.G., *supra* note 11, § 5K2.1-2.16. In Williams v. United States, 503 U.S. 193, 201 (1992), the Court held that where "a policy statement prohibits a district court from taking a specified action, the statement is an authoritative guide to the meaning of the applicable guideline." *See also* United States v. Hickman, 991 F.2d 1110, 1113 n.8 (3d Cir. 1993) (holding that an upward departure based on seriousness of past crimes was unjustified because Guidelines provided procedure that district court failed to follow).

135. U.S.S.G., *supra* note 11, § 5H1.1-1.12.

136. U.S.S.G., *supra* note 11, § 5K2.0.

137. 18 U.S.C. § 3553(b); United States v. Kikumura, 918 F.2d 1084, 1104 (3d Cir. 1990).

138. *See* United States v. Alton, 60 F.3d 1065 (3d Cir. 1995) (holding that

disparate impact on African-Americans is not proper ground for departure from Guidelines range for conspiracy to possess and distribute cocaine); United States v. Bertoli, 40 F.3d 1384 (3d Cir. 1994) (vacating fine of greater than 50 times Guidelines maximum based upon extraordinarily large sum of money gained and under continual control of defendant because court's findings not supported by record); United States v. Copple, 24 F.3d 535 (3d Cir.) (finding that upward departure for more than minimal planning and more than one victim was not warranted where Sentencing Commission appeared to have considered and rejected such outcome), *cert. denied*, 115 S. Ct. 488 (1994); United States v. Monaco, 23 F.3d 793, 800-01 (3d Cir. 1994) (holding that downward departure based upon defendant's mental anguish from inculpating family member affirmed because factor was to degree not adequately considered by Sentencing Commission); United States v. Thomas, 961 F.2d 1110 (3d Cir. 1992) (reversing upward departure in defendant's criminal history category based on determination that some of defendant's juvenile convictions were previously uncounted and past adult convictions were punished too lightly because contrary to Guidelines); United States v. Tsai, 954 F.2d 155, 164-65 (3d Cir.) (holding that court erred in departure based upon threat to national security which is already subsumed in base offense level), *cert. denied*, 113 S. Ct. 93 (1992); United States v. Shoupe, 929 F.2d 116 (3d Cir.) (holding that age and lack of maturity of defendant, brief time span between offenses, and cooperation with authorities were adequately taken into consideration by Sentencing Commission in formulating career offender Guidelines), *cert. denied*, 502 U.S. 943 (1991); United States v. Riviere, 924 F.2d 1289, 1307-09 (3d Cir. 1991) (holding that disruption of governmental function not sufficiently extreme to warrant departure where insignificant disruption was adequately considered by Sentencing Commission in establishing range for offense of assaulting marshal); *Kikumura*, 918 F.2d at 1084 (holding that upward departure warranted where defendant's intent to commit murder was not adequately considered by Commission in promulgating provisions concerning criminal use of explosives); United States v. Chiarelli, 898 F.2d 373, 381 (3d Cir. 1990) (holding that district court erred by using magnitude of thievery as basis for departure because Guidelines already provided for incremental levels based upon amount of property involved in crime); United States v. Uca, 867 F.2d 783 (3d Cir. 1989) (holding that sentencing court erred in determining that Sentencing Commission did not adequately consider number of guns involved in offense and inability to trace weapons); United States v. Ryan, 866 F.2d 604 (3d Cir. 1989) (affirming district court's determination that Sentencing Commission had not adequately considered unusual danger of crack cocaine as well as quality, purity and packaging of drugs).

The court of appeals has recognized that harshness of a sentence is not justification for declining to apply the Guidelines. United States v. McClenton, 53 F.3d 584, 587 n.5 (3d Cir. 1995); United States v. McAllister, 927 F.2d 136, 139 n.5 (3d Cir. 1991). It has further held that the district court is not empowered to impose a sentence lower than the statutory minimum absent the government's motion pursuant to 18 U.S.C. § 3553(e) based upon defendant's substantial assistance. United States v. Melendez, 55 F.3d 130 (3d Cir. 1995), *cert. granted*, 64 U.S.L.W. 3331 (U.S. Nov. 6, 1995) (No. 95-5661). Although the prosecutor consequently obtains the power to determine whether a defendant is eligible for a sentence beneath the statutory minimum, the court found that this was precisely Congress' intent. *Id.* at 134.

Conversely, the court has maintained its practice of striking punishments which exceed those prescribed by the Guidelines. United States v. Harvey, 2 F.3d 1318, 1330 (3d Cir. 1993) (reversing district court's order that defendant convicted of child pornography make substantial monetary donation to charitable child protection organization); United States v. Spiropoulos, 976 F.2d 155 (3d Cir. 1992) (overturning order that defendant pay costs of incarceration not authorized by Guidelines).

2. *Review of Whether the Facts Support the Sentencing Court's Rationale*

The second step in the Third Circuit's departure methodology is the determination of whether the facts support the sentencing court's rationale. This aspect of departure jurisprudence embraces the second and third tenets of the court's pre-Guidelines appellate determinacy: deference to the trial court while insisting upon procedural regularity.

In reviewing whether the announced reasons for the departure are supported by the facts, the court of appeals applies a clearly erroneous standard of review.[139] This standard of review is expressly set forth in the Sentencing Reform Act:

> [t]he court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous and shall give due deference to the district court's application of the guidelines to the facts.[140]

The court of appeals has accepted that this standard mandates deference to the sentencing court, whether it result in an upward or downward departure.[141] Although maintaining its pre-Guide-

139. United States v. Felton, 55 F.3d 861, 866 (3d Cir. 1995); United States v. Hunter, 52 F.3d 489, 492 (3d Cir. 1995); United States v. Seale, 20 F.3d 1279, 1287 (3d Cir. 1994); *Kikumura*, 918 F.2d at 1098.

140. 18 U.S.C. § 3742(d) (1994). The provision that the court of appeals give due deference to the trial judge's application of the Guidelines to the facts was added by a 1988 Amendment to the Act, Pub. L. No. 100-690, § 7103(a)(7), 102 Stat. 4417 (Nov. 18, 1988). The purpose of this amendment is:

> to give the court of appeals flexibility in reviewing an application of a guideline standard that involves some subjectivity. The deference due a district court's determination will depend upon the relationship of the facts found to the guideline standard being applied. If the particular determination involved closely resembles a finding of fact, the court of appeals would apply a clearly erroneous test. As the determination approaches a purely legal determination, however, the court of appeals would review the determination more closely.

134 CONG. REC. H11, 257 (daily ed. Oct. 21, 1988).

In Williams v. United States, 503 U.S. 193 (1992), the Supreme Court opined that in establishing "limited appellate review of sentencing decisions, [the Sentencing Reform Act] did not alter a court of appeals' traditional deference to a district court's exercise of its sentencing discretion." *Id.* at 205.

141. *See* United States v. Monaco, 23 F.3d 793 (3d Cir. 1994) (finding that deference should be given to district court's determination that defendant's mental anguish from inculpating his own son warranted downward departure from Sentencing Guidelines); United States v. Astorri, 923 F.2d 1052, 1058 (3d Cir.) ("[i]f there is any place in the sentencing guidelines analysis where a fact-finder is to be given considerable deference, it is here where the district court is called

lines acquiescence to the sentencing judge's fact-finding, the court of appeals has interpreted the Sentencing Guidelines to increase the procedural protections due to the defendant with respect to fact-finding in sentencing.[142] In this regard, the Third Circuit has perpetuated its pre-Guideline insistence on procedural regularity.[143]

The first additional procedural protection the court found enacted by the Guidelines heightens the requisite reliability of the information that forms the basis of the sentence.[144] Before institution of the Guidelines, the court of appeals merely required that the facts underlying the sentence "have some minimal indicium of reliability beyond mere allegation."[145] Although it initially perceived the same standard to govern information used as the basis of guideline sentences,[146] the Third Circuit later determined

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upon to assess the psychological impact upon the victims"), *cert. denied*, 502 U.S. 970 (1991).

Deference does not signify abdication of the duty to scrutinize the record and vacate a sentence lacking factual support for the departure. *See Seale*, 20 F.3d at 1289 (noting that findings relied upon to justify departure were grounded in speculation rather than fact and therefore clearly erroneous); United States v. Riviere, 924 F.2d 1289, 1307 (3d Cir. 1991) (holding that trial court's factual determination of disruption of governmental functions was clearly erroneous).

142. *See* United States v. Barr, 963 F.2d 641, 655-56 (3d Cir.) (citing Burns v. United States, 501 U.S. 129 (1990)), *cert. denied*, 113 S. Ct. 811 (1992).

143. The Supreme Court also has erected procedural protections for departures from the Sentencing Guidelines. In Burns v. United States, 501 U.S. 129 (1990), the Court held that Federal Rule of Criminal Procedure 32 requires a district court to afford reasonable notice of its consideration of an upward departure on grounds not identified in the presentence report or in submissions by the government. *Id.* at 129. The notice must identify with specificity the grounds on which the court is contemplating the upward departure. *Id.*; *accord Barr*, 963 F.2d at 655-56.

144. United States v. Miele, 989 F.2d 659, 663-64 (3d Cir. 1993) (holding that Sentencing Guidelines elevate threshold of reliability for facts upon which sentence is based).

145. United States v. Baylin, 696 F.2d 1030, 1040 (3d Cir. 1982). While the ultimate threshold of reliability was low, the court of appeals demanded that the defendant be given the opportunity to challenge information alleged to be false. The Sentencing Guidelines codify this mandate, requiring the trial court to give the parties adequate opportunity to present information to the court concerning disputed facts important to the sentencing determination as well as affording the parties an opportunity to submit objections to the court's tentative findings of fact before the imposition of sentence. U.S.S.G., *supra* note 11, § 6A1.3. For a further discussion of the right of defendants to contest allegedly false information, see *supra* note 58.

146. United States v. Sciarrino, 884 F.2d 95, 96-97 (3d Cir.) (noting that neither Sentencing Reform Act nor due process require different rules concerning use of hearsay in sentencing), *cert. denied*, 493 U.S. 997 (1989). *But see* United States v. Kikumura, 918 F.2d 1084, 1103 (3d Cir. 1990) (finding that where magnitude of departure is disproportionate to sentence, due process requires more than minimal indicium of reliability; the court must examine totality of circumstances,

that the Sentencing Guidelines pronounce a higher baseline.[147]

The Third Circuit announced its heightened reliability requirement in *United States v. Miele*.[148] In *Miele*, defendant's base offense level was premised upon the court's finding that Miele conspired to distribute cocaine in an amount in excess of five kilograms.[149] The volume of cocaine was ascertained from information provided by an informant who was a drug addict and whose estimate provided to the probation officer greatly exceeded the quantity of drugs he testified to at trial.[150] In assessing whether the informant's testimony supported the trial court's conclusion as to the amount of drugs involved, the Third Circuit held that the Sentencing Guidelines elevate the threshold of reliability for facts upon which a sentencing determination is based.[151] Section 6A1.3(a) of the Guidelines provides that while information considered in sentencing need not be admissible under the rules of evidence governing the trial, the information relied upon must have "sufficient indicia of reliability to support its probable accuracy."[152] The Commentary to section 6A1.3 makes plain that unlike the pre-Guidelines practice, characteristics of the particular offense and offender will have a specific and measurable effect on the sentence under the Guidelines.[153] Consequently, the court reasoned that "the reliability of the evidentiary basis for facts found at sentencing is of the utmost importance."[154]

Interestingly, while proclaiming a more rigorous evidentiary standard in *Miele*, the court of appeals maintained its posture of

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including other corroborating evidence, to determine whether hearsay declarations are reasonably trustworthy).

147. *Miele*, 989 F.2d at 663.

148. 989 F.2d 659 (3d Cir. 1993).

149. *Id.* at 662.

150. *Id.* at 661-62.

151. *Id.* at 663-64.

152. U.S.S.G., *supra* note 11, § 6A1.3(a).

153. *Id.* § 6A1.3 cmt. Although the commentary to the Guidelines is not authorized by the Sentencing Reform Act, the Supreme Court has found commentary that interprets or explains a guideline to be authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline. Stinson v. United States, 113 S. Ct. 1913, 1919 (1993); *see also* United States v. Hightower, 25 F.3d 182, 187 (3d Cir.) ("[W]e think that the commentary's expansion of the definition of a controlled substance offense . . . does not 'violate[ ] the Constitution or a federal statute.' " (quoting *Stinson*, 113 S. Ct. at 1915), *cert. denied*, 115 S. Ct. 370 (1994).

154. *Miele*, 989 F.2d at 668; *see also* United States v. Harris, 44 F.3d 1206, 1216 (3d Cir.) (ruling that promotional pamphlet does not provide sufficiently reliable basis for concluding that Phaser Mace is dangerous weapon within meaning of Guidelines), *cert. denied*, 115 S. Ct. 1806 (1995).

deference to the district court.[155] The court did not preclude the district court from ultimately relying upon the informant's post-trial statements to the probation officer to establish the quantity of cocaine.[156] Instead, it remanded for resentencing. The Third Circuit provided, however, that should the trial court elect to accept the informant's estimate, it must make specific, non-conclusory findings of fact explaining why it deemed the informant's post-trial estimate to have sufficient indicia of reliability to support a conclusion that it is probably accurate in the face of: a) inconsistent trial testimony, and b) the informant's status as a drug addict.[157]

The second procedural protection which the court of appeals erected under the Sentencing Guidelines is the loftier standard of proof to be applied in cases of extreme departures from the Guidelines. In *United States v. Kikumura*,[158] defendant was convicted of passport and explosives offenses carrying a Guidelines sentencing range of between twenty-seven and thirty-three months in prison.[159] Departing upward from the Guidelines range, the trial judge sentenced Kikumura to thirty years imprisonment because evidence at the sentencing hearing indicated that Kikumura manufactured three bombs in preparation for a major terrorist attack at a Navy and Marine recruiting office in New York City with the intent to cause multiple deaths and serious injuries.[160]

In reviewing the challenge to the sentencing judge's finding that Kikumura intended to use the bombs to kill people, the court of appeals first addressed the appropriate standard of proof applicable to sentencing hearings.[161] In *McMillan v. Pennsylvania*,[162] the Supreme Court had held that while proof of guilt must be established beyond a reasonable doubt, most sentencing facts need be proven only by a preponderance of the evidence.[163] The Third Circuit assented to that standard as appropriate in most sentencing cases under the Guidelines.[164] However, the court held that facts

155. *Miele*, 989 F.2d at 664-65.

156. *Id.* at 664.

157. *Id.* at 665. The Court held that "[t]he absence of any findings by the court to explain why it may have chosen to follow [the witness' higher estimate] . . . leaves us without confidence that [there was] 'sufficient indicia of reliability.' " *Id.*

158. 918 F.2d 1084 (3d Cir. 1990).

159. *Id.* at 1089.

160. *Id.* at 1093-98.

161. *Id.* at 1098-1102.

162. 477 U.S. 79 (1986).

163. *Id.* at 91.

164. *Kikumura*, 918 F.2d at 1101-02.

must be proven by clear and convincing evidence for departures so great that the sentencing hearing could be characterized as "a tail which wags the dog of the substantive offense."[165]

The court's decision to increase the burden of proof in cases of extreme departure was not motivated by a desire to enhance its power to invade the fact findings of the trial judge.[166] Indeed, the court of appeals ultimately found that the trial court's determination that Kikumura intended to kill was supported by clear and convincing evidence in the record.[167] The court was impelled by due process concerns raised by the Guidelines scheme of assigning punishment based upon the defendant's actual conduct in the particular case. In cases of modest departures from the Guideline range, the sentencing decision is less crucial than the determination of guilt, thus justifying the use of a preponderance standard to alleviate the fiscal and administrative burdens of a more onerous standard.[168] Where a significant departure from the Guidelines is contemplated, however, the sentencing hearing will have far greater consequences for the defendant than the underlying conviction. In such instances, the court held, the defendant must be afforded procedural protections more closely akin to those guaranteed at trial, including the requirement that the facts underlying the departure be established at least by clear and convincing evidence.[169]

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165. *Id.* at 1101 (quoting McMillan v. Pennsylvania, 477 U.S. 79, 88 (1986)); *see* United States v. Seale, 20 F.3d 1279, 1288-89 (3d Cir. 1994) (holding that sevenfold upward departure from maximum fine prescribed by Guidelines is type of "extreme context" mandating clear and convincing standard of proof; preponderance of evidence standard, however, governs departure assessing double maximum fine against co-defendant).

166. Of course, the net result of increasing the burden of proof is a concomitant expansion of situations where the court of appeals will find the sentencing court's findings of fact to be clearly erroneous. *See* United States v. Bertoli, 40 F.3d 1384, 1410-11 (3d Cir. 1994) (ruling that district court finding that defendant hid seven million dollars in illegal profits in foreign bank accounts, relied upon to support upward departure in excess of 50 times Guideline range fine, might be affirmed under preponderance standard but is clearly erroneous under governing clear and convincing evidence standard).

