

Publication No. 105

PRESENTENCE  
VERIFICATION  
REPORT

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*Division of Probation*  
ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS  
*Washington, D.C. 20544*





46950  
Publication 105

# *The* PRESENTENCE INVESTIGATION REPORT ♦ ♦ ♦ ♦ ♦

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*Division of Probation*  
ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS  
*Washington, D.C. 20544*

January 5, 1978

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Washington, D.C. 20402 - Price \$2.30  
Stock Number 028-004-00012-5



## Preface

In 1965 the Federal Probation System initiated a new set of standards for the preparation of presentence investigation reports. Known as Publication 103, *The Presentence Investigation Report*, this document was soon regarded as the state of the art for not only the federal criminal justice system but state and local systems as well. In 1974 the Administrative Office issued Publication 104, *The Selective Presentence Investigation Report*, setting forth a shorter format for reports in routine cases. With the publication of this monograph, Publication 105, the federal judiciary marks another step in the continuing evolution of standards—dating from 1943—for one of the most difficult and demanding jobs of the probation officer, preparation of presentence investigation reports. Publication 105 combines the best ideas of previous publications and updates presentence investigation practice in light of current law.

A committee chaired by a member of the Judicial Conference Committee on the Administration of the Probation System, and with representatives from field probation offices, the U.S. Parole Commission, Federal Bureau of Prisons, General Counsel's office of the Administrative Office and Probation Division, has developed this new monograph. The Probation Committee has approved this document as the standard guide for all U.S. probation officers and the monograph was reported to the Judicial Conference of the United States at the September 1977 meeting. Publication 105 introduces the *Core Concept* which sets forth a flexible model for preparing presentence investigation reports. The Core Concept requires the probation officer to develop a core of essential information which is supplemented by additional pertinent data. That amount of information which is essential and pertinent determines the content and length of the report. Application of the core concept will result in more succinct reports, for the concept emphasizes inclusion of only that information which is germane to the sentence decision.

The monograph requires the development of supervision plans for defendants eligible for probation. The supervision plan will indicate goals, objectives to achieve these goals, and deadlines for delivery of needed services. The plan will also include the anticipated level of supervision: maximum, medium, or minimum, and anticipated frequency of contacts during the initial period of supervision.

Readers will find a substantial increase in the contents devoted to legal issues. A number of changes in corrections law affect the presentence investigation and sentencing processes. This monograph sets new standards for probation practice with special attention to how current law governs disclosure of the presentence report and the use of prior record information in sentencing. Careful adherence to the principles set forth in this monograph will result in several benefits: greater uniformity in report

writing; shorter, more concise reports for courts and other users; closer observation of the latest standards of law with respect to contents and disclosure.

As a part of a closely integrated network of field offices serving all district courts in the 50 States, the District of Columbia, the Canal Zone, Guam, Puerto Rico, and the Virgin Islands, Federal probation officers may be called on to prepare a presentence report for any one of the 95 district courts. For this reason it is essential to maintain uniformity in the outline, format, and contents of the report; however, the probation officer should still have sufficient flexibility to present problems and needs of the individual offender in a meaningful way.

The official outline adopted by the Committee on the Administration of the Probation System is that shown on page 6 of the monograph. The face sheet (Probation Form No. 2) approved for all presentence reports appears on page 31. The suggested contents for each of the marginal headings in the approved outline are given starting on page 8. The items listed under *essential data* are those which should appear in all presentence reports. Those listed under *include if pertinent* will appear in some reports, depending on the requirements in the specific case. The officially approved format for the presentence report is presented in the appendix of the monograph.

Mrs. Carol D. Erichsen, U.S. probation officer from the Western District of Michigan, was responsible for the drafts that started this project. We also extend our thanks to the members of the committee, many of whom put in untold hours on this project. Special mention should also be made of Glen W. Vaughan, Thomas J. Weadock, of the Probation Division staff, William B. Eldridge of the Federal Judicial Center, and U.S. Probation Officer Edward M. Murphy of the District of Massachusetts who, although not members of the staff committee, made substantial contributions to this work.

Last, special commendation goes to the secretaries of the Division, Millie A. Raby, Rose M. Horn, Debbie A. Gough, and Grace T. Woodburn, who produced so many excellent drafts from such undecipherable committee notes.

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# The Presentence Investigation Report

## Introduction

In 1965 the Administrative Office of the United States Courts issued Publication 103, *The Presentence Investigation Report*, and in 1974 published No. 104, *The Selective Presentence Investigation Report*. Those documents represented the best professional judgment of what a presentence report should contain. A committee of special consultants prepared those publications under the guidance of the Judicial Conference Committee on the Administration of the Probation System. Since these earlier publications statutory and case law have redefined the contents and the uses of the report. Publication 105 reflects the changes required by new law.

Aside from the determination of guilt or innocence, selecting an appropriate sentence is perhaps *the* most important decision to be made in the entire criminal justice system. The primary vehicle to assist the sentencing court in fulfilling this responsibility is the presentence investigation report. The Federal Rules of Criminal Procedure assign the task of conducting presentence investigations to U.S. probation officers. This assignment requires a professional presentence report of the highest quality.

## Functions and Objectives

This document is a guide for U.S. probation officers in the preparation of presentence reports. Its use provides a common format for the preparation of presentence reports throughout the Federal judiciary. The presentence investigation report is a basic working document in judicial and correctional administration. Its primary purpose is to aid the court in determining the appropriate sentence. It also serves four other functions: (1) to aid the probation officer in supervision efforts during probation and parole; (2) to assist the Federal Bureau of

Prisons in classification, institutional programs, and release planning; (3) to furnish the U.S. Parole Commission with information pertinent to consideration of parole; and (4) to serve as a source of information for research.

If the report is to fulfill its purpose, it must include:

- (a) All objective information which is significant to the decisionmaking process;
- (b) An assessment of the needs of the defendant and the community; and
- (c) A sound recommendation with supporting rationale which follows logically from the evaluation.

The presentence report describes the defendant's character and personality, evaluates his or her problems and needs, helps the reader understand the world in which the defendant lives, reveals the nature of his or her relationships with people, and discloses those factors that underlie the defendant's specific offense and conduct in general. It suggests alternatives for sentencing and the supervision process.

Rule 32(c) of the Federal Rules of Criminal Procedure reflects the significance attached to the presentence report by the judiciary. This rule requires the preparation of a report in each case unless waived by the defendant with the court's permission, or unless the court makes the appropriate finding (see Appendix A).

When a defendant is committed to the custody of the Attorney General, a copy of the presentence report goes to the designated institution. The institution relies on the report for pertinent data relating to the kind and degree of custody required by the defendant, needed medical attention, and the needs, capacities, and problems of the individual. The report also provides information regarding any supportive community ties which the defendant might have. This information will aid the institution in formulating an institutional program.

In considering whether to grant or deny parole, the Parole Commission finds in the

presentence report essential information about the offender's personal and social adjustment prior to commitment, the offense and prior record, and personal relationships within the community to which the offender may return. The Parole Commission is required by statute to consider the presentence report in the parole decisionmaking process. (Appendix B.)

### Disclosure and Confidential Nature of the Report

*Disclosure.*—Rule 32(c)(3) of the Federal Rules of Criminal Procedure requires that the court shall, upon request, permit the defendant, or his counsel if he is so represented, to read the presentence investigation report exclusive of any exempted information or recommendation as to sentence (see Appendix A). The presentence investigation report should be written in such a manner that the contents may be disclosed to the defendant or defense counsel. It is sound practice for the court to disclose the report sufficiently prior to the imposition of sentence to afford the parties a reasonable opportunity to be informed of its contents and prepare a challenge to any alleged factual inaccuracies.

Rule 32(c)(3) of the Federal Rules of Criminal Procedure states that there are three types of information which the court *may* exempt from disclosure. They are:

- (1) Diagnostic opinion which if revealed might seriously disrupt a program of rehabilitation and treatment;
- (2) Sources of information obtained upon a promise of confidentiality; and
- (3) Any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons.

In the first instance, withholding of this information may be necessary when the knowledge of a psychiatric diagnosis or prognosis might interfere with a defendant's receptivity to treatment.

Another situation allowing for exemption occurs when the disclosure of information obtained upon a promise of confidentiality would reveal the identity of the source of information. Not all information provided by the confidential source is protected, but only that information that would in any way reveal the identity of the

source. The presentence investigation report often contains highly privileged information about the defendant and the family as well as confidential data from cooperating public and private welfare agencies, law enforcement agencies, employers, and others who know the defendant. This information is sometimes obtained by the probation officer on a promise of confidentiality to protect the source.

The third allowable exemption permits the court to withhold information which might result in harm, physical or otherwise, to a defendant or others. Some defendants have had a close relationship with dangerous associates or have had serious family difficulties. If unfavorable information about the defendant or other persons is divulged and there may be risk of retaliation, such information would also be exempt from disclosure. Where information is withheld, the court shall provide a summary of withheld factual information relied on in determining sentence.