167. *Kikumura*, 918 F.2d at 1104.

168. The defendant's entitlement to procedural protections is also weakened as he is no longer cloaked with the presumption of innocence. *Bertoli*, 40 F.3d at 1409.

169. While not signifying an effort to invade the discretion of the trial judge, at first blush the *Kikumura* court could be accused of usurping the province of the legislature. The court, however, believed the clear and convincing standard implicit in the requirement of 18 U.S.C. § 3553(b) that in order to justify a departure, the trial judge must "find" an aggravating or mitigating circumstance not adequately taken into consideration by the Sentencing Commission. *Kikumura*, 918 F.2d at 1102.

It is not surprising that the Third Circuit obeyed its pre-Guidelines tenets in applying the first two parts of its departure methodology. The first step squarely called upon the court to interpret and enforce the intent of the legislature. The second inquiry involved the court in review of fact-finding comparable to the review of discretion in which it had engaged before the Guidelines, albeit within a quite different overall sentencing scheme. Yet, the final two stages of the departure analysis directly instruct the court of appeals to evaluate the reasonableness of the departure, thus presenting the court with an avenue to interject its own sentencing philosophy. The Third Circuit, however, expressly declined the invitation to thrust its own view of sentencing policy upon the district courts.[170]

3. *Appropriateness of the Factors Relied Upon for the Departure*

The third prong of the departure methodology requires the court of appeals to ascertain whether the factors on which the sentencing court relied — factors which, under the first step of the analysis, the appellate court already would have concluded were not adequately considered in the Guidelines — are "appropriate bases for departure from the guideline range."[171] While the court decisions applying this test are relatively sparse, the opinions exhibit a jurisprudence consistent with appellate determinacy. First, as in the pre-Guidelines era, the court of appeals has recognized that the district court is owed "a substantial amount of discretion" in determining whether the factor relied upon for the departure is appropriate.[172] Second, the court of appeals has promoted the sentencing scheme crafted by Congress and the Sentencing Commission by analogizing to the Sentencing Guidelines in determining appropriateness.

In certain cases, the factors relied upon to depart are specified in the Guidelines as proper bases for an upward or downward departure.[173] In such instances, the court of appeals obviously has no occasion to interject its view as to the appropriateness of the factor used for the departure.[174] Yet, even where the Guidelines do not

170. For a further discussion of the Third Circuit's philosophy on imposing its views of sentencing policy upon district courts, see *supra* notes 132-69 and accompanying text.

171. United States v. Felton, 55 F.3d 861, 866 (3d Cir. 1995).

172. *Id.*; *see also* United States v. Ryan, 866 F.2d 604, 610 (3d Cir. 1989) ("[T]he district courts are entitled to exercise a substantial amount of discretion in determining whether to depart from the guidelines.").

173. U.S.S.G., *supra* note 11, §§ 5K1.1-5K2.16.

174. United States v. Astorri, 923 F.2d 1052, 1058-59 (3d Cir.) (noting that

identify the factor as appropriate for departure, rather than generate its own philosophy of appropriateness, the court of appeals has examined whether the factor is employed by related provisions of the Guidelines not directly controlling the offense or departure. In *United States v. Ryan*,[175] the court upheld the district court's reliance upon the quantity and purity of the drugs involved to justify an upward departure in defendant's sentence for simple possession of a controlled substance.[176] In finding these to be appropriate grounds for departure, the court noted that the Guidelines expressly include quantity as a relevant sentencing element for other drug related offenses and indirectly incorporate the purity of drugs into base offense levels.[177] Similarly, in *United States v. Cherry*,[178] the court held the factors set forth in the Guidelines on obstruction of justice to be an appropriate foundation for departure following defendant's conviction for Unlawful Flight to Avoid Prosecution, an offense for which there was no Sentencing Guideline.[179] In *United States v. Felton*,[180] the fact that defendant tax examiner accepted multiple gratuities to adjust tax liabilities was deemed an appropriate circumstance for departure because analogous Guidelines authorized increased penalties for public officials who accepted multiple bribes.[181] As these cases evidence, rather than proffer its own criteria for sentencing departures, the court of appeals has extrapolated from the factors deemed relevant by Congress and the

upward departure for inflicting extreme psychological injury on victims approved by Guidelines § 5K2.3), *cert. denied*, 502 U.S. 970 (1991).

175. 866 F.2d 604 (3d Cir. 1989).

176. *Id.* at 606-08. The court also affirmed the sentencing judge's reliance on the packaging of drugs as a departure factor, rejecting defendant's claim that use of this fact was precluded because he had been acquitted of possession with intent to distribute. *Id.* at 609. The court reasoned that, as in the pre-Guidelines era, sentencing judges may consider conduct that is not an element of the offense for which the defendant was convicted. *Id.*

177. The *Ryan* court relied upon the following policy statement in § 5K2.0 of the Guidelines to deem appropriate factors listed in other provisions of the Guidelines: "[A] factor may be listed as a specific offense characteristic under one guideline but not under all guidelines. Simply because it was not listed does not mean that there may not be circumstances when that factor would be relevant to sentencing." *Ryan*, 866 F.2d at 607 (quoting U.S.S.G., *supra* note 11, § 5K2.0).

178. 10 F.3d 1003 (3d Cir. 1993).

179. *Id.* at 1009-10. The court also held, however, that the district court erred by departing upward based upon the Guideline pertaining to an "Official Victim," U.S.S.G. § 3A1.2, and the Guideline on Criminal Purpose, U.S.S.G. § 5K2.9, finding that the facts of the case did not meet the criteria of these Guidelines. *Id.* at 1010-12. In so ruling, the court did not reject the use of analogous Guidelines as appropriate factors for departure. *Id.* at 1012-13.

180. 55 F.3d 861 (3d Cir. 1995).

181. *Id.* at 868.

Sentencing Commission in analogous circumstances.[182]

In sum, while expressing that to be appropriate for departure a factor "must be relevant to the defendant's culpability,"[183] the court has looked to the Guidelines rather than the court's own construct to define what is relevant. While the court has not detailed the policy reasons underlying its refusal to implement its own philosophy in defining the appropriateness of the factors giving rise to the departure, it has overtly repudiated a more activist role in assessing the reasonableness of the degree of the departure.

4. *Appropriateness of the Degree of Departure*

The Third Circuit's most conscious declination of the opportunity to apply its own sentencing philosophy through reviewing the reasonableness of departures lies in the final stage of its departure analysis — evaluation of whether the degree of departure is appropriate. The court in *United States v. Kikumura*,[184] explicated the rationale for perpetuating its pre-Guidelines deference to the trial court and legislature when scrutinizing the degree of the departure.[185]

The court of appeals submitted that legislative intent, as well as preserving the structural integrity of the judiciary, countenance a deferential standard of review of the appropriateness of the degree of the departure. District courts are to be afforded " 'a substantial

182. *Cf.* United States v. Tsai, 954 F.2d 155, 165 (3d Cir. 1992) (finding that where Guideline already considers potential harm of crime, court cannot depart upward by analogy to another crime involving same potential harm), *cert. denied*, 113 S. Ct. 93 (1992). The one prominent exception to this approach is found in United States v. Schweitzer, 5 F.3d 44 (3d Cir. 1993). In *Schweitzer*, the trial judge imposed an upward departure to defendant's sentence following his conviction for conspiracy to bribe a public official in order to acquire confidential information held by the Social Security Administration. *Id.* The departure was founded in part upon defendant's disclosure of his compromise of confidential information in appearances on the Oprah Winfrey show and other interviews, which the court believed enhanced the loss of public confidence caused by the bribery. *Id.* at 46-47. Without citation to the Guidelines or any other authority, the court of appeals held that it was inappropriate for the judge to take into account defendant's media efforts to call attention to the ease of obtaining confidential information held by the government, a matter of public concern. *Id.* at 48. Although not expressed by the court, arguably, utilization of defendant's media appearances as a departure factor could raise first amendment concerns.

The court of appeals likewise offered no reason for its conclusion in United States v. Kikumura, 918 F.2d 1084 (3d Cir. 1990), that defendant's intent to commit murder was "an eminently reasonable basis" for an upward departure from his conviction for explosives offenses, although the correctness of its conclusion seems self-evident as a matter of common sense. *Id.* at 1110.

183. *Schweitzer*, 5 F.3d at 48.

184. 918 F.2d 1084 (3d Cir. 1990).

185. *Id.* at 1110-14.

amount of discretion' in determining the extent of any departure."[186] The court found such deference mandated by the legislative instruction that the court of appeals must affirm unless the sentence was: (1) imposed in violation of law; (2) imposed as a result of an incorrect application of the Guidelines; or (3) outside the Guideline range and unreasonable.[187]

The court of appeals further offered that special deference is owed to the trial court at this level of the analysis because, through the first three stages of the departure methodology, the court already would have ascertained that the sentence was not offensive to the Guidelines. At this juncture, therefore, the remaining issue is whether the judgment of the court of appeals should displace the discretion of the trial court. Because the " '[d]istrict courts are in the front lines, sentencing flesh-and-blood defendants,' " whereas the court of appeals is relegated to " 'the antiseptic nature of a sterile paper record,' " the Third Circuit opined that deference was owed not only because of Congress' instruction, but due to the trial judge's " 'superior "feel" for the case.' "[188]

Although endorsing the wisdom of yielding to the trial judge's discretion, the court of appeals did not entirely abandon a role in determining the reasonableness of departures.[189] It posited that objective standards must govern the statutory requirement of reasonableness.[190] In defining these objective standards, however, the court patently accepted the primacy of the legislature in matters of sentencing.[191]

The court of appeals began its search for standards pertaining to the reasonableness requirement by acknowledging that neither pre-Guidelines statutes nor common law offered any guidance, as the discretionary judgments of trial courts before institution of the

186. *Id.* at 1110 (quoting United States v. Ryan, 866 F.2d 604, 610 (3d Cir. 1989)).

187. 18 U.S.C. § 3742(f)(3) (1994); *Kikumura*, 918 F.2d at 1110.

188. *Kikumura*, 918 F.2d at 1110 (quoting United States v. Diaz-Villafane, 874 F.2d 43, 49-50 (1st Cir.), *cert. denied*, 493 U.S. 862 (1989)).

189. *Kikumura*, 918 F.2d at 1110-14.

190. *Id.* at 1110-11. The court argued that the Sentencing Guidelines were adopted to avoid disparity in sentencing that results from reasonable persons differing over what is an appropriate sentence. *Id.* at 1110. It believed "that fidelity to the policy undergirding the guidelines requires [the court] . . . to strive for some principled basis for reviewing the reasonableness of departures." *Id.* at 1110-11. If there were no objective standards, then sentencing disparity would reappear. *Id.* at 1111.

191. *Id.* at 1111 ("A natural starting point for deriving such standards is the statutory provision governing appellate review.").

Guidelines were "essentially unreviewable."[192] The Third Circuit also found the Sentencing Reform Act particularly unhelpful in divining a principled basis to measure the reasonableness of departures.[193] One guidepost offered by the Sentencing Reform Act was that in assessing reasonableness, the court of appeals must look at "the factors to be considered [by the district court] in imposing a sentence, as set forth in [18 U.S.C. § 3553(a)]."[194] Section 3553(a) in turn requires the district court to craft a sentence "sufficient, but not greater than necessary" to comply with the four purposes of sentencing: retribution, general deterrence, specific deterrence and a measure of rehabilitation.[195] Without doing violence to the statute, the Third Circuit could have seized upon the language of the statute to contrive its own recipe for balancing the core aims of sentencing. Instead, the court spurned the role of oracle of reasonableness, finding that without further legislative guidance as to how to weight the often conflicting goals of sentencing in a particular case, the general sentencing policies listed in § 3553(a) could not supply a principled basis to prevent disparities in sentencing.[196]

Having refused to measure reasonableness by its own "hunches and instincts,"[197] the court of appeals instructed the district courts to attempt to analogize to related Guidelines in measuring the degree of a departure.[198] The court found authority for this approach in the Sentencing Reform Act, which provides that in imposing a sentence for an offense with no governing guideline, the court must have "due regard for the relationship of the sentence imposed to sentences prescribed by Guidelines applicable to similar offenses and offenders."[199] The Guidelines also endorse analogization

192. *Id.* at 1110.

193. *Id.* at 1111. The court noted that 18 U.S.C. §§ 3742(e)(3)(B) and 3553(c) provide little more than "that if a district court fails to state the specific findings on which its departure is based, the court of appeals should vacate and remand for clarification." *Id.*

194. 18 U.S.C. § 3742(e)(3) (1994).

195. 18 U.S.C. § 3553(a) (1994).

196. *Kikumura*, 918 F.2d at 1111. Specifically, the court complained that:

> The statute says nothing about how much of each factor [§ 3553(a)] requires, how to determine the amount of each factor a contemplated sentence in fact would provide, or how to weigh factors against one another in the frequent situations when different factors (for example, retribution and rehabilitation) tend to pull in opposing directions.

Id. Rather than taking an activist position, the court allowed analogic reasoning and afforded the district court deference to "craft any particular analogy [to other Guidelines criteria] it might wish to employ." *Id.* at 1114.

197. *Id.* at 1113-14.

198. *Id.*

199. 18 U.S.C. § 3553(b) (1994). The Third Circuit has held that the meth-

where the defendant's criminal history understates the seriousness of the past criminal conduct or likelihood of recurrence; in departing on this basis, the court is to "use, as a reference, the guideline range for a defendant with a higher or lower criminal history category."[200] The Third Circuit adopted as a guiding principle that "the appropriate length of a sentence should be determined from the sentencing table, even outside the context of straightforward applications of [the] . . . guidelines."[201] By directing the district courts to follow by analogy the structure of the Guidelines, the court of appeals hoped to forestall the disparity in sentences that motivated passage of the Sentencing Reform Act, disparity that would be inevitable under a standardless approach to reasonableness. The Third Circuit tailored its methodology, then, to carry out the will of Congress at the expense of its own power to influence sentencing policy.

IV. CONCLUSION

The Third Circuit's fidelity to the three tenets of appellate determinacy is in the highest tradition of the classical role of federal appellate courts. The court's reversal of all sentences violative of the statutory scheme, regardless of the court's sympathy with the reasons for departure, accepts that the role of the court of appeals is not to quarrel with the legislature's judgment within constitu-

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odology developed in *Kikumura* likewise governs sentencing and departures where no offense guideline exists. United States v. Cherry, 10 F.3d 1003, 1012-13 (3d Cir. 1993).

200. U.S.S.G., *supra* note 11, § 4A1.3; United States v. Harris, 44 F.3d 1206, 1211-14 (3d Cir.), *cert. denied*, 115 S. Ct. 1806 (1995).

201. *Kikumura*, 918 F.2d at 1112. The court found that enhancement of Kikumura's sentence could be justified under analogous Guidelines sanctioning upward departures for criminal history, multiple attempted murders, extreme conduct and conduct endangering public safety. The court then ruled that the Guideline authorizing upward departure for disruption of governmental functions was not analogous because Kikumura's intent to modify government policy by deterring future anti-terrorist bombings akin to the bombing of Libya was not disruption of a governmental function within the meaning of the Guidelines. Applying the analogous Guideline departures, the applicable sentencing range would be 210 to 262 months. Because the trial judge's sentence of 360 months imprisonment exceeded the analogous Guideline range, the court of appeals remanded for resentencing.