The Parole Commission and Reorganization Act, effective May 14, 1976, requires that the Commission consider, among other documents, the information in the presentence report (if available) when making a determination relating to release on parole. Section 4208 of the same Act requires that, at least 30 days prior to a parole determination hearing, the inmate shall be provided with reasonable access to the presentence report and any other document to be used by the Commission in making its determination (see Appendix B).

This Act provides for the withholding of essentially the same categories of information exempted from mandatory disclosure by Rule 32(c)(3)(a) of the Federal Rules of Criminal Procedure. When portions of the presentence report are deemed excludable under this statute by the sentencing court, the probation officer must summarize the contents of the material "bearing in mind the need for confidentiality or the impact on the inmate or both" (18 USC 4208(c)). If the presentence report is not provided in its entirety to the inmate, he must be given a summary of the information excluded. If this summary is provided to the inmate, the Parole Commission may utilize all of the excluded information.

If the presentence investigation report has been disclosed to the defendant prior to sentencing in accordance with Rule 32(c)(3)(A) no

problem should be encountered when the Commission later releases the identical information to committed defendants. The portions of the presentence report which were withheld and summarized at sentencing should be identified for the Commission for its later use in parole determination hearings. The Commission will then have before it the entire report and be able to provide the inmate with (1) a copy of the report less any withheld material and (2) the summary of excluded material.

*Confidential Nature of the Report.*—The presentence investigation report is a confidential document and, as a general rule, is not available to anyone other than as described above without permission of the court. There are a few circumstances in which disclosure may be warranted. In some instances the court delegates to the probation office the responsibility for determining what information from the report may be disclosed. In most instances, if release of the information is otherwise deemed proper, it is best to obtain the defendant's written consent for release of information.

Prosecutorial use of a presentence report is incompatible with the purpose of the report as a sentencing and correctional tool. Candor and openness on the part of the report's primary source, the defendant, may be stifled if the report is available for prosecutorial or investigative use.

### Investigative Role of Probation Officer

The probation officer is responsible for searching out all pertinent facts about the defendant, verifying the information gathered, interpreting and evaluating the data, and presenting it in an organized objective report. The officer is responsible for investigating each defendant without preconception or prejudice as to the outcome of the case.

The reliability of the information should be clear in the report, with distinction between what is factual and what is inferred. Verification by personal contact is best; otherwise documents such as letters, facsimiles, and certified statements may be used.

It is important that the defendant be seen at least twice during the course of the investigation. If possible, at least one contact should be a home visit, since this gives the probation officer

an opportunity to evaluate the defendant in familiar surroundings. Seldom does the defendant reveal his or her true self in a single interview. Often it takes more than one interview to establish a cooperative relationship and to give the defendant confidence in the probation officer.

If the investigation discloses information that is substantially different from statements given by the defendant, it is important that the probation officer reinterview the defendant and resolve the conflicting statements. This process will assist the probation officer in determining the motivation behind any erroneous statements and may help to explain the defendant's personality and character. Unresolved discrepancies are reported as such.

Rule 32(a) of the Federal Rules of Criminal Procedure provides that sentence shall be imposed without unreasonable delay. Generally, the probation officer will have 3 to 4 weeks to complete the investigation and write the report. While neither the "Speedy Trial Act of 1974" nor Rule 50(b) of the Federal Rules of Criminal Procedure sets an express time limit on the sentencing process, the intent of both laws makes it clear that sentencing is to be expedited.

*Required Content of the Presentence Report.*—Rule 32(c) of the Federal Rules of Criminal Procedure is the probation officer's authorization for preparing presentence reports. It specifies what the presentence report shall contain, i.e., "any prior criminal record of the defendant and such information about his characteristics, his financial condition, and the circumstances affecting his behavior as may be helpful in imposing sentence... and such other information as may be required by the court."

Rule 32 does not exclude any specific kinds of information. Case law has imposed, however, some limitations on the information contained in the presentence report. In making its sentencing decision the court is prohibited from considering prior convictions of a defendant that were invalid because, in violation of his sixth amendment right to counsel, he had not been represented by counsel or had not properly waived counsel. Similarly, the court is prohibited from treating as a conviction any previous criminal charges against the defendant that resulted in dismissal or acquittal. (See Appendix C.)

*Investigations Prior to Conviction or Plea.*—Rule 32(c) also permits a presentence investiga-

tion prior to conviction when the defendant consents. This may occur in any of the following situations: (1) Rule 11 plea agreement procedures; (2) Rule 20 transfers for plea and sentence; or (3) where it is the practice of the court. With the written consent of the defendant, presentence reports may be inspected by the court at any time.

*Start Where the Defendant Is.*—In conducting the investigation and writing the report, the probation officer is primarily concerned with the defendant as he or she is today. The court must deal with the end product of the defendant's experiences, both positive and negative. Accordingly, in this format, past experiences are reported *only* to the extent they assist in understanding what motivates the defendant's behavior or aid in predicting what kinds of behavior may be anticipated in the future.

During the presentence investigation the defendant may be amenable to personal change. The investigation may have both a salutary and traumatic effect on the defendant. The crisis of the situation often brings about a reevaluation of the offender's personal situation. Thus, it is an excellent time to develop a positive atmosphere for the subsequent supervisory relationship.

*Tangible Facts Not Enough.*—A presentence report is more than a compilation of tangible facts. Information about family, employment, health, and other factors has relatively little value unless interpreted in relation to the defendant's behavior. Likewise the attitudes and feelings of the offender regarding the offense and his or her reactions to opportunities, accomplishments, disappointments, and frustrations are important. Time, patience, and skill are required to uncover these more subjective factors and to develop their relevance. Both the tangible facts and the intangible information are best presented in a manner which reveals their relevance to the needs of the defendant and the needs of the community. Above all it is the ability to select the pertinent data, to separate fact and inference, to draw out the subjective elements and to assess their relative importance that distinguishes the trained and skilled probation officer.

*Discussion of the Report With the Judge.*—Judges are encouraged to discuss the presentence report with the chief probation officer and the probation officer who conducted the investiga-

tion. Bear in mind that additional factual information provided at this time is subject to the rules on disclosure. Cooperation and communication between the probation office and sentencing judge are essential to the sentencing process.

### Composing the Report

The presentence report contains information which is related to the present character and behavior of the offender. Information about the defendant's birth and early development is generally unnecessary in the case of an adult who has normal intelligence and relatively normal behavior.

Detailed information about family members with whom an adult defendant has had no contact in many years may be of little significance. A comprehensive school report will be more pertinent in understanding a juvenile or youth offender than a person in his forties or fifties. An extended history of similar types of offenses, history of unemployment, instability, and family discord can provide pertinent insights.

Avoid verbatim repetition of the indictment. Describe the defendant's offense behavior specifically enough to permit an evaluation of the severity of the offense. Do not recite details which add nothing to this evaluation, or tell nothing about the defendant's personality and conduct in general.

*Brevity.*—For clarity and interest use short sentences and paragraphs confined to single topics or thoughts. Avoid repetition. Do not employ brevity, however, at the expense of completeness. Avoid irrelevant statements such as, "This juvenile has no military experience"; "The defendant had no brothers and sisters"; and "There is no history of hospitalization for emotional disorders."

*Use of "Label" Terms.*—Generalized terms and unsupported adjectives frequently fail to define the difference between persons, situations, and circumstances. Terms such as "disorderly home," "shocking conduct," "lacking in judgment," "poor disciplinarian," "undependable person," "makes a good living," "heavy drinker," have different meanings to different people. The judge, the probation officer, the defendant, and the employer do not give the same evaluation to such terms.

*Verbatim Style.*—Use caution in verbatim reporting. Use a direct quotation only if it gives a better picture of the defendant or the situation than would a paraphrased statement. Quotation marks are used for the *exact* words of the person quoted—not an interpretation. Be careful that language is *not* taken out of context. Meanings may be distorted or altered if any preceding or following statement or any part of the quoted portion is omitted.

Verbatim reporting is helpful for the picture it gives of the defendant's thinking processes, attitudes, and feelings, and the precise way in which he expresses himself. It is best to take complete notes in the presence of the defendant when verbatim reporting is to be used. Recording direct quotations following the interview is less reliable.

Handwritten statements by the defendant on certain aspects of the presentence investigation fall in the category of verbatim reporting and are carried in quotes, or attached as an appendix to the presentence report.

*Sources of Information.*—Verify the facts contained in a presentence investigation report. Whenever the disclosure of information sources is appropriate, such sources are to be shown in the body of the report. In reading about the defendant's employment record, for example, the reader should know whether the statement is given by the defendant, the spouse, the employer, or some other source. When reporting that the defendant gets along well with his wife, it is essential to know whether it is based on his statement only, the wife's, or the statement of each of them. Clearly label any unverified information. Immeasurable harm may result from unverified information presented as fact.

If, in unusual circumstances, a presentence report is based solely on the defendant's statement, this should be made clear at the outset. This might occur, for example, in the case of an illegal alien about whom additional sources of information are not available.

*Technical Words and Phrases.*—Use technical words and phrases only if they have wide usage and a common meaning. Such terms as "sociopath," "schizophrenic," "paranoid," "sexual psychopath," "neurotic," "psychotic," and "character-disorder" often are used indiscriminately by the public, the press, and sometimes by probation officers. Each of these words has a particular professional meaning to psychiatrists

and psychologists and the probation officer should not attempt to use them on his own. When psychiatric, medical, or psychological terminology is used in the presentence report, include an explanation of the diagnostic statements.

*Style and Format in Writing the Report.*—A simple, direct, lucid style is effective. The report need not be elaborate nor seek a dramatic effect. The officer should follow the format of this publication, utilizing the writing style with which he or she is most comfortable.

A broad descriptive vocabulary is an essential tool. Repeated referral to the offender as "defendant" or "subject" is too impersonal. Use the person's name. A juvenile or youth offender may be referred to by first name. Avoid frequent use of "he said," "she said." Some variations are: mentioned, asserted, replied, recalled, admitted, acknowledged, suggested, promised, emphasized, disclosed, revealed, divulged.

*Writing the Report.*—Dictate the presentence report at the earliest possible time following the investigation. Notes grow cold if they are not dictated soon. The longer the delay, the greater is the chance of overlooking significant observations.

Organize all of the information gathered prior to dictation. The probation officer who dictates the report signs it.

## Core Concept

*Pertinent Facts Determine Length.*—This monograph sets forth a flexible model for preparing presentence reports known as the "core concept"—a core of *essential* information supplemented by additional *pertinent* information. The amount of information which is *essential* and *pertinent* will determine the content and length of the report. By leaving out any information not related to the sentence decision, the probation officer produces reports that are factual, germane, precise, and succinct.

Each report is prepared after a thorough exploration of the defendant's background. The officer evaluates the facts and reports only the information which will help the court understand the individual and the circumstances of the offense. A concise report fully read and

considered is more effective than a lengthy one not considered or used.

THE EFFECTIVENESS OF A PRESENTENCE REPORT IS DIRECTLY RELATED TO THE SUCCESS WITH WHICH THE FINDINGS ARE COMMUNICATED AND THE EXTENT TO WHICH IT IS UTILIZED.

The length of a presentence report and the number of items it contains will vary. The greater the consequences of a judgment the more likely it is that the court will need a greater range and variety of information. For example, in the case of an individual who has committed a violent or potentially violent offense, any consideration for release on probation requires substantially more knowledge of the individual than the case of a situational, nonviolent first offender.

*The Body of the Report.*—The presentence report consists of the following five core categories and subsections:

1. *Offense (Core)*

*Official Version*

*Defendant's Version*

Codefendant Information

Statement of witnesses, complainants, and victims

2. *Prior Record (Core)*

Juvenile adjudications

Adult arrests

Adult convictions

3. *Personal and Family Data (Core)*

*Defendant*

Parents and siblings

Marital

Education

Employment

Health

Physical

Mental and emotional

Military service

Financial condition

Assets

Liabilities

4. *Evaluation (Core)*

Alternative Plans

Sentencing Data

5. *Recommendation (Core)*

All reports will use all core categories. THE NONITALICIZED SUBSECTIONS MAY BE SUMMARIZED IN A SINGLE NARRATIVE STATEMENT OR, AS NEEDS DICTATE, MAY BE ENLARGED UPON UNDER SEPARATE PARAGRAPH HEADINGS. As the investigation proceeds, unless the court has directed otherwise, the probation officer, after consultation with his supervisor, will determine the extent to which each subsection item needs to be probed and reported.

After completing the investigation, professional discretion must be exercised in deciding whether to report the personal and family history in a single narrative section or in specific subheadings. When one or more areas of the defendant's personal life has played a major role in contributing to his or her present problems, the probation officer may elect to highlight those areas in specific subheadings.

## Outline, Contents, and Format of the Presentence Report

*Identifying Information (Face Sheet).*—The face sheet of the presentence report provides the court with a brief overview of significant identifying and court related information. It is important to provide *accurate* information on the face sheet. Any unverified information must be labeled. The first page of all presentence reports contains the following identifying information as set out on Probation Form No. 2. Some items do not apply to corporations.

**COURT NAME:** Enter the name of the defendant as shown on the court record and any aliases ("also known as" is abbreviated "a/k/a"). Enter the defendant's legal name if different from the court name.

**ADDRESS:** Give the present home address; indicate "transient" when applicable.

**LEGAL RESIDENCE:** Give the legal residence if different from the present home address. Otherwise state "same."

**AGE AND DATE OF BIRTH:** Give the age in years on the last birthday and the date of birth reflecting the month, day, and year of defendant's birth. Place of birth is shown below the date. This entry should be recorded as follows:

25 3/21/51

Hesperia, Calif.

**SEX:** Identify whether male or female.

**RACE:** Race is determined by ancestry and is to be recorded as Caucasian, Black, American Indian, Asian, or other.

**CITIZENSHIP:** Enter the name of the country of which the defendant is a subject or a citizen. If a naturalized citizen, so indicate.

**EDUCATION:** Enter the highest grade for which defendant has received credit. If the defendant is presently attending school, record the last grade level completed, and the grade or year in which presently enrolled.

**MARITAL STATUS:** Select the defendant's marital status from the following: single, married, cohabiting, widowed, divorced, or separated.

**DEPENDENTS:** This includes defendant's spouse, children, and stepchildren living in defendant's household as well as any other person to whom defend-

ant contributes more than 50 percent support. This should be stated as "Two (wife and one child)."

**SOCIAL SECURITY NUMBER:** Enter a nine (9) digit Social Security number.

**FBI NUMBER:** The defendant's FBI fingerprint number is entered in this section. This may be obtained from the arresting agency, U.S. attorney, U.S. marshal, or the fingerprint record.

**OTHER IDENTIFYING NUMBERS:** This space may be used to record local police agency numbers, driver's license number, passport number, Medicare/Medicaid number or similar identifiers.

**DATE:** Date of dictation of the report.

**DOCKET NUMBER:** This 9-digit number may be obtained from the court clerk's or U.S. attorney's file. In cases disposed of by the U.S. magistrate, the magistrate case number should be entered.

**OFFENSE:** State the title of the offense or offenses, with U.S. Code section, for which the defendant is to be sentenced. Example: Possession of Stolen Mail 18 U.S.C. 1708.

**PENALTY:** Enter the maximum statutory penalty for the specific offense(s), including special parole terms. This information should be obtained from the U.S. attorney. State eligibility for Youth Corrections Act, Young Adult Offenders Act, Narcotic Addict Rehabilitation Act, or other special sentencing provisions.

**PLEA:** Enter the nature of the plea, the date of the plea, and the count or counts to which the plea was made. Example: Guilty on 5-10-76 to counts 3 and 4 and not guilty to counts 1 and 2 of a 4-count indictment.

**VERDICT:** Enter the date of the conviction and the source of conviction; that is, by jury or by the court. Also indicate the count or counts on which convicted. Example: Guilty on 5-11-76, on both counts; by jury.

**CUSTODIAL STATUS:** If the defendant is not in custody, indicate the condition of release, including amount of bond: (1) *personal recognizance*—the defendant is released upon personal or own recognizance *without* an unsecured appearance bond being ordered; (2) *unsecured bond*—the defendant is released on own recognizance *with* an unsecured bond being ordered; (3) *10 percent deposit*—the defendant is required to execute an appearance

bond in a specific amount and deposit said amount with the clerk of the court, *in cash or other security as directed*, of a sum not to exceed 10 per cent of the amount of the bond; (4) *surety bond*—requires the execution of bail bond by the deposit of cash; (5) *collateral*—requires the execution of bail bond, i.e., property of equal or greater value to the bail set by the judicial officer; (6) *third party custody*—the court may place the person in the custody of a designated person or organization such as the pretrial services agency; and (7) *custody*—if the defendant is in custody, state the location. It is essential to indicate *accurately* the number of days the defendant has been in Federal custody in connection with the offense or acts for which sentence is to be imposed. This information may be obtained from the U.S. marshal. If in custody at the time the presentence report is complete, state that the person “Remains in custody since (date).” If in the custody of another jurisdiction, so state.

ASSISTANT U.S. ATTORNEY: Give the name of the assistant U.S. attorney handling the case.

DEFENSE COUNSEL: Give the name and address of the defense counsel. Also indicate if the defense counsel has been retained by the defendant or appointed by the court. Indicate “Self” if the defendant is serving as his or her own counsel. Indicate “Waived” if the defendant has waived the right to counsel.

DETAINERS OR CHARGES PENDING: Give the name and address of the office issuing the detainer or preferring the charge, the nature of the official charge, and the current status of the case.

OTHER DEFENDANTS: Enter the names of codefendants and defendants of companion cases, if any, and status, including dispositions, of their respective cases.

The following information, below the double line on Form 2, is inserted after the final disposition of the case:

DISPOSITION: Sentence imposed by the court on each count.

DATE: Date the sentence was imposed.

SENTENCING JUDGE: Enter the name of the judge imposing sentence on the defendant.

*Body of the Report.*—Each presentence report follows the title and sequence of the core headings. If subsections are used under “Personal and Family Data,” they should follow the recommended sequence.