On remand, the district court sentenced Kikumura to 262 months imprisonment. The Third Circuit affirmed the sentence, rejecting Kikumura's claim that the trial judge deprived him of his right to counsel by refusing to grant a continuance to obtain counsel of his choice. United States v. Kikumura, 947 F.2d 72 (3d Cir. 1991); *see also* United States v. Felton, 55 F.3d 861 (3d Cir. 1995) (holding degree of departure for accepting multiple gratuities appropriate because it was no greater than sentence required by analogous Guideline).

tional bounds but to enforce its intent. The court defers to Congress' greater ability to hold hearings to assess and balance the difficult policy judgments encompassed within sentencing, as well as its position as the democratically elected representatives of the public will. The Third Circuit's reversal of sentences tainted by procedural error is the basic execution of the judicial branch's duty to interpret the Constitution, in particular the requirement that no person be deprived of liberty without due process of law. Finally, the Third Circuit's refusal to upset the exercise of the sentencing court's discretion is emblematic of a court of appeals' general deference to findings of fact, as the trial court has superior information by virtue of its ability to observe the witnesses who testify. With respect to sentencing, as the Third Circuit noted in *Del Piano v. United States*,[202] the district court judge has

> the opportunity to evaluate the total person who stands at the bar of justice: to note the physical appearance and demeanor; the tone, temper and rhythm of speech; the facial expressions, the hands, the revealing look into the eyes . . . those impressions gleaned through the senses in any personal confrontation in which one attempts to assess the credibility or to evaluate the true moral fiber of another.
>
> Wide discretion is vested in the sentencing judge because of what is called "the superiority of his nether position." This is so not because the district judge knows more than his appellate brothers, but rather, as Professor Maurice Rosenberg reminds us, "he sees more and senses more."[203]

But what about justice? In an arena so rife with controversy and emotion, why has there not been a case in which the court's sensibilities were so offended that it dropped its deferential posture in favor of what it believed to be the proper sentence for the defendant at bar? Professor Linder has castigated the courts of appeals' inflexible interpretation of the Guidelines and declination to review refusals to depart as symptomatic of "[d]istance from the human consequences of one's decisions [that] can breed the indifference and lack of imagination that Hannah Arendt found so

202. 575 F.2d 1066 (3d Cir. 1978), *cert. denied*, 442 U.S. 944 (1979).
203. *Id.* at 1069.

closely linked to evil."[204] Judge Cabranes commends replacement of the Sentencing Guidelines with a system of enhanced appellate review of discretion as "a way to preserve the humanity of the sentencing system while preventing potential 'disparities' from eroding the principle that, all other things being equal, similar crimes should entail similar punishments."[205] Yet, as the pendulum of sentencing philosophy has swung between retribution and rehabilitation, determinacy and indeterminacy, the Third Circuit has abnegated rather than arrogated the power to define sentencing policy. The court has taken to heart the admonition it issued to the district courts to "refrain from taking into consideration factors that are adverse to the philosophy of [the sentencing scheme established by Congress], which is now the law of the land, whether the . . . court philosophically agrees or disagrees with it."[206]

Perhaps the true, but unarticulated, source of the Third Circuit's appellate determinacy is its belief that courts of appeals are not competent to implement a philosophy that balances the aims of punishment through articulable rules which can successfully address the root problems of crime. Professor Lawrence Friedman, in his epic work *Crime and Punishment in American History*, concludes that crime is "embedded in the culture" and cannot be eradicated by punishment.[207] The evolution of sentencing philosophy in the United States is but a microcosm of the thousands of years old "fundamental jurisprudential conflict . . . over whether what is 'right' (deserved punishment) is good or whether what is 'good' (the utilitarian, crime control aims of deterrence, incapacitation, and treatment) is right."[208] Although impotent to resolve this conflict, the United States Court of Appeals for the Third Circuit has sought to ensure that within parameters established by Congress and the facts as determined by the district court, the ultimate sentence, even if not just, is fair.

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204. Douglas Linder, *Journeying Through the Valley of Evil*, 71 N.C. L. REV. 1111, 1147 (1993).

205. Cabranes, *supra* note 12, at 188. Judge Cabranes would require the trial judge to explain on the record the rationale for the sentence, with both the government and the defendant at liberty to appeal the outcome. *Id.* The appellate courts then would develop common-law standards for sentencing as they do in other areas of the law. *Id.* at 185-89.

206. United States v. Chiarelli, 898 F.2d 373, 385 (3d Cir. 1990).

207. FRIEDMAN, *supra* note 1, at 456-63.

208. Don M. Gottfredson, *Criminal Sentencing in Transition*, 68 JUDICATURE 125 (1984).

APPENDIX A

SENTENCING — STATISTICS

	Docket #	Caption		Date Dock	Date Term
both	89-2087	USA v. Gambino	SO	12/27/89	03/04/91
both	89-2089	USA v. Mannino	SO	12/27/89	03/04/91
both	89-5925	USA v. Frischling	MO	11/30/89	02/25/91
both	90-1025	USA v. Headley	SO	01/17/90	01/24/91
both	90-1034	USA v. Varisco	SO	01/18/90	03/04/91
sen	90-1049	USA v. Roman	MO	01/23/90	12/26/90
sen	90-1073	USA v. Norat	MO	01/29/90	12/26/90
both	90-1074	USA v. Lores	MO	01/29/90	12/13/90
both	90-1106	USA v. Brennen	SO	02/08/90	09/17/90
both	90-1110	USA v. Jasinski	MO	02/13/90	06/29/90
both	90-1129	USA v. Brant	MO	02/23/90	08/27/90
sen	90-1171	USA v. Parker	SO	03/05/90	05/09/90
both	90-1178	USA v. Hernandez	MO	03/07/90	12/26/90
both	90-1201	USA v. Snead	MO	03/15/90	08/27/90
sen	90-1284	USA v. Pharr	SO	04/12/90	10/19/90
sen	90-1297	USA v. Famiano	SO	04/18/90	10/23/90
both	90-1338	USA v. Ljachin	JO	05/04/90	11/26/90
both	90-1342	USA v. Murray	MO	05/07/90	01/18/91
both	90-1369	USA v. Ramos	SO	05/18/90	05/03/91
sen	90-1492	USA v. Devlin	MO	07/05/90	02/26/91
both	90-1535	USA v. Moscony	SO	07/23/90	03/08/91
both	90-1546	USA v. Davis	JO	07/26/90	08/21/91
sen	90-1548	USA v. Hunt	JO	07/26/90	01/15/91
sen	90-1573	USA v. Hundley	MO	08/06/90	02/15/91
sen	90-1581	USA v. Cope	JO	08/08/90	01/17/91
sen	90-1601	USA v. Tubbs	SO	08/17/90	05/31/91
sen	90-1669	USA v. Spanjol	JO	09/13/90	02/20/92
both	90-1738	USA v. Norat	MO	10/04/90	06/21/91
sen	90-1741	USA v. McAllister	SO	10/05/90	03/01/91
sen	90-1755	USA v. Davis	SO	10/15/90	04/02/91
both	90-1760	USA v. Mercado	MO	10/16/90	04/22/91
both	90-1766	USA v. Suren	SO	10/17/90	06/03/91
both	90-1827	USA v. Jones	MO	11/08/90	05/23/91
sen	90-1908	USA v. Fernandez	MO	11/29/90	05/23/91
both	90-1910	USA v. Mitchell	JO	11/30/90	06/03/91
both	90-1929	USA v. Fuentes	SO	12/11/90	01/17/92
both	90-1931	USA v. Cusumano	SO	12/12/90	08/28/91
sen	90-1935	USA v. Rivera	JO	12/12/90	06/24/91
both	90-1946	USA v. Chase	MO	12/18/90	05/23/91
both	90-1963	USA v. Garcia	JO	12/21/90	09/10/91
sen	90-1986	USA v. Jones	JO	12/28/90	07/02/91
both	90-3008	USA v. Williams	MO	01/11/90	05/31/90
both	90-3037	USA v. Domino	JO	01/29/90	08/28/90
both	90-3044	USA v. Woods	SO	01/30/90	10/01/90
both	90-3045	USA v. Hartman	SO	01/30/90	10/01/90
both	90-3047	USA v. Galloway	MO	01/30/90	08/30/90
both	90-3053	USA v. Drino	MO	02/06/90	07/05/90
sen	90-3054	USA v. Didio	MO	02/06/90	07/05/90
both	90-3055	USA v. McClure	MO	02/09/90	08/30/90

APPENDIX A (CONTINUED)

	Docket #	Caption		Date Dock	Date Term
sen	90-3079	USA v. McMillen	SO	02/26/90	10/29/90
sen	90-3083	USA v. George	MO	02/27/90	07/17/90
both	90-3084	USA v. Rickabaugh	JO	02/27/90	08/23/90
both	90-3119	USA v. Moser	MO	03/09/90	01/30/91
sen	90-3122	USA v. Tuitt	JO	03/09/90	12/19/90
sen	90-3126	USA v. Williams	JO	03/12/90	12/03/90
sen	90-3128	USA v. Riviere	SO	03/12/90	01/31/91
both	90-3129	USA v. Riviere	SO	03/12/90	01/31/91
both	90-3142	USA v. Inigo	SO	03/19/90	02/01/91
both	90-3151	USA v. Giordano	SO	03/23/90	02/01/91
both	90-3152	USA v. Skerianz	SO	03/23/90	02/01/91
sen	90-3157	USA v. Stewart	MO	03/26/90	08/28/90
sen	90-3191	USA v. Gennaro	MO	03/29/90	11/23/90
both	90-3196	USA v. Dennard	JO	03/30/90	09/26/90
sen	90-3202	USA v. Bermudez	JO	04/05/90	10/16/90
sen	90-3204	USA v. Sample	JO	04/09/90	08/31/90
sen	90-3224	USA v. Georgiadis	SO	04/19/90	05/23/91
both	90-3255	USA v. Walton	MO	04/26/90	11/07/90
sen	90-3277	USA v. Astorri	SO	05/02/90	01/22/91
both	90-3287	USA v. Lunt	JO	05/08/90	05/31/91
both	90-3322	USA v. Steinbergen	JO	05/24/90	12/18/90
sen	90-3370	USA v. Lytle	JO	06/15/90	03/08/91
both	90-3381	USA v. Telesford	MO	06/19/90	02/07/91
both	90-3382	USA v. Frierson	SO	06/19/90	10/01/91
both	90-3384	USA v. Wilson	MO	06/19/90	01/18/91
both	90-3385	USA v. Wilson	MO	06/19/90	01/18/91
both	90-3409	USA v. Wright	JO	06/29/90	01/17/91
sen	90-3410	USA v. Lante	MO	06/29/90	02/11/91
sen	90-3424	USA v. Bellitti	MO	07/06/90	02/11/91
both	90-3431	USA v. Welsh	MO	07/10/90	02/27/91
both	90-3438	USA v. Surratt	SO	07/12/90	09/17/91
sen	90-3449	USA v. Bashor	MO	07/17/90	02/27/91
both	90-3523	USA v. Van Tassel	JO	07/27/90	06/26/91
both	90-3524	USA v. Sloss	JO	07/30/90	06/26/91
both	90-3539	USA v. Sloss	JO	08/06/90	06/26/91
both	90-3550	USA v. Crosby	JO	08/09/90	02/12/91
both	90-3571	USA v. Smith	JO	08/20/90	03/15/91
both	90-3574	USA v. Wickstrom	JO	08/21/90	01/16/92
both	90-3579	USA v. Petergol	JO	08/23/90	06/26/91
both	90-3582	USA v. Saunders	MO	08/24/90	02/22/91
sen	90-3583	USA v. Perakis	SO	08/24/90	06/25/91
both	90-3609	USA v. Recalde	JO	09/07/90	05/07/91
both	90-3645	USA v. Navarro	JO	09/20/90	05/07/91
both	90-3653	USA v. Creque	MO	09/21/90	05/13/91
sen	90-3661	USA v. Murillo	SO	09/25/90	05/08/91
both	90-3662	USA v. Murillo	SO	09/25/90	05/08/91
both	90-3663	USA v. Murillo	SO	09/25/90	05/08/91
both	90-3666	USA v. Thomas	JO	09/25/90	03/06/91
both	90-3667	USA v. Thomas	JO	09/25/90	03/06/91
sen	90-3688	USA v. Hanlin	SO	10/03/90	07/15/91
sen	90-3689	USA v. Muller	SO	10/03/90	07/15/91

APPENDIX A (CONTINUED)

	Docket #	Caption		Date Dock	Date Term
sen	90-3706	USA v. Muller	SO	10/12/90	07/15/91
both	90-3714	USA v. Durham	JO	10/16/90	03/15/91
sen	90-3716	USA v. Ofchinick	SO	10/16/90	07/05/91
both	90-3734	USA v. Romani	JO	10/26/90	10/08/91
both	90-3742	USA v. Romani	JO	10/31/90	10/08/91
both	90-3745	USA v. Ricche	JO	11/01/90	10/08/91
both	90-3751	USA v. Valentin	MO	11/05/90	12/17/91
both	90-3755	USA v. Hauser	SO	11/13/90	06/19/92
both	90-3775	USA v. Isenberg	SO	11/20/90	10/30/91
sen	90-3785	USA v. Halterman	SO	11/26/90	12/27/91
both	90-3791	USA v. Martin	MO	11/27/90	12/20/91
sen	90-3826	USA v. Walker	JO	12/13/90	08/13/91
sen	90-3832	USA v. Mobley	SO	12/14/90	02/14/92
both	90-3846	USA v. Johnson	MO	12/26/90	07/26/91
sen	90-5004	USA v. Williams	SO	01/12/90	10/24/90
sen	90-5008	USA v. Mendoza	JO	01/12/90	06/08/90
both	90-5053	USA v. Gilliam	JO	01/25/90	10/15/90
both	90-5054	USA v. Pray	JO	01/25/90	08/31/92
sen	90-5099	USA v. Bierley	SO	02/13/90	12/28/90
sen	90-5100	USA v. Correa	JO	02/14/90	08/22/90
both	90-5102	USA v. Sutter	JO	02/14/90	08/31/90
sen	90-5112	USA v. Franco	JO	02/22/90	08/28/90
both	90-5125	USA v. Alfano	JO	02/28/90	10/05/90
both	90-5133	USA v. Amis	SO	02/28/90	03/04/91
both	90-5177	USA v. Gutierrez-Jaramillo	JO	03/12/90	10/05/90
both	90-5178	USA v. Valdes	JO	03/12/90	10/05/90
both	90-5188	USA v. Gonzalez	SO	03/13/90	11/16/90
both	90-5189	USA v. Caba	SO	03/13/90	11/16/90
sen	90-5200	USA v. Lemos-Martinez	MO	03/15/90	06/27/91
both	90-5202	USA v. Gilsenan	JO	03/15/90	02/28/91
both	90-5203	USA v. Cicalese	JO	03/15/90	02/28/91
sen	90-5213	USA v. Leon	MO	03/20/90	09/20/90
sen	90-5214	USA v. Hincapie	MO	03/20/90	09/20/90
sen	90-5222	USA v. Furst	SO	03/23/90	11/05/90
sen	90-5235	USA v. Ortiz	MO	03/27/90	12/07/90
sen	90-5236	USA v. Santiago	MO	03/27/90	12/07/90
sen	90-5237	USA v. Lewis	MO	03/27/90	12/07/90
sen	90-5240	USA v. Lemos-Martinez	MO	03/28/90	06/27/91
sen	90-5241	USA v. Torres	JO	03/28/90	07/19/90
sen	90-5245	USA v. Trujillo	SO	03/28/90	12/05/90
both	90-5264	USA v. Delgado	MO	04/06/90	06/27/91
both	90-5265	USA v. Puentes	MO	04/06/90	06/27/91
sen	90-5276	USA v. Khaliq	JO	04/13/90	10/24/90
both	90-5281	USA v. Rolo	JO	04/16/90	01/29/91
sen	90-5293	USA v. Johnson	SO	04/19/90	04/30/91
both	90-5297	USA v. Rivero	MO	04/23/90	06/27/91
sen	90-5339	USA v. Jacobs	SO	04/30/90	11/13/90
both	90-5356	USA v. White	MO	05/08/90	10/05/90
both	90-5365	USA v. Olchowa	JO	05/14/90	10/24/90
sen	90-5366	USA v. Osorio	MO	05/14/90	11/15/90
both	90-5393	USA v. Montilla-Davila	JO	05/22/90	05/01/91

APPENDIX A (CONTINUED)

	Docket #	Caption		Date Dock	Date Term
both	90-5394	USA v. Pierce	JO	05/22/90	10/17/90
both	90-5401	USA v. Reyes	SO	05/22/90	04/11/91
both	90-5408	USA v. Doe	MO	05/24/90	06/11/91
both	90-5425	USA v. Colbert	JO	05/29/90	02/13/91
both	90-5426	USA v. Colbert	JO	05/29/90	02/13/91
both	90-5430	USA v. Wilson	JO	05/29/90	11/22/91
sen	90-5432	USA v. Little	JO	05/30/90	10/24/90
both	90-5457	USA v. Barel	SO	06/06/90	07/17/91
both	90-5474	USA v. Schroyer	MO	06/12/90	10/16/90
sen	90-5505	USA v. Perez	JO	06/20/90	02/22/91
sen	90-5508	USA v. Tomasso	MO	06/21/90	12/31/90
sen	90-5517	USA v. Vargas	MO	06/25/90	10/03/91
sen	90-5518	USA v. Singh	SO	06/25/90	01/17/91
sen	90-5544	USA v. Weatherby	JO	06/28/90	01/28/91
both	90-5545	USA v. Torres	SO	06/28/90	03/01/91
sen	90-5549	USA v. Newman	SO	06/29/90	03/26/91
both	90-5553	USA v. Palmer	JO	06/29/90	03/21/91
both	90-5576	USA v. Porte	JO	07/11/90	12/07/90
both	90-5577	USA v. Gonzalez	SO	07/13/90	03/08/91
both	90-5581	USA v. Garfield	MO	07/17/90	12/19/90
both	90-5585	USA v. Crumling	JO	07/17/90	02/05/91
sen	90-5604	USA v. Shoupe	SO	07/23/90	03/29/91
sen	90-5621	USA v. Crumling	JO	07/26/90	03/14/91
sen	90-5630	USA v. Rivera-Diaz	JO	07/27/90	01/31/91
sen	90-5688	USA v. Rendon	JO	08/17/90	07/03/91
sen	90-5716	USA v. Lemos-Villada	JO	08/22/90	07/03/91
both	90-5739	USA v. Gutierrez	JO	08/28/90	07/03/91
sen	90-5747	USA v. Garcia	JO	08/29/90	05/23/91
sen	90-5759	USA v. Marin	MO	08/31/90	09/30/91
both	90-5775	USA v. Canadilla	MO	09/14/90	02/11/91
sen	90-5801	USA v. Henderson	JO	09/24/90	02/11/91
both	90-5844	USA v. Vellaro	JO	10/10/90	03/29/91
sen	90-5880	USA v. Gallego-Zuluaga	JO	10/18/90	11/22/91
sen	90-5895	USA v. Khan	MO	10/23/90	04/16/91
both	90-5934	USA v. Lopez	MO	11/06/90	10/08/91
both	90-5958	USA v. Braswell	MO	11/19/90	04/16/91
sen	90-5982	USA v. Delgado	MO	11/27/90	07/29/91
both	90-6041	USA v. Valenciano	JO	12/21/90	06/12/91
sen	90-6056	USA v. Plant	MO	12/31/90	05/23/91
both	91-1070	USA v. Purnell	JO	01/30/91	07/19/91
sen	91-1107	USA v. Leon	MO	02/13/91	12/20/91
both	91-1116	USA v. Wright	MO	02/19/91	07/26/91
both	91-1123	USA v. Logar	SO	02/21/91	09/04/92
both	91-1129	USA v. Sitek	JO	02/22/91	09/04/91
sen	91-1201	USA v. McGill	SO	03/20/91	05/13/92
both	91-1202	USA v. Tsai	SO	03/20/91	01/21/92
sen	91-1233	USA v. Sanchez-Pinero	MO	03/28/91	08/10/94
both	91-1252	USA v. Rodriquez	SO	04/05/91	04/17/92
both	91-1264	USA v. Russo	JO	04/08/91	04/08/92
both	91-1267	USA v. Delany	JO	04/11/91	04/08/92
both	91-1271	USA v. LePore	JO	04/11/91	04/08/92