The information is reported in narrative form whenever possible. Where it does not sacrifice accuracy, the information is summarized rather than reported in detail. For example:

*Employment.* The defendant has been steadily employed as a machinist working for three different firms for the past 10 years. He has held his current job with Apex Machine Shop for 3 1/2 years and now earns \$6.85 per hour. He is considered to be a reliable honest employee by the present supervisor.

The items listed under *Essential Data* are those which appear in *all* presentence reports. Those listed under *Include if Pertinent* appear when the officer determines they are significant to the defendant’s present situation and bear on the sentencing decision. The contents for the core categories are given below:

#### Offense

##### Official Version

##### Essential Data:

Summary of the indictment or information containing number of counts, period covered, and nature, date(s) and place(s) of offense(s). Extent of property or monetary loss. Reasons why prosecution was not diverted to local courts in juvenile cases. Details of the offense including a summary of the defendant’s specific involvement. Role of defendant in planning and commission of crime. How and where crime committed. Defendant’s profit from this crime and any aggravating or extenuating circumstances.

##### Include if Pertinent:

Date and place of arrest. Statement of arresting officer. Attitude of defendant toward arresting officer. Degree of cooperation. Extent to which offense follows pattern of any previous offense. Relation of offense to organized crime or racketeering. Amount of loss recovered. Full or partial restitution. Other alleged violations. If a plea agreement has been offered, attach a copy or provide the terms (Rule 11(e), Federal Rules of Criminal Procedure). Information as to the defendant’s adjustment while on bond. *If under the supervision of a pretrial services agency, the probation officer should use the pretrial services officer’s case material in preparing the presentence report.*

*Comment:* The official version of the offense may be obtained from the office of the U.S. attorney. In keeping with the Privacy Act of

1974 (Appendix D) make arrangements with the U.S. attorney's office or obtain the defendant's consent for the release of information from official files. The U.S. attorney's office in each district can advise of the procedure for obtaining this information. The U.S. attorney's file will give the nature of the charge, details of the offense, statements of arresting officer, statements of codefendants, complainants, witnesses, and victims and also a summary of the arrest record. Other sources of information include the prosecutor, investigating agent, defense counsel, and court file. When the presentence investigation is conducted prior to conviction, the probation officer should not presume the guilt of the defendant.

Basic reporting skills—the who, what, when, where, and how—dictate the essential elements to be reported. It is not necessary to give identification, such as check numbers or auto serial numbers.

Labeling of a defendant is to be avoided because it connotes varying perceptions of the defendant which may not be accurate. If a defendant is to be termed a "ringleader" or a major "organized crime" figure, the source, such as the investigating officer, must be revealed or the facts from which such a conclusion is derived clearly set forth. If the defendant challenges the veracity of the information, the court can determine its accuracy or discount reliance on it in sentencing. A probation officer may be required to provide substantiation of challenged information. Hearsay information is permissible but its reliability is critical.

### *Defendant's Version*

#### Essential Data:

Summary of offense and arrest by defendant. Differences between defendant's version and official version. Extent to which defendant admits guilt. Defendant's explanation of why he became involved and what he hoped to accomplish.

#### Include if Pertinent:

Defendant's feelings from time of offense until arrest and defendant's reactions after arrest (e.g., defiant, relieved, indifferent, etc.).

*Comment:* It is helpful to obtain both a written and verbal statement from the defend-

ant. A verbal statement should be so labeled and paraphrased. Whatever the defendant says about the offense and his involvement is helpful in understanding him. The offender's statements may vary from those of the law enforcement officer's and the U.S. attorney's, but the defendant is entitled, nevertheless, to make clear his version of the offense and to give his own interpretation of the underlying circumstances and motivations.

### Codefendant Information

#### Include if Pertinent:

Extent of codefendant's participation in the offense and the present status of his prosecution. Relative culpability of the defendant in relation to codefendant(s) and coconspirators(s). Codefendant's version if available. Codefendant's attitude toward the offense, and the defendant, plus codefendant's statement of defendant's participation.

*Comment:* If there is a codefendant, it is important to have his version of the offense and the extent to which he may have been a leader or an aggressor. *The court is interested in knowing the relative culpability of all the defendants.* The report should indicate whether the codefendant(s) has been apprehended and what disposition was made in that case.

### Statement of Witnesses, Complainants, and Victims

#### Include if Pertinent:

Firsthand statements of complainants, witnesses, and victims in relation to understanding the defendant and the offense. When appropriate, nature and extent of victim's loss. Acts of overt violence or acts which endangered the safety of others. *All parties making such statements should be aware of the potential for disclosure of the report to the defendant.*

### Prior Record

#### Juvenile Adjudications

#### Essential Data:

Date, charge, location, disposition, and representation by counsel, of all referrals to juvenile court by law enforcement officials.

*Comment:* The probation officer should report all referrals to the juvenile court involving acts which would, if committed by an adult, constitute a crime. Status offenses, e.g., run-away, incorrigible, truant, beyond parental control, etc., are more properly described in the "Personal and Family Data" section.

Each entry, in chronological order, should include the date of referral, the name and location of the juvenile court, whether or not the juvenile was represented by counsel, the juvenile's age, charge, and the disposition.

Example:

10/1/66	Shoplifting	Marion County	Informal
Age 14		Juvenile Court,	Probation
		Salem, Oregon	

Defendant was represented by counsel.

A subsequent paragraph may be appropriate to describe circumstances surrounding serious violations, to describe the defendant's performance under supervision or the defendant's institutional adjustment.

An offender's past is often highly relevant to the sentencing inquiry. Hence a court may consider an offender's juvenile history including any juvenile court dispositions. There are, however, several caveats to observe. First, juvenile delinquency adjudications are not criminal convictions and should not be identified as such. Second, even though state laws generally limit the use of juvenile records as evidence in any court proceedings, the weight of authority is that sentencing use is permissible. The presentence report should indicate, however, whether the juvenile record is a sealed court record, or whether such information is of a confidential nature. As for *expunged* records, if a juvenile court disposition has been destroyed, then a probation officer should not refer to it in the presentence report.

Finally, juvenile delinquency proceedings in which a juvenile was not afforded his right to counsel are invalid and may not be relied upon by the sentencing judge. During the presentence investigation the officer should verify whether the juvenile had counsel or waived his right to counsel with respect to each juvenile disposition.

## Adult Record

### Essential Data:

Date, charge, location, disposition of all arrests, and representation by counsel.

### Include if Pertinent

Detainers and details of charges lodged against Defendant. Defendant's explanation of why he was involved in previous offenses.

Codefendants in previous offenses.

Details of arrests occurring subsequent to present offense.

*Comment:* The identification record (fingerprint record) of the Federal Bureau of Investigation is a good source of information on the arrest record of a defendant. The FBI record is not a complete coverage of arrests and convictions and the probation office should also clear with state and local identification bureaus, police departments, and sheriffs' offices in those cities and communities in which the defendant has worked or resided. The defendant is also a valuable source of information and may provide information regarding missing dispositions or pending charges.

The sixth amendment to the Constitution provides the right to counsel in all criminal cases, other than petty offense cases where a fine is the only penalty. The Supreme Court in *U.S. v. Tucker* (see Appendix C) made it essential, for sentencing purposes, to determine whether or not the defendant was represented by counsel or legally waived counsel in any prior convictions where the right to counsel applied. Only convictions in which the constitutional right to counsel was provided are valid. Invalid convictions may not be considered when determining the sentence disposition. It must be stated in the report whether or not defendant was represented by counsel. If it cannot be determined whether or not the defendant was legally represented, this circumstance must also be stated.

Where the FBI fingerprint record does not give the disposition of a case, the probation officer should communicate with the law enforcement office which filed the print or the court in which the case was tried to determine

the outcome. Arrests without dispositions are not convictions and should be clearly identified.

*Many times one offense will result in multiple entries on the fingerprint record, all relating to one offense. When this duplication occurs, consolidate the entries so that only one entry is made for each offense.* If the defendant admits arrests which are not reflected in official arrest records, indicate they are by his or her admission.

If the defendant has an institutional record, the date of commitment and release, the institutional adjustment, and the present release status should be ascertained from the institution or parole authorities. Information about prior probation or parole adjustment should usually be included.

All military courts-martial are reported in the "Military" subsection. Serious military offenses with a civilian counterpart may be cross referenced in the prior record section.

List all prior arrests in chronological order, including the date of arrest, age of the defendant, charge, arresting agency or court, and disposition.

Example:

7/6/69	Burglary I	Multnomah	3 years
Age 27		County, Portland, Oregon	State Prison

Not determined whether represented by counsel.

Conviction may be invalid.

For serious offenses use a subsequent paragraph to describe the circumstances. If the defendant has compiled a lengthy history of misdemeanor and/or traffic arrests, these may be summarized in narrative form. Data should include the time period involved, the general type(s) of offenses and the range of dispositions.

Example:

From 1968 to 1972, Mr. Jones was arrested five times for shoplifting, five times for drunkenness, and four times for minor traffic violations resulting in bail forfeitures or fines ranging up to \$50, and two jail terms of less than 10 days. He was represented by counsel only on three of the shoplifting offenses.

Arrests subsequent to the present offense are to be recorded in the same manner as those set forth in the "Adult" section. They should be clearly labeled because they may reflect persistent problems. Further, the interest of other jurisdictions may have an impact on disposition of the present case.

### *Personal and Family Data*

The core category "Personal and Family Data" is comprised of the following subsections:

#### *Defendant*

Parents and Siblings

Marital

Education

Employment

Health

Physical

Mental and Emotional

Military Service

Financial Condition

Assets

Liabilities

In all cases this core category will be used to report information about the defendant's family, marriage, education, employment, health, military service, and financial condition. IF, AFTER EXPLORING ALL OF THE SUBSECTIONS THE INFORMATION IS FOUND TO BE UNREMARKABLE OR ROUTINE, IT IS TO BE REPORTED IN A SINGLE NARRATIVE. Whenever information is received which indicates unusual social or personal circumstances which may have contributed to the defendant's present difficulties, report this in a separate subsection with an appropriate heading.

#### *Defendant*

##### *Essential Data:*

Age, place of birth.

Influences of early life that may have a significant bearing on defendant's present personality and behavior: Extent of family cohesiveness, attitudes of parents, and important factors in the home and neighborhood environment. Persons who reared defendant if other than parents. Present status of this relationship. Family members with whom defendant is especially close. Age left home; reason for leaving, any history

of truancy from home. Primary factors affecting defendant's present mode of living, including relationship with family members, associates, and home and neighborhood influences. Career and social accomplishments. Any other major factor affecting defendant's present behavior.

**Include if Pertinent:**

Naturalization status (country of birth and place and date of entry into United States). Order of birth among siblings. Significance of religion in the defendant's life. Home and neighborhood. Special talents, interests, and leisure-time activities (including sports, hobbies, and organizations).

*Comment:* Include only that family background information which is necessary to understand the defendant and to help in his or her personal and social adjustment. Start where the defendant is now.

What are the most important influences in his or her life? Portray early life experiences in a manner which points out their relevance to defendant's present life. Attitudes and the relationship between the defendant and his parents and family are especially significant if the defendant has regular contact with them (parents' names are useful to the Bureau of Prisons if defendant is committed). What does defendant say that is favorable or unfavorable about the family? What family problems and relationships are disturbing and with which ones is he or she unable to cope?

In appropriate instances, report those environmental or economic factors which contributed to the defendant's present situation. For example, is the home in an area which produces a high incidence of criminal behavior? Is the defendant attempting to maintain a life style beyond his financial means?

Defendant's past or present involvement in religious activities should be included in the report if they are relevant to his or her present situation. Meaningful religious involvement may be a major influence on one's life and also on an offender's feelings regarding involvement in illegal activities.

Include talents, interests, and leisure-time activities if they are an important part of the defendant's social adjustment.

## Parents and Siblings

**Include if Pertinent:**

Parents and siblings—name, age, address, citizenship, naturalization status, employment, education, marital status, health, religion, economic status. If deceased, cause and age at time of death. History of emotional disorders, diseases, and criminal behavior in the family. Attitude of parents and siblings toward defendant's offense.

*Comment:* Resist the tendency to report extraneous information about parents and siblings. Such information as dates and places of birth, residence, health, education, religion, employment, and earnings may in many instances have little or no relevance. Detailed information about the family generally is more pertinent in understanding juvenile and youth offenders than older offenders. What is the cultural background of the family? What family influences are apparent? What stabilizing factors are there in the parental family? To what community agencies is the family known?

## Marital

If defendant has never married or cohabited, omit this section.

**Essential Data:**

Present marriage or relationship if cohabiting. Date and place of marriage; name, and age of spouse at time of marriage as well as present status of the relationship. Quality of the relationship between defendant, spouse, and children—cohesive or stressful? Previous marriage(s). Name of previous spouse(s) and date and reason for dissolution of marriage(s) (death, divorce, or annulment). Children from previous relationships. Problems in the current marriage and the attitudes of both parties toward resolving them.

**Include if Pertinent:**

Significant facts in spouse's background presently affecting relationship with defendant. History of courtship and reason for marriage. Name, age, and custody of children and voluntary or court ordered support obligation. Attitude of spouse and children toward offense. Contacts with domestic relations court indicating abuse or neglect of children. Juvenile court involve-

ment of children. Social agencies involved with the family. Divorce data including grounds, date of final decree, special conditions, and to whom granted.

*Comment:* A presentence investigation is not complete unless the spouse, or cohabiting partner, if any, has been interviewed. This person can be a valuable source of information about the family and the relationship. Such a person, however, can be a biased source either against or in protection of the defendant.

A disorganized family life can contribute in large measure to the defendant's conduct and the partner can be a factor in the offender's difficulties with the law. Therefore, it is important to know about the partner's personality, character, health problems, needs, and social adjustment. Sometimes neighbors, relatives, and other social agencies can also cast considerable light on the relationship.

It is helpful to know which family problems each marital partner finds it especially difficult to cope with. Stabilizing influences provided by each partner should be noted. Does each partner display a responsible attitude toward the relationship?

## Education

### Essential Data:

Educational achievement, including age left school and reason for leaving. Last grade completed and the grade or year in which presently enrolled if the defendant is attending school.

### Include if Pertinent:

Date and name of last school attended. Social adjustment while in school as evidenced by conduct, scholastic standing, training, leadership, special abilities and disabilities. Business and trade training. Inability to read, write or understand English.

*Comment:* The school is a valuable source of information about the defendant particularly in juvenile and youth offender cases. Sources of information include teachers, attendance officers, guidance counselors, social workers, and school nurses. Report significant patterns of behavior which persist from school days.

## Employment

### Essential Data:

Employment stability and how this relates to present personal adjustment. Specific information about his or her employment record. Verified employment history for the past 10 years including dates, nature of work, and reasons for leaving. Employer's evaluation of defendant (immediate supervisor, where possible) including attendance, capabilities, reliability, honesty, personality, attitude toward work, and relationships with coworkers and supervisor. Occupational skills, interests, and ambitions. Source of support if unemployed. Defendant's capacity for employment. Verified employment or vocational training opportunities currently available to the defendant.

*Comment:* Demonstrate how the defendant's employment adjustment and attitude toward the job relate to his or her personal and social adjustment. Verify the employment history by contact with each employer. Specify any part of the employment history that has not been verified. If the employer's evaluation differs from the defendant's, explore the discrepancies. It is important to find out why the defendant left employment. Was it a result of the instant offense? It is not necessary to report on the employment history beyond a 10-year period unless there is obvious relevance to the defendant's present life. Summarize in a single statement any history of employment at a variety of menial jobs. If the offender is unemployable, describe nature of limitation or handicap.

## Health

### Physical:

#### Essential Data:

Any physical illness(es) for which the defendant is presently being treated. Type of treatment or medication, if known. General physical condition. Health problems based on defendant's estimate, medical reports, and probation officer's observations.

#### Include if Pertinent:

Evidence of excessive alcohol consumption.

Dependence upon alcohol to a degree that shows a noticeable mental disturbance, damage to

physical health, or interference with interpersonal relations and social and economic functioning. Opiates or other drug abuse. History of serious diseases, major surgeries, and hospital treatment presently affecting defendant. History of chronic illnesses. Allergies especially to any common medicines; e.g., penicillin.

*Comment:* A drug abuser is a person who is using a controlled substance as defined in Title 21 U.S.C. 802(6) and who is in a state of psychic or physical dependency arising from the use of that substance on a continuing basis. Drug dependency is characterized by behavior and other responses which include a strong compulsion to take a substance on a continuing basis in order to experience its psychic effects or to avoid the discomfort caused by its absence. What type of drug abuse or addiction does defendant exhibit? Are there obvious psychological or social disturbances which preceded drug dependence? Common drugs of abuse consist of opiates which include heroin, codeine, morphine, opium, and illicit methadone. Other drugs include barbiturates, methaqualone, PCP, amphetamines, cocaine, LSD, mescaline, glue/solvents, hashish, and marihuana. Verification of drug abuse as well as identification of the type of drug *may* be determined by blood tests as well as urinalysis. The latter is the most frequently used method and may be available at community drug treatment centers with the defendant's consent. Duration of abuse is an important consideration especially with opiates. It is the duration that differentiates the acute from the chronic abuser.

Does defendant's alcohol or drug abuse contribute to his or her criminal involvement? Indicate alcohol or drug treatment programs in which defendant participates and an evaluation of his or her progress. Report hospitalization which resulted from alcohol or drug abuse. Alcohol or drug treatment programs are prohibited by the Federal Regulations on the Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR Part 2) from releasing client/patient records without a specific release of information.

Describe any medical problems or physical disabilities which limit the defendant's ability to maintain gainful employment or otherwise adversely affect overall adjustment. Any current illnesses or conditions requiring professional

treatment should be discussed in detail. It may be helpful to attach current medical reports, if available. Include in the report *no more than is necessary to understand the defendant's present health condition.*

#### Mental and Emotional:

##### Essential Data:

Social adjustment and personality characteristics as assessed by associates, family members, and mental health professionals, if any. Social and personal characteristics in relation to overall adjustment. Awareness of emotional problems and willingness to accept responsibility for seeking solutions. Ability to cope with family and social demands.