APPENDIX A (CONTINUED)

	Docket #	Caption		Date Dock	Date Term
both	91-1282	USA v. Dougherty	JO	04/15/91	04/08/92
sen	91-1296	USA v. Schwartz	MO	04/17/91	01/16/92
sen	91-1320	USA v. Mullen	SO	04/25/91	10/16/91
sen	91-1388	USA v. Kang	SO	05/15/91	11/13/91
sen	91-1418	USA v. McAllister	JO	05/22/91	11/29/91
sen	91-1436	USA v. Yu	SO	05/29/91	01/28/92
both	91-1461	USA v. Farley	JO	06/05/91	10/31/91
both	91-1464	USA v. Anderson	MO	06/06/91	10/31/91
sen	91-1470	USA v. Butcher	MO	06/07/91	11/05/91
sen	91-1481	USA v. McAllister	JO	06/13/91	11/29/91
both	91-1492	USA v. Collado	SO	06/18/91	09/16/92
both	91-1493	USA v. McKreith	MO	06/18/91	12/13/91
both	91-1516	USA v. Collado	SO	06/25/91	09/16/92
sen	91-1547	USA v. Giraldo	MO	07/05/91	12/19/91
both	91-1562	USA v. Ukaji	SO	07/10/91	02/20/92
both	91-1563	USA v. Chima	MO	07/10/91	08/11/92
both	91-1575	USA v. Dizes	JO	07/12/91	07/31/92
both	91-1619	USA v. Brennen	MO	07/29/91	02/12/92
sen	91-1667	USA v. Vasquez	JO	08/07/91	02/14/92
both	91-1668	USA v. Packer	MO	08/07/91	02/25/92
both	91-1697	USA v. Damiano	JO	08/15/91	03/16/92
sen	91-1728	USA v. Garcia	MO	08/22/91	12/11/92
both	91-1788	USA v. Cintron	MO	09/12/91	06/17/92
both	91-1793	USA v. Milicia	JO	09/12/91	04/14/92
both	91-1826	USA v. Lattany	SO	09/23/91	12/29/92
both	91-1827	USA v. Terry	JO	09/25/91	05/20/92
both	91-1828	USA v. Lewis	MO	09/25/91	06/18/92
both	91-1847	USA v. Flores	MO	09/30/91	06/18/92
both	91-1849	USA v. Baker	JO	10/03/91	05/28/92
sen	91-1854	USA v. Zaffiro	JO	10/07/91	06/30/92
sen	91-1857	USA v. Perez	JO	10/08/91	07/27/92
both	91-1872	USA v. Marilao	JO	10/11/91	01/21/93
both	91-1876	USA v. Herbert	MO	10/15/91	05/28/92
both	91-1877	USA v. Higgins	SO	10/15/91	06/16/92
both	91-1885	USA v. Toth	SO	10/18/91	10/27/92
sen	91-1898	USA v. Bordinaro	JO	10/23/91	06/30/92
both	91-1948	USA v. Menendez	MO	11/14/91	12/15/92
both	91-1975	USA v. Edwards	JO	11/22/91	10/29/92
both	91-1976	USA v. Freeman	JO	11/22/91	10/29/92
both	91-1996	USA v. Floyd	MO	11/29/91	03/31/93
both	91-1995	USA v. Torres	MO	11/29/91	12/30/92
both	91-1998	USA v. Keegan	JO	12/04/91	07/17/92
both	91-2000	USA v. Kelly	JO	12/04/91	07/17/92
both	91-2001	USA v. Menendez	MO	12/04/91	12/30/92
sen	91-2004	USA v. Wallace	JO	12/04/91	08/05/92
both	91-2010	USA v. Vinnacombe	JO	12/05/91	07/17/92
both	91-2018	USA v. Travieso	MO	12/06/91	12/30/92
both	91-2025	USA v. Duffus	JO	12/10/91	10/29/92
sen	91-2026	USA v. Morrison	JO	12/10/91	10/29/92
both	91-2028	USA v. Pogany	MO	12/11/91	07/20/92
both	91-2033	USA v. Jennings	JO	12/12/91	07/16/92

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	Docket #	Caption		Date Dock	Date Term
both	91-2043	USA v. Stewart	SO	12/18/91	10/09/92
both	91-2048	USA v. Chaplin	JO	12/19/91	10/29/92
both	91-2050	USA v. Chang	JO	12/19/91	12/15/92
both	91-2059	USA v. Clarke	JO	12/23/91	10/29/92
both	91-2060	USA v. Taylor	JO	12/23/91	10/29/92
both	91-2061	USA v. Fray	JO	12/23/91	10/29/92
sen	91-2064	USA v. Rorke	JO	12/24/91	07/17/92
sen	91-2065	USA v. Vinnacombe	JO	12/24/91	07/17/92
sen	91-2066	USA v. Keegan	JO	12/24/91	07/17/92
sen	91-2067	USA v. Smythe	JO	12/24/91	07/17/92
sen	91-2068	USA v. Kelly	JO	12/24/91	07/17/92
both	91-2082	USA v. Lastra	JO	12/27/91	07/28/92
sen	91-2083	USA v. Seligsohn	SO	12/27/91	12/09/92
sen	91-2084	USA v. Reddick	MO	12/27/91	07/13/92
both	91-2087	USA v. Thomas	JO	12/27/91	07/16/92
both	91-2088	USA v. Bennett	JO	12/27/91	07/16/92
both	91-2089	USA v. Sally	JO	12/27/91	07/16/92
sen	91-2093	USA v. Seligsohn	SO	12/30/91	12/09/92
sen	91-2100	USA v. Seligsohn	SO	12/31/91	12/09/92
both	91-3048	USA v. Taylor	JO	01/28/91	06/21/91
both	91-3049	USA v. Raucci	MO	01/30/91	04/27/92
both	91-3056	USA v. Porter	MO	02/01/91	04/27/92
both	91-3058	USA v. Levie	MO	02/01/91	04/27/92
sen	91-3059	USA v. Parson	SO	02/04/91	01/31/92
both	91-3062	USA v. Chiarelli	MO	02/05/91	04/27/92
both	91-3063	USA v. Durish	MO	02/05/91	04/27/92
both	91-3064	USA v. Porter	MO	02/05/91	04/27/92
both	91-3065	USA v. Sosa	MO	02/05/91	04/27/92
both	91-3068	USA v. Mall	JO	02/06/91	10/08/91
both	91-3069	USA v. Frechette	JO	02/06/91	10/08/91
both	91-3079	USA v. Marsico	MO	02/12/91	05/23/91
both	91-3088	USA v. McGlory	SO	02/20/91	06/19/92
sen	91-3090	USA v. Demes	SO	02/20/91	08/01/91
both	91-3099	USA v. Porter	JO	02/25/91	07/15/91
both	91-3103	USA v. Ferguson	MO	02/27/91	09/20/91
both	91-3118	USA v. Boyd	JO	03/05/91	08/15/91
both	91-3119	USA v. Hill	MO	03/05/91	08/12/91
both	91-3120	USA v. Vereb	MO	03/05/91	08/12/91
sen	91-3124	USA v. Williams	JO	03/06/91	08/05/91
sen	91-3136	USA v. Embry	MO	03/13/91	06/21/91
both	91-3137	USA v. Baskin	JO	03/14/91	10/08/91
both	91-3138	USA v. McGeary	JO	03/14/91	10/31/91
both	91-3151	USA v. Heller	MO	03/20/91	07/29/91
both	91-3152	USA v. Hayes	SO	03/20/91	10/08/91
both	91-3180	USA v. Shaffer	MO	03/29/91	09/11/91
both	91-3210	USA v. Giampa	JO	04/16/91	10/17/91
sen	91-3220	USA v. King	MO	04/23/91	09/11/91
sen	91-3236	USA v. Gibbs	MO	04/26/91	11/06/91
both	91-3252	USA v. Phillips #03062-015	SO	04/30/91	03/03/92
both	91-3260	Govt of VI v. Smith	JO	05/09/91	12/19/91
both	91-3265	USA v. Baptiste	MO	05/10/91	12/20/91

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	Docket #	Caption		Date Dock	Date Term
both	91-3282	USA v. Paolello	SO	05/15/91	12/04/91
both	91-3286	USA v. Joshua	SO	05/17/91	10/05/92
both	91-3288	USA v. Arteaga	MO	05/20/91	12/26/91
sen	91-3325	USA v. Brown	JO	05/30/91	10/23/91
sen	91-3334	USA v. Mack	MO	06/05/91	06/30/92
sen	91-3364	USA v. MacFarlane	MO	06/12/91	08/11/92
both	91-3373	USA v. Lurito	JO	06/14/91	07/22/92
both	91-3401	USA v. Gill	MO	06/26/91	05/04/92
sen	91-3403	USA v. Malesic	JO	06/26/91	12/18/91
sen	91-3421	USA v. Smith	MO	07/02/91	12/23/91
both	91-3425	Govt of VI v. Pinney	SO	07/03/91	06/22/92
both	91-3431	USA v. Wilson	MO	07/08/91	04/03/92
both	91-3443	USA v. Francis	MO	07/12/91	05/04/92
both	91-3505	USA v. Squire	SO	08/02/91	12/07/92
both	91-3519	USA v. Katora	SO	08/08/91	12/07/92
both	91-3520	USA v. Brentley	SO	08/09/91	04/10/92
both	91-3547	USA v. Mustakeem	JO	08/19/91	08/13/92
both	91-3551	USA v. Walker	JO	08/20/91	02/03/92
both	91-3585	USA v. Wedderburn	JO	08/29/91	07/21/92
sen	91-3597	USA v. Boyd	SO	09/03/91	04/13/92
both	91-3616	USA v. Fazakes	MO	09/13/91	06/19/92
both	91-3628	USA v. Henningham	JO	09/17/91	07/21/92
sen	91-3629	USA v. Morgan	MO	09/17/91	11/17/92
sen	91-3657	USA v. Lawrence	JO	09/26/91	07/21/92
both	91-3678	USA v. Cruz-Jimenez	SO	10/08/91	10/19/92
both	91-3683	USA v. Polan	SO	10/09/91	07/29/92
both	91-3686	USA v. Wilson	JO	10/09/91	05/21/92
both	91-3701	USA v. Bettor	JO	10/15/91	04/16/92
both	91-3702	USA v. Bettor	JO	10/15/91	04/16/92
both	91-3705	USA v. Williams	SO	10/15/91	05/06/92
sen	91-3706	USA v. Frorup	SO	10/15/91	05/06/92
both	91-3738	USA v. Simon	SO	10/24/91	06/07/93
both	91-3766	USA v. Salandra	JO	11/04/91	05/28/92
both	91-3772	USA v. Salandra	JO	11/05/91	05/28/92
sen	91-3773	USA v. Spiewak	JO	11/05/91	05/28/92
both	91-3782	Govt of VI v. Luu	MO	11/07/91	04/30/92
both	91-3814	USA v. Morris	JO	11/15/91	05/13/92
both	91-3825	USA v. Beveridge	JO	11/21/91	12/15/92
both	91-3826	USA v. Lively	JO	11/21/91	05/27/92
both	91-3828	USA v. Flaherty	JO	11/21/91	07/17/92
both	91-3842	USA v. Sheehan	JO	11/26/91	07/17/92
both	91-3849	USA v. Mayer	JO	11/27/91	07/31/92
both	91-3852	USA v. Cartaya	JO	11/29/91	12/18/92
sen	91-3855	USA v. Miele	SO	12/03/91	03/22/93
sen	91-3882	USA v. Lucchese	SO	12/13/91	12/28/92
sen	91-3888	USA v. Sommers	JO	12/16/91	07/09/92
both	91-3889	USA v. Bartolotta	MO	12/16/91	06/24/92
both	91-3910	USA v. Woiner	JO	12/20/91	07/31/92
both	91-3911	USA v. L U Kustom Inc.	JO	12/20/91	07/31/92
both	91-3912	USA v. Minefield	JO	12/20/91	06/24/92
sen	91-3925	USA v. Riviere	MO	12/31/91	04/28/92

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	Docket #	Caption		Date Dock	Date Term
sen	91-3926	USA v. Riviere	MO	12/31/91	04/28/92
both	91-5006	USA v. Asper	JO	01/10/91	07/23/91
both	91-5007	USA v. Asper	JO	01/10/91	07/23/91
both	91-5040	USA v. Barber	MO	01/22/91	05/23/91
sen	91-5079	USA v. Wallace	JO	02/07/91	12/20/91
both	91-5098	USA v. Feleciano-Rosario	MO	02/15/91	07/17/91
both	91-5106	USA v. Green	JO	02/15/91	08/22/91
sen	91-5111	USA v. Applegate	JO	02/20/91	09/27/91
sen	91-5112	USA v. McAvay	MO	02/20/91	07/02/91
sen	91-5129	USA v. Napier	MO	02/27/91	06/10/91
both	91-5152	USA v. Rish	JO	03/07/91	02/04/92
both	91-5168	USA v. Andino	JO	03/13/91	07/17/91
sen	91-5169	USA v. Ansari	MO	03/13/91	08/22/91
both	91-5171	USA v. Ahmad	JO	03/13/91	05/21/92
both	91-5197	USA v. Kikumura	SO	03/26/91	10/15/91
both	91-5226	USA v. Ray	JO	03/29/91	02/12/92
both	91-5227	USA v. Casper	SO	03/29/91	02/11/92
both	91-5243	USA v. Winters	SO	04/05/91	02/12/92
sen	91-5244	USA v. Higley	MO	04/08/91	08/12/91
sen	91-5266	USA v. Straw	MO	04/17/91	10/21/91
sen	91-5267	USA v. Straw	MO	04/17/91	10/21/91
both	91-5318	USA v. Franco	MO	04/29/91	09/26/91
both	91-5320	USA v. Valdez	JO	04/29/91	09/19/91
sen	91-5333	USA v. Trujillo	JO	04/30/91	02/26/92
sen	91-5358	USA v. Danzig	JO	05/13/91	11/26/91
sen	91-5371	USA v. Glynn	MO	05/14/91	06/25/92
both	91-5372	USA v. Nwakanma	JO	05/14/91	11/22/91
both	91-5373	USA v. Machado	JO	05/14/91	10/23/91
sen	91-5382	USA v. Thompson	MO	05/15/91	12/17/91
both	91-5405	USA v. Colletti	SO	05/21/91	12/21/92
both	91-5424	USA v. Barrett	JO	05/28/91	01/16/92
sen	91-5434	USA v. Saiyad	JO	05/28/91	04/15/92
sen	91-5453	USA v. Kopp	SO	05/30/91	12/04/91
both	91-5455	USA v. Rodriguez	SO	05/31/91	09/18/92
both	91-5464	USA v. Berbessi-Acosta	MO	06/06/91	07/13/92
both	91-5465	USA v. Mayles	MO	06/06/91	09/23/92
both	91-5466	USA v. Schneiderman	MO	06/06/91	04/17/92
both	91-5478	USA v. Kapadia	JO	06/13/91	04/15/92
sen	91-5479	USA v. Marguglio	JO	06/13/91	12/17/91
sen	91-5484	USA v. Badaracco	SO	06/17/91	01/24/92
both	91-5485	USA v. Cordero	JO	06/17/91	11/07/91
both	91-5486	USA v. Barr	SO	06/17/91	05/15/92
both	91-5488	USA v. Guida	JO	06/17/91	11/22/91
both	91-5494	USA v. Anderson	SO	06/18/91	09/18/92
both	91-5495	USA v. Smith	JO	06/18/91	05/21/92
both	91-5497	USA v. Taylor	MO	06/19/91	03/17/92
both	91-5518	USA v. Kelly	SO	06/25/91	12/21/92
both	91-5519	USA v. Shea	SO	06/25/91	12/21/92
both	91-5524	USA v. Heffernan	MO	06/26/91	07/08/92
sen	91-5525	USA v. Cardona	JO	06/26/91	08/26/92
sen	91-5538	USA v. Chasmer	SO	06/27/91	12/23/91

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	Docket #	Caption		Date Dock	Date Term
sen	91-5539	USA v. Narvarte	MO	06/27/91	01/16/92
both	91-5551	USA v. Pelaez	JO	07/02/91	01/16/92
both	91-5574	USA v. Cadavid	JO	07/10/91	02/28/92
both	91-5577	USA v. Butler	MO	07/12/91	05/21/92
sen	91-5588	USA v. Cole	JO	07/16/91	12/17/91
both	91-5589	USA v. Uwaezhoke	SO	07/16/91	05/06/93
sen	91-5610	USA v. Holguin	MO	07/24/91	01/16/92
sen	91-5611	USA v. Abdullah	JO	07/24/91	01/16/92
both	91-5615	USA v. Belletiere	SO	07/29/91	07/22/92
sen	91-5629	USA v. Holguin	MO	07/30/91	01/16/92
both	91-5635	USA v. Wilson	MO	08/01/91	02/14/92
sen	91-5666	USA v. Ferriol	JO	08/14/91	02/06/92
sen	91-5684	USA v. Nunez	MO	08/19/91	03/17/92
sen	91-5687	USA v. Lieberman	SO	08/20/91	07/24/92
sen	91-5703	USA v. Pollen	SO	08/27/91	10/13/92
sen	91-5719	USA v. Thomas	SO	08/29/91	04/21/92
both	91-5728	USA v. Melkonian	JO	09/10/91	04/15/92
both	91-5751	USA v. Collazo-Martinez	SO	09/18/91	09/18/92
sen	91-5755	USA v. Charles	SO	09/18/91	07/21/92
both	91-5772	USA v. DelViscovo	PC	09/26/91	11/02/92
both	91-5784	USA v. Sierra	SO	09/30/91	12/08/92
sen	91-5800	USA v. O'Brien	SO	10/03/91	08/04/92
sen	91-5814	USA v. Hargrove	JO	10/15/91	04/17/92
sen	91-5817	USA v. Conde	JO	10/17/91	06/17/92
sen	91-5819	USA v. Walker	MO	10/17/91	04/17/92
both	91-5820	USA v. Jeffery	JO	10/17/91	04/15/92
both	91-5824	USA v. Mejia	JO	10/18/91	05/22/92
both	91-5831	USA v. Wood	MO	10/23/91	06/23/92
both	91-5832	USA v. Wood	MO	10/23/91	06/23/92
both	91-5841	USA v. Hill	SO	10/23/91	09/10/92
both	91-5864	USA v. Victoriano	JO	10/29/91	05/22/92
sen	91-5893	USA v. Bolger	MO	11/07/91	12/08/92
both	91-5898	USA v. Reyes	JO	11/12/91	05/20/92
sen	91-5900	USA v. Doe	MO	11/15/91	06/23/92
sen	91-5901	USA v. Gomez-Salazar	JO	11/15/91	07/31/92
both	91-5902	USA v. Belton	MO	11/15/91	08/07/92
sen	91-5903	USA v. Garrett	MO	11/15/91	03/06/92
sen	91-5904	USA v. Eisenfelder	MO	11/15/91	12/08/92
both	91-5912	USA v. Basile	JO	11/15/91	07/31/92
sen	91-5920	USA v. Garrett	MO	11/18/91	03/06/92
sen	91-5929	USA v. Saniel	MO	11/20/91	08/13/92
both	91-5943	USA v. Meza	JO	11/22/91	09/30/92
both	91-5949	USA v. Gatto	SO	11/25/91	05/18/93
both	91-5950	USA v. Grecco	SO	11/25/91	05/18/93
sen	91-5969	USA v. Blandin	SO	11/27/91	11/06/92
sen	91-5970	USA v. Blandin	SO	11/27/91	11/06/92
sen	91-5971	USA v. Blandin	SO	11/27/91	11/06/92
sen	91-5979	USA v. Barnes	JO	11/29/91	07/20/92
sen	91-5980	USA v. Barnes	JO	11/29/91	07/20/92
sen	91-5982	USA v. Ospina	MO	12/03/91	08/06/92
both	91-5983	USA v. Ospina	MO	12/03/91	08/06/92

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	Docket #	Caption		Date Dock	Date Term
sen	91-5985	USA v. Ospina	MO	12/05/91	09/29/92
sen	91-5987	USA v. Garcia	JO	12/09/91	07/31/92
sen	91-6002	USA v. Ospina	MO	12/12/91	09/29/92
sen	91-6011	USA v. Huerta	MO	12/13/91	06/17/92
sen	91-6022	USA v. Lopez	SO	12/16/91	11/16/92
both	91-6031	USA v. Jiovine	MO	12/19/91	08/05/92
sen	91-6033	USA v. Sanders	MO	12/19/91	08/05/92
sen	91-6034	USA v. Sanders	MO	12/19/91	08/05/92
both	91-6053	USA v. Miller	MO	12/27/91	06/17/92
sen	91-6058	USA v. Spiropoulos	SO	12/30/91	09/25/92
both	91-6060	USA v. Iafelice	SO	12/31/91	10/20/92
sen	92-1003	USA v. Stewart	SO	01/09/92	10/09/92
sen	92-1008	USA v. Parco	JO	01/09/92	06/30/92
sen	92-1009	USA v. McCollum	JO	01/09/92	06/30/92
both	92-1023	USA v. Clarke	JO	01/16/92	10/29/92
both	92-1035	USA v. Hurst	JO	01/21/92	07/09/92
sen	92-1038	USA v. Seligsohn	SO	01/22/92	12/09/92
both	92-1050	USA v. Garth	JO	01/28/92	12/07/92
both	92-1059	USA v. Baptiste	MO	01/30/92	08/06/92
sen	92-1060	USA v. Collins	MO	01/30/92	08/06/92
both	92-1073	USA v. Montalvo	MO	02/04/92	08/14/92
both	92-1085	USA v. Santos	JO	02/12/92	07/27/92
both	92-1104	USA v. Mattis	JO	02/19/92	10/29/92
sen	92-1156	USA v. Broderick	MO	03/04/92	08/04/92
both	92-1161	USA v. Jones	MO	03/05/92	02/17/93
both	92-1162	USA v. Drake	MO	03/05/92	12/04/92
sen	92-1204	USA v. Schwartz	SO	03/20/92	12/15/92
sen	92-1238	USA v. Jones	SO	03/31/92	02/17/93
sen	92-1245	USA v. Yannessa	MO	03/31/92	09/25/92
sen	92-1246	USA v. Wawzjnak	MO	03/31/92	11/23/92
sen	92-1254	USA v. Craddock	SO	04/02/92	05/14/93
both	92-1256	USA v. Gomez	MO	04/03/92	11/02/92
sen	92-1265	USA v. King	MO	04/08/92	02/17/93
both	92-1284	USA v. Rodriguez	JO	04/14/92	11/13/92
both	92-1300	USA v. Ortiz	MO	04/16/92	12/04/92
both	92-1326	USA v. Granero	MO	04/23/92	12/04/92
both	92-1327	USA v. Achuff	JO	04/23/92	12/15/92
both	92-1416	USA v. Rosado	JO	05/26/92	02/03/93
both	92-1425	USA v. Soto	JO	05/27/92	12/14/92
both	92-1428	USA v. Martinez	JO	05/28/92	02/03/93
both	92-1429	USA v. Holloman	SO	05/28/92	12/08/92
both	92-1430	USA v. Brightful	MO	05/28/92	03/22/93
sen	92-1452	USA v. Mastros	SO	06/03/92	06/07/93
sen	92-1468	USA v. Butler	JO	06/09/92	02/02/93
both	92-1477	USA v. Jasinski	JO	06/11/92	02/02/93
both	92-1505	USA v. Guillermo	JO	06/22/92	02/04/93
both	92-1506	USA v. Guillermo	JO	06/22/92	02/04/93
both	92-1527	USA v. Gallego	MO	06/30/92	01/14/93
sen	92-1534	USA v. Zuluago	JO	07/02/92	01/20/93
sen	92-1536	USA v. McCutchen	SO	07/06/92	04/13/93
both	92-1542	USA v. Ruiz-Avila	JO	07/08/92	05/10/93

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	Docket #	Caption		Date Dock	Date Term
both	92-1558	USA v. Prinski	JO	07/10/92	03/18/93
sen	92-1572	USA v. Diaz	MO	07/15/92	03/16/93
both	92-1576	USA v. Paulino	SO	07/16/92	06/28/93
both	92-1580	USA v. Lopez	SO	07/17/92	06/28/93
both	92-1583	USA v. Garcia	SO	07/21/92	06/28/93
both	92-1585	USA v. Jacob-Sanchez	JO	07/21/92	05/10/93
both	92-1587	USA v. Rodriguez	SO	07/22/92	06/28/93
sen	92-1622	USA v. Leonardo	SO	08/04/92	06/28/93
both	92-1625	USA v. Colon	MO	08/06/92	08/20/93
sen	92-1636	USA v. Lloyd	SO	08/10/92	02/26/93
both	92-1664	USA v. Spruill	MO	08/18/92	04/23/93
both	92-1694	USA v. Sallins	SO	08/26/92	05/18/93
both	92-1696	USA v. Rivera	MO	08/26/92	04/15/93
both	92-1698	USA v. Taylor	MO	08/26/92	04/19/93
both	92-1713	USA v. Dumas	MO	09/02/92	07/13/93
sen	92-1728	USA v. Glenn	SO	09/08/92	06/21/93
both	92-1729	USA v. Cintron	JO	09/08/92	06/08/93
both	92-1748	USA v. Paulino	SO	09/15/92	06/28/93
sen	92-1751	USA v. Glenn	SO	09/16/92	06/21/93
both	92-1785	USA v. Jones	SO	09/25/92	07/19/93
sen	92-1790	USA v. Thomas	MO	09/28/92	07/13/93
sen	92-1794	USA v. Rodriguez	SO	09/29/92	06/18/93
both	92-1797	USA v. Lu	SO	09/29/92	03/23/94
both	92-1731	USA v. Rivera	JO	10/08/92	07/20/93
both	92-1842	USA v. Sarne	MO	10/13/92	05/12/93
both	92-1843	USA v. Bohn	JO	10/13/92	06/07/93
both	92-1845	USA v. Gonzalez	JO	10/14/92	06/07/93
both	92-1846	USA v. Desamour	JO	10/15/92	06/08/93
sen	92-1847	USA v. Gould	JO	10/15/92	04/16/93
both	92-1861	USA v. Paramo	SO	10/21/92	07/07/93
sen	92-1865	USA v. Daniels	MO	10/21/92	03/15/93
sen	92-1866	USA v. Munoz	MO	10/21/92	07/30/93
both	92-1878	USA v. Fields	SO	10/27/92	07/19/93
both	92-1881	USA v. Pazel	JO	10/27/92	08/17/93
both	92-1888	USA v. Price	SO	10/28/92	01/10/94
sen	92-1890	USA v. Boyd	MO	10/28/92	10/07/93
both	92-1902	USA v. Reaves	SO	10/30/92	01/10/94
both	92-1903	USA v. Cobb	SO	10/30/92	01/10/94
both	92-1907	USA v. Luong	JO	11/03/92	02/23/94
sen	92-1914	USA v. Sigafoos	JO	11/05/92	06/30/93
both	92-1915	USA v. Torres	JO	11/05/92	05/19/93
both	92-1963	USA v. Qualtieri	JO	11/20/92	05/12/93
sen	92-1967	USA v. People	JO	11/23/92	05/07/93
sen	92-2018	USA v. Higgins	MO	11/30/92	07/14/93
sen	92-2019	USA v. Johnson	JO	11/30/92	05/10/93
sen	92-2021	USA v. Perez	MO	11/30/92	08/19/93
sen	92-2029	USA v. Cruz-Pagan	MO	12/04/92	03/23/94
both	92-2049	USA v. Fullwood	MO	12/11/92	09/07/93
both	92-2058	USA v. Polcino	MO	12/16/92	12/20/93
both	92-2060	USA v. Schwager	MO	12/16/92	10/07/93
both	92-2069	USA v. Disla	JO	12/17/92	09/28/93

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	Docket #	Caption		Date Dock	Date Term
sen	92-2071	USA v. Olmo	JO	12/18/92	09/28/93
sen	92-2079	USA v. Gomez	JO	12/21/92	08/12/93
both	92-2086	USA v. Moya	JO	12/23/92	09/23/93
both	92-2099	USA v. Avila	JO	12/28/92	09/21/93
sen	92-2102	USA v. Reyes	JO	12/29/92	10/29/93
both	92-2106	USA v. Estrada	MO	12/29/92	11/09/93
both	92-2108	USA v. Siwinski	JO	12/30/92	08/23/93
sen	92-3013	USA v. Cawog	SO	01/10/92	06/15/92
both	92-3036	USA v. Kelly	JO	01/24/92	08/13/92
both	92-3049	USA v. Hornaman	SO	02/04/92	11/12/92
both	92-3053	USA v. Lincoln	SO	02/06/92	04/13/93
both	92-3062	USA v. Stepoli	MO	02/11/92	08/27/92
both	92-3073	USA v. Leroy	SO	02/13/92	04/13/93
both	92-3094	USA v. Munsch	JO	02/25/92	12/28/92
both	92-3102	USA v. Chapple	SO	02/28/92	02/11/93
both	92-3107	USA v. Smith	SO	03/03/92	02/11/93
both	92-3117	USA v. Dranko	JO	03/11/92	10/16/92
both	92-3124	USA v. Dixon	SO	03/13/92	12/30/92
both	92-3127	USA v. Fletcher	SO	03/13/92	12/30/92
both	92-3139	USA v. Gall	JO	03/19/92	10/02/92
both	92-3143	USA v. Marshall	MO	03/20/92	10/05/92
sen	92-3177	USA v. Frazier	PC	04/03/92	11/23/92
sen	92-3178	USA v. Singleton	PC	04/03/92	11/23/92
both	92-3179	USA v. Salb	JO	04/06/92	12/15/92
both	92-3190	USA v. Jones	SO	04/10/92	11/05/92
sen	92-3196	USA v. Pettus	PC	04/14/92	11/23/92
sen	92-3199	USA v. McClain	MO	04/15/92	10/19/92
both	92-3224	USA v. Sedillo	MO	04/29/92	11/27/92
both	92-3229	USA v. Soberon	JO	04/30/92	12/18/92
both	92-3273	USA v. Harvey	SO	05/20/92	08/23/93
both	92-3299	USA v. Kenney	SO	06/09/92	04/27/93
both	92-3307	USA v. Correa	MO	06/11/92	07/12/93
both	92-3314	USA v. Alexander	MO	06/17/92	01/20/93
both	92-3334	USA v. Bey	MO	06/26/92	04/05/93
both	92-3344	USA v. Hayes	JO	06/30/92	03/09/94
sen	92-3376	USA v. Dawkins	JO	07/23/92	02/03/93
sen	92-3377	USA v. Love	SO	07/23/92	02/12/93
sen	92-3382	USA v. Marchese	JO	07/23/92	05/19/93
both	92-3405	USA v. Hidalgo	SO	07/28/92	08/24/93
sen	92-3407	USA v. Tantalo	JO	07/28/92	01/25/93
both	92-3410	USA v. Clarke	JO	07/29/92	03/10/93
both	92-3431	USA v. Thurmon	JO	08/04/92	03/03/93
sen	92-3448	USA v. Walls	JO	08/07/92	03/15/93
sen	92-3462	USA v. Pagan	MO	08/12/92	03/03/93
sen	92-3470	USA v. Abron	MO	08/17/92	03/03/93
both	92-3484	USA v. Cepeda	SO	08/20/92	08/24/93
sen	92-3485	USA v. Pagan	MO	08/20/92	03/03/93
both	92-3490	USA v. Jay	JO	08/21/92	04/06/93
both	92-3497	USA v. Vereb	JO	08/26/92	04/16/93
both	92-3503	USA v. Holden	MO	08/28/92	04/06/93
sen	92-3530	USA v. Rhone	SO	09/14/92	05/19/93