##### Include if Pertinent:

I.Q. (Support with test scores.) Findings of psychological and psychiatric examination (name of test, scores, date, by whom given). Emotional instability. History of psychiatric treatment. Unusual fears, hostilities, obsessions, compulsions, compulsive gambling, depressions, or sexual deviations.

*Comment:* If a current psychiatric or psychological evaluation is available, this is of primary importance, and may be attached. Previous diagnoses may also be appropriate to indicate the duration or intensity of the problem(s) involved. Psychiatric terms and diagnostic labels need explanation by the examining expert.

The probation officer is called upon to offer a subjective opinion of the defendant's capacity to effect positive attitudinal and behavioral changes. For example, do personality problems exist which adversely affect the defendant's self-concept, interpersonal relationships, or value system?

#### Military Service

If defendant has not been in military service omit this section.

##### Essential Data:

Branch of service. Service number. Dates of each period of military service and total length of service. Type of discharge. Highest grade or rank achieved and grade or rank at separation.

**Include if Pertinent:**

Inducted or enlisted. Special training received. Foreign service, combat experience, decorations, and citations. Disciplinary action, including *all* courts martial. Eligibility for benefits.

*Comment:* If defendant is currently in the military, contact the commanding officer. Authorization to release is necessary to obtain information on military personnel. Include medical history supplied by the military in the section on "Health." For those individuals inducted into the military after January 1, 1972, their Social Security number is identical with the service number. Various types of discharge are honorable, general under honorable conditions, undesirable, bad conduct, dishonorable, medical, or retired.

**Financial Condition**

**Assets:**

**Essential Data:**

Statement of financial assets. Average monthly income. Spending habits in relation to level of income. If unemployed, source of support such as unemployment insurance, public assistance, veteran's/military benefits, Social Security benefits, private assistance, retirement funds, family help, or criminal activities.

**Include if Pertinent:**

Net worth statement. Real estate (type, location, value, equity). Insurance (type, amount, cash value, company). Checking and savings accounts (bank, amount). Stocks and bonds (type, value). Personal property (car, furniture, appliances). Income from pensions, rentals, boarders. Family income. Available resources through relatives and friends. Other valuable property (jewelry, antiques).

**Liabilities:**

**Essential Data:**

Statement of financial obligations including balance due and monthly payments (home mortgage, rent, utilities, medical, personal property, home repairs, charge accounts, loans, fines, restitution, and child support).

**Include if Pertinent:**

Money management and financial delinquencies. Credit rating.

*Comment:* This section should make readily apparent the defendant's ability to pay a fine or restitution. Knowledge of the defendant's debts and financial obligations indicates how responsibly the defendant meets financial obligations. A credit report, available through local retail credit associations, may offer helpful leads to his or her financial status.

**Evaluation**

The evaluation contains the probation officer's professional assessment of the objective material in the body of the report. It goes beyond summarizing the more significant contents of the report, although some highlighting may be necessary to lend continuity. Having gathered all the facts, the probation officer should now consider the protection of the community and the needs of the defendant.

Consider first the offense. Is it situational in nature or indicative of persistent problems? Was violence threatened or used? Was the defendant armed? Was the offense against person or property? What is the relative culpability of the defendant and codefendants? What was the motive for the offense?

Consider next the community. Does the defendant pose a direct threat to the safety and welfare of others? Would a disposition other than incarceration tend to depreciate the seriousness of the crime? Is probation a sufficient deterrent? Would the most benefit derive by working with the defendant in the community? What community resources are available?

Consider now the defendant. What developmental factors were significant in contributing to the defendant's current behavior pattern? What is the history of antisocial behavior and when did it begin? Does the defendant acknowledge responsibility for the offense? Does he demonstrate remorse? The defendant who voluntarily attempts to make restitution or compensate the victim may display a more conscientious attitude than the one who attempts to rationalize or justify the crime. Is

the defendant motivated to effect behavioral change? Has the defendant's behavior changed since the offense? What are his strengths or weaknesses? Is the defendant employable? Does he have a supportive family? What are the positive factors that can be worked with under supervision? The conclusions reached in the evaluation should provide a logical basis for the recommendation and plan.

### Alternative Plans

Here the probation officer provides a statement of the sentence alternatives available to the court. This includes any eligibility for sentencing under the Youth Corrections Act, Young Adult Offenders Act, Juvenile Delinquency Act, Narcotic Addict Rehabilitation Act, as well as any Special Parole Term required by law.

When the defendant is eligible for probation include an analysis of the defendant's needs and a plan of supervision to meet those needs through the services of the probation office and available community resources. Specifically, consider the role of parents, spouse, residence, employment, education, and any pertinent medical, psychiatric, or drug treatment that is indicated. In the plan of supervision indicate goals, objectives to achieve those goals, and deadlines for delivery of needed services. Provide the expected level of supervision (minimum, medium, or maximum) and the anticipated frequency of contact during the initial period of supervision. (Classification guidelines are available in the United States Probation Officers Manual). *The inclusion of such a plan does not constitute a recommendation by the probation officer; it merely informs the court of those services available to the defendant if probation is granted. It also assists the Bureau of Prisons in formulating treatment programs and aids the officer who may subsequently supervise the case on probation, parole, or mandatory release.*

*Sentencing Data.*—Include the range of sentences imposed nationally for the offense for which the defendant is being sentenced. These data may be obtained from the most recent annual report of the Director of the Administrative Office of the United States Courts, Table D-5, "Criminal Defendants Sentenced After Conviction, by Nature of Offense." More detailed data on sentencing by offense for each

district are also available from the Statistical Analysis and Reports Division of the Administrative Office.

Include also the probation officer's *estimate* of the salient factor score, offense severity rating, and probable months to be spent in custody according to the U.S. Parole Commission guidelines for decisionmaking. This information will help the court not only in arriving at a sentence, but also in specifying factors which the court wishes the Parole Commission to consider should the court send the Commission its recommendation as to parole (Form AO 235). In providing this information to the court, the probation officer must be sensitive to how length of sentence affects the probable place of confinement, and how Parole Commission regulations affect actual length of prison stay.

### Recommendation

#### Essential Data:

Recommendation for disposition including supporting rationale.

#### Include if Pertinent:

Special conditions including fine, restitution, and community service.

*Comment:* All pertinent data have been gathered for the principal purpose of determining the most appropriate sentence. The probation officer has the responsibility to offer a sound recommendation with supporting rationale which will assist the court in achieving its sentencing goals. Draw the recommendation from one of the alternatives listed in the evaluation. If the court does not disclose the recommendation, it should be presented on a separate sheet of paper so that it may be detached when the presentence report is disclosed to the defendant or counsel. Generally, it is good practice for recommendations to be reviewed by a staff committee or administrative staff.

If commitment is recommended, indicate what special problems need the attention of the institutional staff. Report the institution where it is likely that the term will be served under the recommended sentence. Include any recommendation for a specific institution where sentence is to be served. *Indicate security risks*

*including any escape potential as well as any threats made to, or received from, the community or other defendants.*

### **Potentially Excluded Information**

When there is information which in the opinion of the probation officer may be excludable under the provisions of Rule 32(c) of the Federal Rules of Criminal Procedure, it should be identified for the court by reporting it on a separate sheet of paper. This information is submitted to the court with the presentence report under this heading: "INFORMATION EXCLUDED FROM THE PRESENTENCE REPORT AS POTENTIALLY EXEMPT FROM DISCLOSURE: RULE 32(c)(3)(A)." Identify the information by the appropriate core cate-

gory or subsection. Prepare a summary of the excluded information and present it to the court for the court's use in stating orally or in writing a summary of the factual information to be relied on in determining sentence.

Once approved by the court, the presentence report, the confidential information memorandum, and a summary of withheld information can be transmitted for the use of the Parole Commission.

Rule 32 requires that a summary of factual information be made. This means that a general summary is sufficient. The summary should include more than a recitation of statutory exemptions. Indicate the general nature of the excluded information but do not be so specific in summarization that the protected information, e.g., the confidential source, would be disclosed.



# Appendixes

Rule 32 and  
Probation Statute

Appendix A

Parole Commission and  
Reorganization Act Abstract

Appendix B

Analysis of *Tucker v. United  
States* and *Townsend v. Burke*

Appendix C

Analysis of Freedom of  
Information Act and Privacy Act

Appendix D

Request for PSI or Probation  
Records (Sample)

Appendix E

Consent Forms—13A, B, & C

Appendix F

## APPENDIX A

### Rule 32, Federal Rules of Criminal Procedure

#### SENTENCE AND JUDGMENT

(a) Sentence.

(1) Imposition of Sentence. Sentence shall be imposed without unreasonable delay. Before imposing sentence the court shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment. The attorney for the government shall have an equivalent opportunity to speak to the court.

(2) Notification of Right to Appeal. After imposing sentence in a case which has gone to trial on a plea of not guilty, the court shall advise the defendant of his right to appeal and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal in forma pauperis. There shall be no duty on the court to advise the defendant of any right of appeal after sentence is imposed following a plea of guilty or nolo contendere. If the defendant so requests, the clerk of the court shall prepare and file forthwith a notice of appeal on behalf of the defendant.