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	Docket #	Caption		Date Dock	Date Term
both	92-3553	USA v. Heflin	MO	09/23/92	04/19/93
both	92-3554	USA v. Boozer	MO	09/23/92	04/19/93
both	92-3562	USA v. Baltimore	SO	09/25/92	08/09/93
both	92-3594	USA v. Shields	JO	10/14/92	05/12/93
both	92-3596	USA v. Russell	JO	10/14/92	09/28/93
sen	92-3597	USA v. Tolomeo	JO	10/14/92	04/09/93
both	92-3613	USA v. Endsley	JO	10/19/92	01/21/93
sen	92-3624	USA v. Meraz	SO	10/22/92	07/07/93
sen	92-3642	USA v. Lacko	JO	10/29/92	09/20/93
sen	92-3707	USA v. Annis	MO	12/08/92	06/28/93
sen	92-3708	USA v. Rosenwald	MO	12/08/92	06/28/93
both	92-3720	USA v. Hernandez	JO	12/11/92	07/07/93
both	92-3735	USA v. Yeager	JO	12/21/92	07/07/93
sen	92-3755	USA v. Diamond	JO	12/29/92	04/08/93
both	92-5010	USA v. Maldonado	JO	01/15/92	08/31/92
sen	92-5019	USA v. Reinhardt	MO	01/21/92	06/25/92
sen	92-5044	USA v. Yehuda	JO	01/30/92	03/12/93
both	92-5045	USA v. Vasquez-Caro	MO	01/30/92	10/06/92
sen	92-5058	USA v. Sinde	JO	02/05/92	08/11/92
sen	92-5059	USA v. Sinde	JO	02/05/92	08/11/92
both	92-5087	USA v. Kabba	MO	02/21/92	09/28/92
both	92-5090	USA v. Florez	JO	02/21/92	06/16/93
both	92-5091	USA v. Florez	JO	02/21/92	06/16/93
both	92-5092	USA v. Muhammed	JO	02/21/92	04/06/93
both	92-5105	USA v. Santtini	SO	02/27/92	05/08/92
sen	92-5107	USA v. Williams	MO	02/27/92	04/16/93
both	92-5110	USA v. McPherson	JO	02/28/92	04/05/93
sen	92-5127	USA v. Atkinson	MO	03/10/92	04/06/93
both	92-5135	USA v. Peterson	MO	03/13/92	06/30/93
both	92-5136	USA v. McCollum	JO	03/13/92	04/06/93
both	92-5141	USA v. Gore	JO	03/17/92	04/06/93
sen	92-5142	USA v. Cardounel	JO	03/18/92	09/29/92
both	92-5150	USA v. Spagnoli	MO	03/26/92	10/28/92
sen	92-5209	USA v. Zirpoli	JO	04/27/92	10/18/93
sen	92-5214	USA v. Nunez	MO	04/28/92	03/15/93
both	92-5215	USA v. Dellisanti	JO	04/28/92	10/18/93
both	92-5216	USA v. Parlavecchio	JO	04/28/92	10/18/93
both	92-5226	USA v. Parlavecchio	JO	04/29/92	10/18/93
sen	92-5237	USA v. Malik	JO	05/07/92	08/18/93
both	92-5244	USA v. Cariffe	JO	05/12/92	02/24/93
both	92-5252	USA v. Hall	MO	05/14/92	04/06/93
sen	92-5253	USA v. Danzey	MO	05/14/92	11/04/93
both	92-5259	USA v. Ezeihuaku	MO	05/15/92	12/18/92
both	92-5260	USA v. Wright	JO	05/15/92	11/08/93
sen	92-5261	USA v. Payano	MO	05/15/92	12/18/92
both	92-5262	USA v. Nwachia	MO	05/15/92	03/21/94
sen	92-5268	USA v. Solis	MO	05/20/92	12/18/92
both	92-5269	USA v. Anthony	JO	05/20/92	01/20/93
sen	92-5270	USA v. Aliagha	MO	05/20/92	02/03/93
sen	92-5272	USA v. Patel	JO	05/22/92	01/26/93
both	92-5278	USA v. Pollard	SO	05/27/92	02/18/93

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	Docket #	Caption		Date Dock	Date Term
sen	92-5286	USA v. Giovinazzo	JO	05/29/92	12/17/92
sen	92-5295	USA v. Cammareri	MO	06/03/92	12/04/92
both	92-5312	USA v. Benedetto	MO	06/17/92	06/29/93
both	92-5313	USA v. Hock	PC	06/17/92	03/08/93
both	92-5323	USA v. Xhudo	MO	06/23/92	12/17/92
sen	92-5329	USA v. Ambrutis	JO	06/24/92	03/10/93
both	92-5337	USA v. Vermandere	JO	06/25/92	01/20/93
both	92-5363	USA v. McCann	MO	07/15/92	03/08/93
sen	92-5366	USA v. Bernstein	JO	07/16/92	04/07/93
sen	92-5373	USA v. Bober	JO	07/17/92	04/07/93
both	92-5374	USA v. Polanco	JO	07/17/92	02/05/93
both	92-5385	USA v. Montecino	MO	07/24/92	02/04/93
sen	92-5404	USA v. Williams	JO	07/29/92	04/27/93
both	92-5406	USA v. Johnson	JO	07/29/92	01/26/93
both	92-5420	USA v. Matthews	MO	08/06/92	04/27/93
sen	92-5422	USA v. Cherry	SO	08/06/92	12/06/93
both	92-5423	USA v. Hardy	MO	08/06/92	10/15/93
sen	92-5443	USA v. Ortiz	MO	08/14/92	11/05/93
sen	92-5452	USA v. Guerra	MO	08/18/92	07/23/93
both	92-5499	USA v. Poh	MO	09/22/92	06/29/93
both	92-5503	USA v. Hagmaier	MO	09/23/92	11/03/93
both	92-5504	USA v. Hagmaier	MO	09/23/92	11/03/93
both	92-5542	USA v. Anthony	SO	09/30/92	03/26/93
sen	92-5549	USA v. Petrucci	MO	10/05/92	06/22/93
sen	92-5550	USA v. Ekwegh	JO	10/06/92	12/22/93
both	92-5568	USA v. Keeley	JO	10/15/92	12/28/94
sen	92-5570	USA v. Wong	SO	10/15/92	07/30/93
sen	92-5571	USA v. Davis	MO	10/15/92	07/29/93
sen	92-5575	USA v. Bogusz	SO	10/15/92	12/28/94
sen	92-5576	USA v. Caterini	SO	10/15/92	11/10/93
both	92-5585	USA v. Davis	JO	10/22/92	06/22/93
sen	92-5588	USA v. Gaskill	SO	10/22/92	04/16/93
both	92-5589	USA v. Londono	JO	10/22/92	06/09/93
both	92-5593	USA v. Hollenbeck	SO	10/22/92	07/08/94
both	92-5595	USA v. O'Rourke	SO	10/23/92	12/28/94
sen	92-5600	USA v. Pacheco	MO	10/27/92	03/08/93
both	92-5606	USA v. Tamakloe	MO	10/29/92	08/10/93
both	92-5612	USA v. Mantilla	JO	10/30/92	06/29/93
both	92-5614	USA v. Rosario	MO	10/30/92	08/11/94
both	92-5615	USA v. Ryan	JO	10/30/92	12/28/94
both	92-5617	USA v. Jonas	JO	11/03/92	06/29/93
both	92-5625	USA v. Danon	JO	11/13/92	07/26/93
both	92-5626	USA v. Mittenberg	JO	11/13/92	06/29/93
sen	92-5627	USA v. Maldonado	MO	11/13/92	10/27/93
both	92-5644	USA v. Grant	JO	11/25/92	08/23/93
both	92-5654	USA v. Rodriguez	JO	11/27/92	09/21/93
both	92-5656	USA v. Hardy	JO	11/27/92	06/30/93
both	92-5672	USA v. Brower	JO	12/04/92	12/22/93
both	92-5673	USA v. Nwizuzu	JO	12/04/92	12/22/93
both	92-5674	USA v. Ukpai	JO	12/04/92	12/22/93
both	92-5675	USA v. Williams	JO	12/04/92	12/22/93

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	Docket #	Caption		Date Dock	Date Term
both	92-5683	USA v. Bieregu	JO	12/11/92	12/23/93
sen	92-5684	USA v. Sullivan	MO	12/11/92	10/27/93
sen	92-5685	USA v. Sanz	JO	12/11/92	07/01/93
sen	92-5686	USA v. Seale	SO	12/11/92	04/07/94
sen	92-5706	USA v. Acevedo	JO	12/24/92	07/19/93
both	92-5711	USA v. Newby	SO	12/29/92	11/30/93
both	92-5712	USA v. Barber	SO	12/29/92	11/30/93
sen	92-5713	USA v. Schweitzer	SO	12/29/92	09/16/93
sen	92-5718	USA v. Pollen	MO	12/30/92	07/16/93
both	92-7003	USA v. Zahorian	JO	01/13/92	07/17/92
sen	92-7022	USA v. Tracey	MO	01/29/92	07/31/92
both	92-7038	USA v. Snell	JO	02/04/92	07/31/92
sen	92-7039	USA v. Lojak	JO	02/04/92	06/18/92
both	92-7051	USA v. Hickman	SO	02/12/92	04/16/93
sen	92-7064	USA v. Kesner	JO	02/20/92	07/31/92
both	92-7077	USA v. Jackson	MO	02/25/92	10/19/92
both	92-7097	USA v. Pena	MO	03/05/92	12/15/92
both	92-7110	USA v. Tonwe	JO	03/11/92	10/07/92
sen	92-7127	USA v. Tonwe	MO	03/17/92	10/07/92
sen	92-7128	USA v. Tonwe	MO	03/17/92	10/07/92
both	92-7135	USA v. Jackson	MO	03/24/92	10/19/92
both	92-7142	USA v. Rivers	MO	03/26/92	10/19/92
both	92-7157	USA v. Santiago	JO	04/03/92	11/13/92
sen	92-7174	USA v. Shirk	SO	04/10/92	04/28/94
both	92-7185	USA v. Luna	JO	04/16/92	11/13/92
both	92-7202	USA v. Urrutia	JO	04/27/92	09/30/92
both	92-7204	USA v. Shoupe	SO	04/28/92	03/12/93
both	92-7237	USA v. Hillstrom	SO	05/11/92	03/12/93
sen	92-7257	USA v. Brann	SO	05/26/92	03/30/93
both	92-7291	USA v. Danna	MO	06/11/92	01/21/93
both	92-7292	USA v. Stump	MO	06/11/92	01/14/93
both	92-7315	USA v. Ravenell	JO	06/26/92	02/03/93
sen	92-7325	USA v. Ramos	MO	07/07/92	01/20/93
both	92-7338	USA v. Westphal	JO	07/15/92	02/03/93
sen	92-7353	USA v. Brown	SO	07/22/92	04/30/93
sen	92-7405	USA v. Culnen	JO	08/11/92	03/19/93
sen	92-7406	USA v. Culnen Hamilton Inc.	JO	08/11/92	03/19/93
both	92-7407	USA v. Behney	JO	08/11/92	01/14/93
both	92-7409	USA v. Joseph	SO	08/11/92	06/15/93
both	92-7426	USA v. Mallison	JO	08/17/92	01/27/93
both	92-7445	USA v. Terry	MO	08/28/92	04/13/93
sen	92-7453	USA v. Spells	PC	08/28/92	03/19/93
both	92-7486	USA v. Corcoran	JO	09/15/92	05/27/94
sen	92-7520	USA v. Mazzola	MO	09/30/92	06/28/93
both	92-7524	USA v. Fraser	MO	10/05/92	12/06/93
both	92-7539	USA v. Torres	JO	10/19/92	05/28/93
sen	92-7540	USA v. Parker	JO	10/19/92	04/07/93
both	92-7564	USA v. Santiago	MO	10/27/92	06/23/93
sen	92-7608	USA v. Bruton	MO	11/13/92	05/07/93
both	92-7609	USA v. Reyes-Santiago	MO	11/13/92	07/13/93
sen	92-7615	USA v. Morris	JO	11/18/92	06/25/93

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	Docket #	Caption		Date Dock	Date Term
sen	92-7616	USA v. Brittingham	JO	11/18/92	06/25/93
both	92-7623	USA v. Fraites	JO	11/20/92	05/11/93
both	92-7624	USA v. Ferron	MO	11/20/92	05/12/93
both	92-7625	USA v. Urrutia	MO	11/20/92	06/23/93
both	92-7626	USA v. Deaner	SO	11/20/92	07/29/93
sen	92-7630	USA v. Atwood	MO	11/23/92	06/29/93
both	92-7638	USA v. Fontanez	MO	11/25/92	06/27/94
sen	92-7643	USA v. Winslow	JO	11/30/92	06/16/93
sen	92-7670	USA v. Hutson	JO	12/18/92	06/28/93
sen	92-7678	USA v. Davis	JO	12/23/92	07/21/93
both	92-7682	USA v. Polanco	JO	12/31/92	07/16/93
sen	92-7683	USA v. Unuakhalu	MO	12/31/92	10/04/93
both	92-7687	USA v. Milton	MO	12/31/92	08/24/93
both	93-1037	USA v. Arabia	JO	01/20/93	12/20/93
sen	93-1052	USA v. Robinson	MO	01/25/93	11/04/93
both	93-1056	USA v. Abruzzo	JO	01/26/93	12/20/93
sen	93-1068	USA v. Lacastro	JO	01/27/93	12/20/93
both	93-1069	USA v. Jackson	SO	01/27/93	01/10/94
both	93-1070	USA v. Perdue	MO	01/27/93	12/17/93
both	93-1076	USA v. Figueroa	MO	01/28/93	09/02/93
both	93-1094	USA v. Reaves	SO	01/29/93	01/10/94
both	93-1103	USA v. Gordon	JO	02/02/93	09/09/93
both	93-1113	USA v. Long	SO	02/04/93	01/10/94
both	93-1125	USA v. Ovalle-Salcedo	MO	02/08/93	01/25/94
sen	93-1126	USA v. Davis	MO	02/08/93	12/17/93
both	93-1138	USA v. Nehme	JO	02/10/93	09/21/93
both	93-1160	USA v. Williams	SO	02/19/93	01/10/94
both	93-1161	USA v. McGoldrick	MO	02/19/93	03/14/94
both	93-1171	USA v. Novelli	MO	02/24/93	12/16/93
sen	93-1176	USA v. Porat	SO	02/25/93	03/03/94
both	93-1187	USA v. Chew	JO	02/26/93	10/04/93
sen	93-1191	USA v. Flint	JO	03/03/93	08/05/93
both	93-1192	USA v. Rienzi	JO	03/03/93	10/19/93
sen	93-1198	USA v. Ukaji	JO	03/03/93	10/04/93
both	93-1200	USA v. Bida	MO	03/03/93	12/21/93
both	93-1219	USA v. Frew	MO	03/09/93	11/16/93
both	93-1222	USA v. Ramos	SO	03/10/93	06/23/94
both	93-1225	USA v. Croussett	JO	03/10/93	09/09/93
both	93-1233	USA v. Sortino	MO	03/12/93	11/16/93
sen	93-1239	USA v. Duran	MO	03/17/93	09/16/93
both	93-1241	USA v. Robles	JO	03/17/93	09/09/93
sen	93-1243	USA v. Porat	SO	03/18/93	03/03/94
sen	93-1269	USA v. Martin	SO	03/24/93	02/14/94
sen	93-1301	USA v. Holmes	MO	03/31/93	10/06/93
both	93-1307	USA v. Robinson	JO	04/02/93	01/24/94
sen	93-1313	USA v. Fugarino	MO	04/06/93	05/06/94
both	93-1322	USA v. Turcks	SO	04/07/93	11/30/94
both	93-1328	USA v. Gonzalez	JO	04/08/93	02/28/94
sen	93-1335	USA v. Fugarino	MO	04/13/93	05/06/94
both	93-1336	USA v. Diaz	MO	04/13/93	02/03/94
both	93-1339	USA v. Pena	JO	04/15/93	02/01/95