(b) Judgment.

(1) In General. A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.

(2) Criminal Forfeiture. When a verdict contains a finding of property subject to a criminal forfeiture, the judgment of criminal forfeiture shall authorize the Attorney General to seize the interest or property subject to forfeiture, fixing such terms and conditions as the court shall deem proper.

(c) Presentence Investigation.

(1) When Made. The probation service of the court shall make a presentence investigation and report to the court before the imposition of sentence or the granting of probation unless, with the permission of the court, the defendant waives a presentence investigation and report, or the court finds that there is in the record information sufficient to enable the meaningful exercise of sentencing discretion, and the court explains this finding on the record.

The report shall not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or nolo contendere or has been found guilty, except that a judge may, with the written consent of the defendant, inspect a presentence report at any time.

(2) Report. The report of the presentence investigation shall contain any prior criminal record of the defendant and such information about his characteristics, his financial condition and the circumstances affecting his behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court.

(3) Disclosure.

(A) Before imposing sentence the court shall upon request permit the defendant, or his counsel if he is so represented, to read the report of the presentence investigation exclusive of any recommendation as to sentence, but not to the extent that in the opinion of the court the report contains diagnostic

opinion which might seriously disrupt a program of rehabilitation, sources of information obtained upon a promise of confidentiality, or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons; and the court shall afford the defendant or his counsel an opportunity to comment thereon and, at the discretion of the court, to introduce testimony or other information relating to any alleged factual inaccuracy contained in the presentence report.

(B) If the court is of the view that there is information in the presentence report which should not be disclosed under subdivision (c)(3)(A) of this rule, the court in lieu of making the report or part thereof available shall state orally or in writing a summary of the factual information contained therein to be relied on in determining sentence, and shall give the defendant or his counsel an opportunity to comment thereon. The statement may be made to the parties in camera.

(C) Any material disclosed to the defendant or his counsel shall also be disclosed to the attorney for the government.

(D) Any copies of the presentence investigation report made available to the defendant or his counsel and the attorney for the government shall be returned to the probation officer immediately following the imposition of sentence or the granting of probation, unless the court, in its discretion otherwise directs.

(E) The reports of studies and recommendations contained therein made by the Director of the Bureau of Prisons or the Youth Correction Division of the Board of Parole pursuant to 18 U.S.C. §§4208(b), 4252, 5010(e), or 5034 shall be considered a presentence investigation within the meaning of subdivision (c)(3) of this rule.

(d) Withdrawal of Plea of Guilty. A motion to withdraw a plea of guilty or *nolo contendere* may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea.

(e) Probation. After conviction of an offense not punishable by death or by life imprisonment, the defendant may be placed on probation if permitted by law.

(f) Revocation of Probation. The court shall not revoke probation except after a hearing at which the defendant shall be present and apprised of the grounds on which such action is proposed. The defendant may be admitted to bail pending such hearing.

Amended Feb. 28, 1966, eff. July 1, 1966; April 24, 1972, eff. Oct. 1, 1972; April 22, 1974, eff. Dec. 1, 1975; July 31, 1975, Pub.L. 94-64, §3(31)-(34), 89 Stat. 375.

#### 1966 Amendment

Modified the third sentence of subdivision (a)(1) by substituting the word "counsel" in lieu of "the defendant"; and by inserting the words "to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes"; inserted subdivision (a)(2); inserted the second and third sentences of subdivision (c)(2); and added subdivision (f).

## APPENDIX A

### Probation Statute

#### 18 USC §3651. Suspension of sentence and probation

Upon entering a judgment of conviction of any offense not punishable by death or life imprisonment, any court having jurisdiction to try offenses against the United States when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may suspend the imposition or execution of sentence and place the defendant on probation for such period and upon such terms and conditions as the court deems best.

Upon entering a judgment of conviction of any offense not punishable by death or life imprisonment, if the maximum punishment provided for such offense is more than six months, any court having jurisdiction to try offenses against the United States, when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may impose a sentence in excess of six months and provide that the defendant be confined in a jail-type institution or a treatment institution for a period not exceeding six months and that the execution of the remainder of the sentence be suspended and the defendant placed on probation for such period and upon such terms and conditions as the court deems best.

Probation may be granted whether the offense is punishable by fine or imprisonment or both. If an offense is punishable by both fine and imprisonment, the court may impose a fine and place the defendant on probation as to imprisonment. Probation may be limited to one or more counts or indictments, but, in the absence of express limitation, shall extend to the entire sentence and judgment.

The court may revoke or modify any condition of probation, or may change the period of probation.

The period of probation, together with any extension thereof, shall not exceed five years.

While on probation and among the conditions thereof, the defendant--

May be required to pay a fine in one or several sums; and

May be required to make restitution or reparation to aggrieved parties for actual damages or loss caused by the offense for which conviction was had; and

May be required to provide for the support of any persons, for whose support he is legally responsible.

The court may require a person as conditions of probation to reside in or participate in the program of a residential community treatment center, or both, for all or part of the period of probation: *Provided*, That the Attorney General certifies that adequate treatment facilities, personnel, and programs are available. If the Attorney General determines that the person's residence in the center or participation in its program, or both, should be terminated, because the person can derive no further significant benefits from such residence or participation, or both, or because his such residence or participation adversely affects the rehabilitation of other residents or participants, he shall so notify the court, which shall thereupon, by order, make such other provision with respect to the person on probation as it deems appropriate.

A person residing in a residential community treatment center may be required to pay such costs incident to residence as the Attorney General deems appropriate.

The court may require a person who is an addict within the meaning of section 4251(a) of this title, or a drug dependent person within the meaning of section 2(q) of the Public Health Service Act, as amended (42 U.S.C. 201), as a condition of probation, to participate in the community supervision programs authorized by section 4255 of this title for all or part of the period of probation: *Provided*, That the Attorney General

certifies a suitable program is available. If the Attorney General determines that the person's participation in the program should be terminated, because the person can derive no further significant benefits from participation or because his participation adversely affects the rehabilitation of other participants, he shall so notify the court, which shall thereupon, by order, make such other provision with respect to the person on probation as it deems appropriate.

The defendant's liability for any fine or other punishment imposed as to which probation is granted, shall be fully discharged by the fulfillment of the terms and conditions of probation.

As amended June 20, 1958, Pub.L. 85-463, §1, 72 Stat. 216; Aug. 23, 1958, Pub.L. 85-741, 72 Stat. 834; Oct. 22, 1970, Pub.L. 91-492, §1, 84 Stat. 1090; May 11, 1972, Pub. L. 92-293, §1, 86 Stat. 136.

## APPENDIX B

### Abstract of Parole Commission & Reorganization Act

#### §4207. Information considered

In making a determination under this chapter (relating to release on parole) the Commission shall consider, if available and relevant:

- (1) reports and recommendations which the staff of the facility in which such prisoner is confined may make;
- (2) official reports of the prisoner's prior criminal record, including a report or record of earlier probation and parole experiences;
- (3) presentence investigation reports;
- (4) recommendations regarding the prisoner's parole made at the time of sentencing by the sentencing judge; and
- (5) reports of physical, mental, or psychiatric examination of the offender.

There shall also be taken into consideration such additional relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available.

Added Pub.L. 94-233, §2, Mar. 15, 1976, 90 Stat. 224.

#### §4208. Parole determination proceeding; time

(a) In making a determination under this chapter (relating to parole) the Commission shall conduct a parole determination proceeding unless it determines on the basis of the prisoner's record that the prisoner will be released on parole. Whenever feasible, the initial parole determination proceeding for a prisoner eligible for parole pursuant to subsections (a) and (b)(1) of section 4205 shall be held not later than thirty days before the date of such eligibility for parole. Whenever feasible, the initial parole determination proceeding for a prisoner eligible for parole pursuant to subsection (b)(2) of section 4205 or released on parole and whose parole has been revoked shall be held not later than one hundred and twenty days following such prisoner's imprisonment or reimprisonment in a Federal institution, as the case may be. An eligible prisoner may knowingly and intelligently waive any proceeding.

(b) At least thirty days prior to any parole determination proceeding, the prisoner shall be provided with (1) written notice of the time and place of the proceeding, and (2) reasonable access to a report or other document to be used by the Commission in making its determination. A prisoner may waive such notice, except that if notice is not waived the proceeding shall be held during the next regularly scheduled proceedings by the Commission at the institution in which the prisoner is confined.

(c) Subparagraph (2) of subsection (b) shall not apply to—

- (1) diagnostic opinions which, if made known to the eligible prisoner, could lead to a serious disruption of his institutional program;
- (2) any document which reveals sources of information obtained upon a promise of confidentiality; or
- (3) any other information which, if disclosed, might result in harm, physical or otherwise, to any person.

If any document is deemed by either the Commission, the Bureau of Prisons, or any other agency to fall within the exclusionary provisions of subparagraphs (1), (2), or (3) of this subsection, then it shall become the duty of the Commission, the Bureau, or such other agency, as the case may be, to summarize the basic contents of the material withheld, bearing in mind the need for confidentiality or the impact on the inmate, or both, and furnish such summary to the inmate.