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	Docket #	Caption		Date Dock	Date Term
both	93-1343	USA v. Font	JO	04/15/93	01/27/94
both	93-1344	USA v. Ghilyard	MO	04/15/93	11/10/93
both	93-1354	USA v. Crespo	MO	04/19/93	02/03/94
both	93-1359	USA v. Gonzalez	JO	04/20/93	02/28/94
both	93-1361	USA v. Gonzalez	JO	04/21/93	02/28/94
sen	93-1373	USA v. Patchell	MO	04/22/93	12/07/93
both	93-1376	USA v. Carr	SO	04/23/93	06/03/94
both	93-1377	USA v. Quintero	SO	04/23/93	10/25/94
both	93-1383	USA v. Cardona-Usquiano	SO	04/23/93	06/03/94
both	93-1386	USA v. Rodriguez	SO	04/27/93	10/25/94
both	93-1387	USA v. Carroll	JO	04/27/93	01/25/94
both	93-1389	USA v. Gonzalez	SO	04/27/93	10/25/94
both	93-1401	USA v. Chen	MO	04/30/93	02/24/94
sen	93-1411	USA v. Salcedo	MO	05/04/93	01/25/94
both	93-1415	USA v. Gonzalez-Rivera	SO	05/05/93	10/25/94
both	93-1416	USA v. Cruz	SO	05/05/93	10/25/94
both	93-1428	USA v. Walker	MO	05/06/93	11/17/93
sen	93-1432	USA v. Woods	SO	05/10/93	05/17/94
both	93-1433	USA v. Schindler	MO	05/10/93	03/14/94
both	93-1444	USA v. Curran	SO	05/12/93	03/30/94
sen	93-1471	USA v. Amerman	MO	05/18/93	11/17/93
sen	93-1484	USA v. Torres	MO	05/20/93	02/03/94
both	93-1527	USA v. Stevens	MO	05/27/93	01/21/94
sen	93-1539	USA v. Griffin	MO	06/04/93	12/21/93
both	93-1543	USA v. Maiellano	MO	06/07/93	02/04/94
both	93-1555	USA v. Maiellano	MO	06/11/93	02/04/94
both	93-1558	USA v. Garrison	MO	06/11/93	03/09/94
both	93-1572	USA v. Morgado	SO	06/15/93	10/25/94
sen	93-1579	USA v. Lloyd	JO	06/16/93	03/09/94
both	93-1591	USA v. Carmona	MO	06/22/93	03/09/94
both	93-1596	USA v. Hannigan	SO	06/23/93	06/23/94
sen	93-1603	USA v. Collado	MO	06/24/93	02/01/94
both	93-1605	USA v. Green	SO	06/24/93	06/07/94
both	93-1640	USA v. Rios	MO	07/08/93	03/29/94
both	93-1643	USA v. Gaev	SO	07/08/93	04/29/94
both	93-1645	USA v. Escobar	JO	07/09/93	01/25/94
sen	93-1652	USA v. Green	MO	07/09/93	07/22/94
both	93-1666	USA v. Smith	MO	07/15/93	01/24/94
sen	93-1669	USA v. Tabas	JO	07/15/93	09/29/94
both	93-1677	USA v. Shelton	MO	07/16/93	06/13/94
both	93-1707	USA v. McRay	MO	07/26/93	04/25/94
both	93-1726	USA v. Kim	SO	07/28/93	06/30/94
both	93-1729	USA v. Baines	MO	07/29/93	03/15/94
sen	93-1740	USA v. Dellorfano	MO	08/03/93	05/11/94
both	93-1744	USA v. Hunter	MO	08/03/93	01/30/95
both	93-1779	USA v. Montez	JO	08/12/93	05/27/94
both	93-1800	USA v. Sanchez	MO	08/18/93	09/14/94
both	93-1801	USA v. Hallman	SO	08/18/93	05/13/94
both	93-1802	USA v. Smith	MO	08/18/93	05/11/94
both	93-1806	USA v. Enigwe	MO	08/20/93	04/28/94
both	93-1813	USA v. Hernandez	JO	08/23/93	08/02/94

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	Docket #	Caption		Date Dock	Date Term
sen	93-1831	USA v. Broad	JO	08/25/93	04/01/94
both	93-1834	USA v. Jones	SO	08/26/93	03/10/94
both	93-1851	USA v. Lowery	MO	08/30/93	09/16/94
both	93-1858	USA v. Delgado	MO	08/31/93	09/13/94
sen	93-1874	USA v. Almeida	MO	09/09/93	09/20/94
sen	93-1885	USA v. Seligsohn	MO	09/17/93	09/19/94
both	93-1908	USA v. McCalla	SO	09/22/93	10/14/94
both	93-1909	USA v. Lopez	JO	09/22/93	01/24/95
sen	93-1925	USA v. Santiago	MO	09/30/93	07/18/94
both	93-1939	USA v. Kates	MO	10/07/93	05/23/94
both	93-1964	USA v. Crespo	MO	10/18/93	07/14/94
both	93-1966	USA v. Gaskins	JO	10/18/93	06/01/94
both	93-1967	USA v. Figueroa	MO	10/18/93	09/13/94
sen	93-1979	USA v. Hatcher	MO	10/20/93	08/08/94
sen	93-1980	USA v. Hillgrube	MO	10/20/93	08/08/94
sen	93-1996	USA v. Stefano	MO	10/25/93	08/15/94
sen	93-2002	USA v. Frison	JO	10/27/93	07/25/94
sen	93-2004	USA v. Gordon	MO	10/27/93	08/15/94
sen	93-2028	USA v. Abbott	MO	11/03/93	09/16/94
sen	93-2031	USA v. Ortiz	MO	11/04/93	05/25/94
sen	93-2032	USA v. Cobb	MO	11/04/93	08/15/94
sen	93-2033	USA v. Bell	SO	11/04/93	11/07/94
both	93-2053	USA v. Jefferson	MO	11/10/93	08/11/94
sen	93-2054	USA v. Alverty	JO	11/10/93	12/05/94
sen	93-2074	USA v. Ray	MO	11/18/93	07/25/94
both	93-2100	USA v. Beckford	MO	11/30/93	09/20/94
sen	93-2101	USA v. Martinez	MO	11/30/93	06/27/94
sen	93-2118	USA v. Crump	JO	12/03/93	06/27/94
both	93-2143	USA v. Sanchez	MO	12/10/93	09/13/94
both	93-2147	USA v. Johnson	JO	12/13/93	09/26/94
sen	93-2151	USA v. Paramo	MO	12/16/93	07/06/94
sen	93-3002	USA v. Burger	JO	01/06/93	08/06/93
both	93-3003	USA v. Copple	SO	01/06/93	05/17/94
both	93-3082	USA v. Cianca	MO	02/24/93	10/07/93
sen	93-3121	USA v. Hawkes	MO	03/19/93	11/30/93
sen	93-3125	USA v. Cole	SO	03/23/93	09/21/93
sen	93-3126	USA v. Cole	SO	03/23/93	09/21/93
sen	93-3133	USA v. Fields	JO	03/29/93	09/28/93
both	93-3134	USA v. Atkinson	JO	03/29/93	10/15/93
both	93-3161	USA v. Miller	JO	04/14/93	12/02/93
both	93-3168	USA v. Resko	MO	04/20/93	11/10/93
both	93-3181	USA v. Vaughn	JO	04/27/93	11/17/93
both	93-3187	USA v. Battles	MO	04/27/93	11/09/93
sen	93-3189	USA v. Campbell	MO	04/28/93	11/09/93
both	93-3190	USA v. Snitkin	MO	04/28/93	01/14/94
both	93-3206	USA v. Smith	JO	05/07/93	11/17/93
sen	93-3208	USA v. Parrotte	MO	05/07/93	11/17/93
both	93-3211	USA v. Sinclair	MO	05/11/93	11/10/93
both	93-3213	USA v. Goodwine	MO	05/11/93	12/23/93
sen	93-3224	USA v. Dye	MO	05/18/93	12/07/93
both	93-3252	USA v. Cruse	JO	06/02/93	01/25/94

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	Docket #	Caption		Date Dock	Date Term
sen	93-3271	USA v. Sharapan	SO	06/09/93	01/18/94
sen	93-3300	USA v. Livsey	MO	06/22/93	07/07/94
both	93-3309	USA v. Hayes	JO	06/25/93	03/09/94
sen	93-3312	USA v. Mitchell	MO	06/25/93	02/08/94
sen	93-3313	USA v. Mitchell	MO	06/25/93	02/08/94
sen	93-3328	USA v. Smith	JO	07/06/93	09/20/93
both	93-3341	USA v. Retos	SO	07/13/93	06/08/94
both	93-3342	USA v. Chapple	MO	07/14/93	03/30/94
sen	93-3343	USA v. Smith	MO	07/14/93	03/30/94
both	93-3360	USA v. Sanchez	JO	07/27/93	09/12/94
sen	93-3393	USA v. Malesic	SO	08/10/93	03/07/94
both	93-3394	USA v. King	JO	08/10/93	03/09/94
both	93-3418	USA v. Nicoletti	MO	08/25/93	05/04/94
sen	93-3433	USA v. Stern	MO	09/09/93	04/19/94
both	93-3516	USA v. Leroy	MO	10/14/93	06/06/94
sen	93-3577	USA v. Boyd	JO	11/16/93	08/02/94
both	93-3578	USA v. Jacques	MO	11/16/93	05/03/94
both	93-3617	USA v. Morgan	SO	12/03/93	08/08/94
both	93-3636	USA v. Kyser	JO	12/21/93	09/30/94
both	93-3637	USA v. Peters	MO	12/21/93	06/28/94
both	93-3644	USA v. Jacobs	SO	12/27/93	01/12/95
both	93-5001	USA v. Bethea	JO	01/06/93	08/20/93
sen	93-5005	USA v. Silverman	MO	01/07/93	02/10/94
both	93-5039	USA v. Ahamefule	JO	01/26/93	12/23/93
both	93-5040	USA v. Ahamafule	JO	01/26/93	12/23/93
sen	93-5041	USA v. Contorno	MO	01/27/93	07/09/93
both	93-5044	USA v. Gaudenzi	JO	01/27/93	08/13/93
both	93-5046	USA v. McCann	MO	01/28/93	08/05/93
sen	93-5049	USA v. Winters	MO	02/01/93	07/23/93
sen	93-5055	USA v. Rudnick	MO	02/04/93	09/16/93
sen	93-5069	USA v. Seale	SO	02/12/93	04/07/94
both	93-5074	USA v. Walton	SO	02/16/93	12/08/93
both	93-5075	USA v. Scott	MO	02/16/93	10/15/93
sen	93-5076	USA v. Cooper	MO	02/16/93	07/09/93
sen	93-5077	USA v. Cooper	MO	02/16/93	07/09/93
sen	93-5081	USA v. Del Viscovo	JO	02/18/93	09/27/93
sen	93-5104	USA v. Pardo	SO	02/25/93	05/25/94
both	93-5113	USA v. Bautista-Ramirez	MO	02/26/93	12/21/93
both	93-5114	USA v. Dietsch	MO	02/26/93	12/21/93
both	93-5117	USA v. Hightower	JO	03/02/93	05/31/94
both	93-5117	USA v. Hightower	SO	03/02/93	05/31/94
both	93-5134	USA v. Palmieri	SO	03/05/93	02/10/95
both	93-5139	USA v. Barriolo	MO	03/11/93	12/21/93
sen	93-5144	USA v. Castillo-Castillo	MO	03/15/93	02/07/94
both	93-5169	USA v. Ortiz	JO	03/25/93	11/04/93
both	93-5170	USA v. Taylor	JO	03/25/93	11/17/93
sen	93-5171	USA v. Ricks	PC	03/25/93	09/17/93
both	93-5175	USA v. Payne	MO	03/26/93	11/10/93
sen	93-5179	USA v. Lavoie	MO	03/29/93	11/10/93
both	93-5237	USA v. Welbeck	PC	04/29/93	02/18/94
both	93-5238	USA v. Lipari	JO	04/29/93	04/01/94

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	Docket #	Caption		Date Dock	Date Term
both	93-5246	USA v. Ortiz	JO	05/04/93	05/11/94
both	93-5247	USA v. Marin	JO	05/04/93	05/11/94
sen	93-5261	USA v. Monaco	SO	05/11/93	05/10/94
both	93-5266	USA v. Carrizales	JO	05/12/93	03/10/94
sen	93-5268	USA v. Holquin-Hernandez	MO	05/12/93	06/15/94
sen	93-5300	USA v. Pica	MO	05/21/93	11/16/93
both	93-5325	USA v. Eick	MO	06/04/93	05/09/94
sen	93-5334	USA v. Ahmadi	JO	06/08/93	10/04/94
sen	93-5343	USA v. Appiah	JO	06/10/93	02/08/94
both	93-5344	USA v. Akech	JO	06/10/93	02/08/94
both	93-5352	USA v. Crudup	PC	06/17/93	05/16/94
sen	93-5353	USA v. Onibe	JO	06/17/93	01/28/94
both	93-5357	USA v. Anthony	MO	06/23/93	02/07/94
both	93-5358	USA v. Degortari	MO	06/23/93	03/11/94
both	93-5359	USA v. Hernandez	MO	06/23/93	06/08/94
both	93-5374	USA v. Santamari	SO	06/28/93	07/08/94
both	93-5375	USA v. Zotos	JO	06/28/93	01/27/94
sen	93-5389	USA v. Bakos	JO	06/29/93	01/27/94
sen	93-5398	USA v. Staples	JO	07/02/93	02/09/94
both	93-5399	USA v. Menon	SO	07/02/93	05/18/94
sen	93-5408	USA v. Gaona	JO	07/09/93	02/09/94
both	93-5409	USA v. Rosa	MO	07/09/93	08/04/94
both	93-5420	USA v. Goldstein	JO	07/20/93	12/17/93
both	93-5421	USA v. Westerman	JO	07/20/93	12/17/93
both	93-5424	USA v. Worth	JO	07/20/93	04/25/94
both	93-5436	USA v. Damon	MO	07/27/93	09/21/94
both	93-5437	USA v. Tucker	MO	07/27/93	09/21/94
sen	93-5438	USA v. Sultan	JO	07/27/93	03/21/94
sen	93-5450	USA v. Berry	JO	07/29/93	03/16/94
both	93-5469	USA v. Rivera	PC	08/05/93	03/10/94
sen	93-5483	USA v. Harper	MO	08/10/93	03/30/94
both	93-5486	USA v. Jones	MO	08/12/93	07/13/94
both	93-5489	USA v. Colvin	JO	08/13/93	03/14/94
both	93-5491	USA v. Ludiver	JO	08/17/93	04/01/94
both	93-5492	USA v. White	JO	08/17/93	04/01/94
both	93-5512	USA v. Odumosu	MO	08/26/93	04/19/94
both	93-5512	USA v. Odumosu		08/26/93	04/19/94
sen	93-5514	USA v. Shea	MO	08/27/93	03/30/94
both	93-5517	USA v. Heller	JO	08/27/93	05/19/94
sen	93-5539	USA v. Rochester	JO	09/15/93	07/26/94
both	93-5545	USA v. Khan	MO	09/15/93	05/11/94
both	93-5549	USA v. Sanns	MO	09/17/93	07/07/94
both	93-5574	USA v. Rivera	JO	09/24/93	05/11/94
sen	93-5578	USA v. Raven	SO	09/27/93	10/31/94
sen	93-5583	USA v. Colletti	SO	09/28/93	03/30/94
both	93-5597	USA v. Conde	JO	10/05/93	09/30/94
both	93-5598	USA v. Rodriguez	MO	10/05/93	07/18/94
sen	93-5615	USA v. Brooks	JO	10/14/93	10/04/94
both	93-5621	USA v. Earp	JO	10/21/93	10/04/94
sen	93-5641	USA v. Oduntan	MO	10/26/93	08/17/94
both	93-5661	USA v. Souza	JO	10/29/93	05/11/94

APPENDIX A (CONTINUED)

	Docket #	Caption		Date Dock	Date Term
both	93-5693	USA v. Walker	MO	11/23/93	09/13/94
both	93-5742	USA v. Contreras	MO	12/14/93	07/21/94
both	93-5770	USA v. Blohm	JO	12/27/93	12/05/94
both	93-7027	USA v. Russian	MO	01/15/93	12/06/93
sen	93-7030	USA v. Williams	JO	01/19/93	03/18/93
both	93-7044	USA v. Paes	MO	01/22/93	05/07/93
both	93-7060	USA v. Rodriguez-Pugero	MO	01/28/93	09/21/93
both	93-7068	USA v. Noquerol	SO	02/04/93	12/30/93
sen	93-7083	USA v. Smith	JO	02/10/93	09/16/93
both	93-7097	USA v. Herrold	MO	02/18/93	09/21/93
sen	93-7109	USA v. Noquerol	SO	02/25/93	12/30/93
both	93-7147	USA v. Watson	SO	03/11/93	09/27/93
both	93-7148	USA v. Edwards	JO	03/11/93	09/14/93
both	93-7165	USA v. Strope	MO	03/19/93	11/04/93
sen	93-7189	USA v. Marcello	SO	03/26/93	01/11/94
both	93-7206	USA v. White	JO	03/31/93	12/05/94
both	93-7223	USA v. Ramos	JO	04/08/93	10/28/93
both	93-7231	USA v. Bowers	MO	04/09/93	10/01/93
sen	93-7237	USA v. Bossinger	SO	04/13/93	12/13/93
both	93-7275	USA v. Coyne	MO	04/26/93	04/20/94
both	93-7282	USA v. Louis	MO	04/27/93	12/17/93
both	93-7309	USA v. Smith	MO	05/06/93	09/15/94
both	93-7338	USA v. Daddona	SO	05/19/93	08/17/94
both	93-7351	USA v. Cohen	SO	05/21/93	08/17/94
both	93-7352	USA v. Dershem	MO	05/21/93	12/21/93
both	93-7361	USA v. Stuart	SO	05/27/93	04/19/94
sen	93-7363	USA v. Holloway	MO	05/27/93	12/08/93
both	93-7378	USA v. Backstrom	MO	06/08/93	02/10/94
both	93-7379	USA v. Backstrom	MO	06/08/93	02/10/94
sen	93-7380	USA v. King	SO	06/08/93	04/14/94
both	93-7381	USA v. Chang	MO	06/08/93	02/07/94
both	93-7388	USA v. Valdes-Verdecia	MO	06/10/93	02/08/94
both	93-7389	USA v. Valdes-Puig	MO	06/10/93	02/07/94
sen	93-7390	USA v. Spells	JO	06/10/93	03/21/94
both	93-7395	USA v. Avila-Vasquez	MO	06/11/93	02/08/94
both	93-7398	USA v. Correll	MO	06/14/93	12/08/93
sen	93-7399	USA v. Shoupe	SO	06/15/93	09/19/94
both	93-7402	USA v. Erb	MO	06/15/93	02/10/94
both	93-7412	USA v. De La Cruz	MO	06/17/93	02/07/94
sen	93-7416	USA v. Gilbert	SO	06/18/93	03/29/94
both	93-7417	USA v. Shriner	MO	06/18/93	01/26/94
both	93-7477	USA v. Zehrbach	SO	07/20/93	01/23/95
both	93-7493	USA v. Mervis	SO	07/27/93	01/23/95
sen	93-7508	USA v. Shaffer	SO	07/30/93	09/08/94
sen	93-7509	USA v. Shaffer	SO	07/30/93	09/08/94
both	93-7522	USA v. Ayala	JO	08/04/93	03/17/94
sen	93-7549	USA v. Shaffer	SO	08/20/93	09/08/94
sen	93-7550	USA v. Shaffer	SO	08/20/93	09/08/94
both	93-7559	USA v. Brown	MO	08/25/93	04/12/94
both	93-7590	USA v. Brittingham	JO	09/09/93	04/21/94
both	93-7594	USA v. Nelson	JO	09/10/93	12/05/94

APPENDIX A (CONTINUED)

	Docket #	Caption		Date Dock	Date Term
both	93-7599	USA v. Stewart	MO	09/10/93	04/14/94
sen	93-7626	USA v. Watson	JO	09/20/93	05/09/94
both	93-7633	USA v. Montes	MO	09/21/93	03/30/94
both	93-7637	USA v. Peddle	JO	09/22/93	04/21/94
both	93-7638	USA v. Fogleman	JO	09/22/93	04/21/94
both	93-7647	USA v. Montes	MO	09/28/93	03/30/94
sen	93-7681	USA v. Amos	JO	10/12/93	05/31/94
sen	93-7684	USA v. Reilly	SO	10/13/93	07/28/94
sen	93-7685	USA v. Reilly	SO	10/13/93	07/28/94
sen	93-7686	USA v. Reilly	SO	10/13/93	07/28/94
sen	93-7690	USA v. Hickman	SO	10/14/93	05/23/94
sen	93-7692	USA v. Frandino	JO	10/14/93	05/31/94
both	93-7694	USA v. Dowd	SO	10/14/93	07/28/94
sen	93-7698	USA v. Johnson	JO	10/18/93	05/09/94
both	93-7702	USA v. Joshua	MO	10/19/93	12/16/94
sen	93-7711	USA v. Lawrence	JO	10/25/93	05/19/94
both	93-7730	USA v. Gibbs	JO	11/04/93	07/12/94
both	93-7742	USA v. Davies	JO	11/15/93	06/27/94
sen	93-7754	USA v. Gonzalez-Moreno	MO	11/19/93	07/27/94
sen	93-7762	USA v. Daniel	JO	11/23/93	10/05/94
sen	93-7777	USA v. Gamertsfelder	SO	11/30/93	03/18/94
sen	93-7794	USA v. Hillstrom	MO	12/03/93	08/19/94
sen	93-7801	USA v. Peppers	MO	12/08/93	06/09/94
both	93-7808	USA v. Borrero	MO	12/14/93	07/28/94
sen	93-7814	USA v. Barteau	JO	12/16/93	09/12/94
both	93-7815	USA v. McGahee	JO	12/17/93	08/25/94
both	93-7826	USA v. Carrillo	MO	12/29/93	12/20/94
both	93-7832	USA v. Rosebar	MO	12/29/93	07/15/94
sen	94-1046	USA v. McGovern	MO	01/05/94	08/08/94
both	94-1052	USA v. Mathis	MO	01/06/94	07/22/94
sen	94-1135	USA v. Walker	JO	01/27/94	07/26/94
both	94-1140	USA v. Cardona	MO	01/27/94	09/13/94
both	94-1171	USA v. Brown	MO	01/31/94	01/26/95
sen	94-1226	USA v. Rosario	JO	02/15/94	09/29/94
both	94-1240	USA v. Martinson	MO	02/18/94	08/22/94
sen	94-1249	USA v. Nachmann	MO	02/22/94	08/15/94
sen	94-1269	USA v. Markert	MO	02/25/94	08/15/94
sen	94-1298	USA v. McBride	JO	03/08/94	08/18/94
sen	94-1300	USA v. Gregory	MO	03/08/94	09/21/94
both	94-1311	USA v. Cole	JO	03/11/94	01/09/95
sen	94-1313	USA v. Golaschevsky	MO	03/11/94	12/05/94
sen	94-1313	USA v. Golaschevsky		03/11/94	12/05/94
both	94-1331	USA v. Ramos	MO	03/15/94	11/21/94
sen	94-1356	USA v. Danzman	JO	03/21/94	10/04/94
both	94-1363	USA v. Rowland	MO	03/28/94	10/05/94
both	94-1384	USA v. Telepman	MO	03/31/94	11/14/94
sen	94-1405	USA v. Washington	JO	04/07/94	10/28/94
both	94-1421	USA v. Courtney	PC	04/13/94	12/08/94
sen	94-1430	USA v. Becerra-Penuela	JO	04/14/94	12/14/94
both	94-1492	USA v. Keyser	MO	04/29/94	10/06/94
both	94-1502	USA v. Ortiz	JO	05/04/94	12/22/94

APPENDIX A (CONTINUED)

	Docket #	Caption		Date Dock	Date Term
sen	94-1510	USA v. Liccio	MO	05/06/94	11/09/94
both	94-1542	USA v. Thomas	SO	05/18/94	12/20/94
both	94-1564	USA v. Kimatu	MO	05/27/94	01/25/95
sen	94-1565	USA v. McCune	MO	05/27/94	01/26/95
sen	94-1569	USA v. Farias		05/31/94	**/**/**
both	94-1570	USA v. Troublefield	MO	05/31/94	02/03/95
both	94-1570	USA v. Troublefield		05/31/94	02/03/95
sen	94-1596	USA v. Terzini	JO	06/08/94	11/23/94
both	94-1600	USA v. Jones	SO	06/09/94	01/13/95
both	94-1621	USA v. Allen	JO	06/15/94	01/30/95
both	94-1651	USA v. Dorsey	MO	06/23/94	02/03/95
both	94-1710	USA v. Meyer	JO	07/13/94	02/14/95
sen	94-1752	USA v. Diaz	MO	07/26/94	12/16/94
both	94-1776	USA v. Cooke	JO	08/03/94	01/30/95
sen	94-3000	USA v. Holmes	MO	01/05/94	09/26/94
both	94-3007	USA v. Holmes	MO	01/12/94	09/26/94
both	94-3018	USA v. Scolieri	MO	01/21/94	08/18/94
both	94-3029	USA v. Kennedy	JO	01/27/94	07/21/94
sen	94-3049	USA v. Sines	MO	02/08/94	11/09/94
both	94-3058	USA v. Paul	MO	02/14/94	08/15/94
both	94-3078	USA v. Fields	SO	02/24/94	11/03/94
both	94-3081	USA v. Fields	SO	02/25/94	11/03/94
sen	94-3101	USA v. Tielsch	JO	03/09/94	09/29/94
both	94-3115	USA v. Brown	MO	03/14/94	08/12/94
sen	94-3117	USA v. Gillespie	MO	03/15/94	09/27/94
both	94-3133	USA v. Wilson	MO	03/24/94	11/08/94
sen	94-3186	USA v. Edmonds	MO	04/20/94	11/14/94
both	94-3196	USA v. Hundley	MO	04/26/94	11/02/94
sen	94-3269	USA v. Thompson	SO	05/31/94	11/14/94
both	94-3270	USA v. Smalls	JO	05/31/94	12/16/94
sen	94-3360	USA v. Brar	SO	07/11/94	02/08/95
sen	94-3401	USA v. Washington	MO	07/27/94	12/06/94
sen	94-3417	USA v. Burden	JO	08/02/94	02/14/95
both	94-5000	USA v. Miles	MO	01/05/94	08/25/94
both	94-5004	USA v. Lewis	MO	01/11/94	07/27/94
both	94-5009	USA v. Cook	MO	01/14/94	08/04/94
both	94-5018	USA v. Blohm	JO	01/21/94	12/05/94
sen	94-5019	USA v. Orozco	MO	01/21/94	08/17/94
sen	94-5025	USA v. Srivastava	JO	01/25/94	08/26/94
sen	94-5032	USA v. Okereke	MO	01/26/94	12/16/94
both	94-5033	USA v. Malcolm	MO	01/26/94	02/01/95
both	94-5063	USA v. Lewis	MO	02/18/94	07/27/94
sen	94-5065	USA v. Adu	JO	02/18/94	08/15/94
sen	94-5067	USA v. Peterson	MO	02/18/94	09/27/94
sen	94-5068	USA v. Roberts	MO	02/18/94	09/27/94
sen	94-5093	USA v. Westerby	JO	02/25/94	12/30/94
sen	94-5106	USA v. Gorospe	MO	03/07/94	08/04/94
sen	94-5107	USA v. Cherry	JO	03/07/94	09/14/94
both	94-5108	USA v. Benvenuto	JO	03/07/94	11/22/94
sen	94-5109	USA v. Ojenor	JO	03/07/94	12/02/94
sen	94-5120	USA v. Bogos	JO	03/10/94	09/13/94

APPENDIX A (CONTINUED)

	Docket #	Caption		Date Dock	Date Term
both	94-5121	USA v. Wright	MO	03/10/94	12/30/94
both	94-5122	USA v. Sassman	MO	03/10/94	11/07/94
both	94-5156	USA v. Thompson	MO	03/30/94	09/27/94
both	94-5167	USA v. Bertoli	SO	03/31/94	10/28/94
both	94-5176	USA v. Torres-Rosario	JO	04/12/94	09/23/94
sen	94-5177	USA v. Calderon	MO	04/12/94	10/12/94
sen	94-5178	USA v. Nieves	JO	04/12/94	12/09/94
sen	94-5179	USA v. Wall	JO	04/12/94	09/30/94
sen	94-5204	USA v. Carrara	MO	04/21/94	**/**/**
sen	94-5219	USA v. Tawdros	JO	04/26/94	12/13/94
both	94-5231	USA v. Grungo	JO	05/05/94	12/12/94
both	94-5232	USA v. Frazier	MO	05/05/94	11/07/94
sen	94-5235	USA v. Kim	MO	05/06/94	09/23/94
both	94-5267	USA v. Wright	MO	05/16/94	12/30/94
sen	94-5270	USA v. Rosario	JO	05/17/94	11/09/94
sen	94-5284	USA v. Soto	MO	05/20/94	12/07/94
sen	94-5292	USA v. Brown	MO	05/24/94	12/28/94
sen	94-5297	USA v. Williams	JO	05/26/94	02/08/95
sen	94-5300	USA v. Alers	JO	05/27/94	10/28/94
both	94-5309	USA v. Rivera	MO	05/31/94	02/14/95
sen	94-5315	USA v. Pollack	JO	06/08/94	02/02/95
sen	94-5337	USA v. Castano		06/15/94	**/**/**
sen	94-5369	USA v. Cutturini	JO	06/28/94	12/13/94
sen	94-5389	USA v. Martinez	JO	07/08/94	12/09/94
sen	94-5432	USA v. Lewis	MO	07/26/94	02/02/95
both	94-5459	USA v. Aniakor	JO	08/03/94	02/08/95
both	94-5478	USA v. Wright	MO	09/16/94	12/30/94
sen	94-7000	USA v. Schein	SO	01/04/94	07/29/94
both	94-7038	USA v. Peddle	JO	01/27/94	09/23/94
both	94-7068	USA v. Benanti	MO	02/08/94	12/16/94
sen	94-7077	USA v. Adkins	MO	02/14/94	10/05/94
sen	94-7086	USA v. Roache	JO	02/17/94	09/12/94
both	94-7089	USA v. Jones	JO	02/18/94	12/10/94
sen	94-7092	USA v. Petersen	JO	02/18/94	12/19/94
sen	94-7093	USA v. Petersen	JO	02/18/94	12/19/94
both	94-7100	USA v. Thompson	MO	02/22/94	12/19/94
sen	94-7101	USA v. Gohn	JO	02/23/94	09/26/94
sen	94-7119	USA v. Mummert	SO	03/02/94	09/08/94
sen	94-7151	USA v. Lesher	JO	03/15/94	08/29/94
sen	94-7155	USA v. Mizic	MO	03/16/94	08/15/94
sen	94-7185	USA v. Hernandez	JO	03/31/94	09/12/94
sen	94-7205	USA v. Stratton	JO	04/14/94	09/30/94
sen	94-7213	USA v. Greenlaw	JO	04/19/94	09/26/94
both	94-7214	USA v. Isenburg	JO	04/19/94	11/30/94
both	94-7218	USA v. Benton	MO	04/20/94	02/06/95
sen	94-7221	USA v. Watson	JO	04/20/94	09/26/94
both	94-7231	USA v. Toro-Nino	JO	04/25/94	11/04/94
sen	94-7232	USA v. Holliday	JO	04/25/94	10/05/94
sen	94-7240	USA v. Hill	MO	04/29/94	10/05/94
sen	94-7241	USA v. Encarnacion	JO	04/29/94	09/26/94
sen	94-7297	USA v. Chiarella	MO	05/24/94	10/05/94

APPENDIX A (CONTINUED)

	Docket #	Caption		Date Dock	Date Term
both	94-7306	USA v. Gilbert	MO	05/27/94	02/08/95
sen	94-7321	USA v. Brissett	MO	06/01/94	12/22/94
sen	94-7384	USA v. Courts	MO	07/06/94	12/22/94
sen	94-7388	USA v. Akala	JO	07/07/94	02/13/95
both	94-7419	USA v. Heffley	MO	07/19/94	12/16/94
sen	94-7430	USA v. Griffin	JO	07/26/94	02/08/95
both	94-7431	USA v. Green	MO	07/26/94	01/30/95
sen	94-7499	USA v. Maday	JO	08/26/94	02/13/95

Total Criminal:	2044
Total Sentencing:	490
Total Both (sen/conv):	740
Total JO:	477
Total MO:	473
Total SO:	264
Total PC:	11

APPENDIX B

THIRD CIRCUIT CRIMINAL & CIVIL STATISTICS 1940-1993

Year	Criminal	Civil	Total	% of total	
1993	582	2338	2920	20	80
1992	495	2299	2794	18	82
1991	514	2147	2661	19	81
1990	469	2149	2618	18	82
1989	455	2197	2652	17	83
1988	430	2241	2671	16	84
1987	343	1922	2265	15	85
1986	341	1906	2247	15	85
1985	333	1978	2311	14	86
1984	429	1775	2204	19	81
1983	369	1722	2091	18	82
1982	311	1565	1876	17	83
1981	299	1203	1502	20	80
1980	291	1189	1480	20	80
1979	313	1090	1403	22	78
1978	352	976	1328	27	73
1977	407	1047	1454	28	72
1976	323	1004	1327	24	76
1975	321	812	1133	28	72
1974	299	917	1216	25	75
1973	314	967	1281	25	75
1972	305	896	1201	25	75
1971	134	971	1105	12	88
1970	85	615	700	12	88
1969	62	534	596	10	90
1968	72	633	705	10	90
1967	74	504	578	13	87
1966	60	478	538	11	89
1965	25	218	243	10	90
1964	24	251	275	9	91
1963	17	195	212	8	92
1962	92	295	387	24	76
1961	37	272	309	12	88
1960	30	264	294	10	90
1959	35	260	295	12	88
1958	53	262	315	17	83
1957	29	255	284	10	90
1956	35	243	278	13	87
1955	30	235	265	11	89
1954	26	247	273	10	90
1953	22	274	296	7	93
1952	25	254	279	9	91
1951	16	248	264	6	94
1950	25	279	304	8	92
1949	28	259	287	10	90
1948	26	224	250	10	90
1947	26	190	216	12	88
1946	47	227	274	17	83
1945	36	232	268	13	87
1944	21	283	304	7	93
1943	22	280	302	7	93
1942	32	190	222	14	86
1941	27	323	350	8	92
1940	32	328	360	9	91
TOTALS	9,600	44,663	54,263	18%	82%