(d) (1) During the period prior to the parole determination proceeding as provided in subsection (b) of this section, a prisoner may consult, as provided by the director, with a representative as referred to in subparagraph (2) of this subsection, and by mail or otherwise with any person concerning such proceeding.

(2) The prisoner shall, if he chooses, be represented at the parole determination proceeding by a representative who qualifies under rules and regulations promulgated by the Commission. Such rules shall not exclude attorneys as a class.

(e) The prisoner shall be allowed to appear and testify on his own behalf at the parole determination proceeding.

(f) A full and complete record of every proceeding shall be retained by the Commission. Upon request, the Commission shall make available to any eligible prisoner such record as the Commission may retain of the proceeding.

(g) If parole is denied, a personal conference to explain the reasons for such denial shall be held, if feasible, between the prisoner and the Commissioners or examiners conducting the proceeding at the conclusion of the proceeding. When feasible, the conference shall include advice to the prisoner as to what steps may be taken to enhance his chance of being released at a subsequent proceeding.

(h) In any case in which release on parole is not granted, subsequent parole determination proceedings shall be held not less frequently than:

(1) eighteen months in the case of a prisoner with a term or terms of more than one year but less than seven years; and

(2) twenty-four months in the case of a prisoner with a term or terms of seven years or longer.

Added Pub.L. 94-233, §2, Mar. 15, 1976, 90 Stat. 224.

## APPENDIX C

In *Tucker v. United States*, 404 U.S. 443 (1972) the Supreme Court ruled that it was constitutional error for a court to consider, in making its sentencing decision, prior convictions of the defendant that were invalid because, in violation of the sixth amendment, counsel had not represented the defendant or no waiver of counsel had been made. Prior criminal record is a determinative factor in sentencing; however, constitutionally infirm convictions may not serve to enhance the sentence an offender receives. The rationale of *Tucker* is that consideration of invalid prior convictions in sentencing decisionmaking misinforms rather than informs the court's discretionary judgment.

Accordingly, since convictions obtained in violation of a defendant's sixth amendment rights are improperly relied on as prior record, it is incumbent on the probation officer preparing the presentence report to verify, during the course of his investigation, whether the defendant's previous convictions\* were obtained when the defendant was represented by or waived counsel. Examination of the court records relating to such convictions ordinarily will provide the requisite information. The fact of the verification process and its results should be listed as to each prior conviction. It will be the court's responsibility to disclaim on the record reliance on invalid convictions at the time of imposing sentence.

A second limitation which the Supreme Court has placed on sentencing information is found in *Townsend v. Burke*, 334 U.S. 736 (1948). In *Townsend* the Court ruled in *1* the sentencing of a defendant based on assumptions about his criminal record that were materially false. For example, the sentencing court in *Townsend* had treated as convictions previous criminal charges against the defendant that either had been dismissed or had resulted in acquittals. Therefore, a probation officer must be careful to note, on the face of the presentence report, with respect to the arrest or criminal record of an offender, the disposition of all such charges or arrests. This rule of accuracy applies to all data in a presentence report because it is a patent violation of due process to sentence on the basis of materially untrue information.

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\*Under present constitutional doctrine no criminal defendant may be deprived of his liberty as the result of any criminal conviction, whether felony or misdemeanor, unless he was afforded the right to counsel. See *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972). As a general rule, a defendant has a right to counsel in all felony cases and in all other offenses for which incarceration is a potential penalty. In petty offense cases for which only a fine is imposed, representation by counsel need not be verified.

## APPENDIX D

### Freedom of Information Act and Privacy Act The Presentence Report

The Freedom of Information Act and the Privacy Act impose limitations on the availability, use, and disclosure of Government records and documents. The Freedom of Information Act, 5 USC 522<sup>1</sup> establishes a scheme for gaining access to Government records. On the other hand, the Privacy Act, 5 USC 552(a)<sup>2</sup> provides a structure for safeguarding the privacy of individuals by restricting the dissemination to third parties or agencies of records or the information contained in Government records relating to such individuals who are given access to the records pertaining to them.

The FOIA enjoins Governmental agencies to make available to the public its publications, orders, policy decisions and other records unless they fall within certain enumerated disclosure exceptions. The "agencies" bound by the requirements of the FOIA are all establishments in the executive branch of Government and independent regulatory agencies. The "courts of the United States" are excluded explicitly from the definition of "agency" found in the FOIA. 5 USC 551(1)(B), 552(e)

Thus Federal courts are not bound by the requirements of the FOIA. Furthermore, neither are Federal probation offices. As officers of the courts, they perform several major functions, one of which is the preparation of presentence reports, *Fed.R.Crim.P.* 32(c). Presentence reports are thus without the coverage of the FOIA. 5 USC 551(1)(B), 552(e). (1970, Supp. IV, 1974). Consequently, even though a presentence report may later be retained in the files of the Bureau of Prisons, it retains its status as a court document *not* discoverable under the FOIA. See *Cook v. Willingham*, 400 F.2d 885 (10th Cir. 1968)<sup>3</sup>. It is advisable, when forwarding a presentence report to an institution, to stamp it confidential and indicate that it is not to be disclosed pursuant to the FOIA. Similarly, offenders sentenced by Federal courts have no right under the FOIA to obtain a copy of their presentence report directly from the responsible probation office. A sample routine reply to such a request is attached (Appendix E).

With respect to the question of an individual's access to his presentence report or probation files, the response is the same under the Privacy Act as it is under the FOIA. The courts and their probation offices are not within the coverage of the Privacy Act, 5 USC 552a(a)(1); see 5 USC 551(1)(b), 552(e). The sample letter mentioned previously applies to requests made under both Acts. (Appendix F).

Nonetheless, the probation system must abide by the Privacy Act in obtaining for its use and that of the courts information contained in Governmental records or files that are subject to the strictures of the Privacy Act.

<sup>1</sup>Pub.L. No. 89-554, 80 Stat. 383 (Sept. 6, 1966), Pub.L. No. 90-23, Sec. 1, 81 Stat. 54 (June 5, 1967), Pub.L. NO. 93-502, Sec. 1-3, 88 Stat. 1561-64 (Nov. 21, 1974).

<sup>2</sup>Pub.L. No. 93-579, Sec. 3, 88 Stat. 1897 (Dec. 31, 1974).

<sup>3</sup>While it is true that probation officers perform various duties as requested by the United States Parole Commission and thus are "agents" of the Commission for some purposes, such as parole supervision or post-release planning, 18 USC 3655, as amended by Pub.L. No. 94-233, Sec. 14 (Mar. 15, 1976); 18 USC 4203(a)(4) (Mar. 15, 1976), the preparation of presentence reports is not one of those duties. Presentence reports are used by the Bureau of Prisons and Parole Commission because the courts have permitted such use. The reports are not converted, however, by such use into documents of "agencies" subject to the prescriptions of the FOIA. Access to such reports at the time of parole release hearings, when available to the Parole Commission, has recently been given inmates by the Parole Commission and Reorganization Act, 18 USC 4207, 4208 (Mar. 15, 1976). Nothing in that Act, however, alters the fact that the presentence report is a court document which is not within the purview of the FOIA. It cannot be obtained under the FOIA by an inmate or parolee from the Parole Commission.

The Privacy Act imposes restrictions on agency dissemination of records pertaining to individuals to other agencies or persons. An individual is given the right of access to his records and the further right to prevent such records from being used or divulged for purposes other than their original purpose without his consent. Hence, probation office access to needed information in Government files pertaining to individuals has been limited by the Privacy Act, except where the concerned individual consents to the release of information or such release comes within the eleven enumerated exceptions to the Privacy Act's nondisclosure rule.

As stated earlier a probation officer to gain information must have the individual's consent or the request must fall within the exceptions from nondisclosure set forth in 552(a)(b). That section provides in pertinent part:

(b) Conditions of disclosure.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—(within eleven specific exemptions).

To gather necessary information for a presentence report it is important for the probation officer to follow the procedures each Government agency has established for complying with the Privacy Act before releasing information. It is important to remember, however, that if the individual to whom the record relates consents in writing to the disclosure to a particular person or agency, it is permissible. This consensual release is a practical technique for probation offices to follow.

## APPENDIX E

### Model Response to Request for Presentence Report or Probation Records

Dear:

We are in receipt of your letter dated \_\_\_\_\_ which was received by this office on \_\_\_\_\_. Pursuant to your request of certain information pertaining to you in the files of the U.S. Probation Office, \_\_\_\_\_ District of \_\_\_\_\_, under the provisions of the Freedom of Information Act, 5 USC 552 (1970, Supp. IV, 1974), and the Privacy Act, 5 USC 552a (Supp. IV, 1974), I must advise you that neither the Freedom of Information Act nor the Privacy Act have any application to the courts of the United States or, therefore, to Probation Offices of the Federal Courts. 5 USC 551(1)(B) (1970, Supp. IV, 1974); 5 USC 552(e), 552a (a)(1) (Supp. IV, 1974); see *Cook v. Willingham*, 400 F.2d 885 (10th Cir. 1968).

For this reason, there is no right under these Acts to obtain the documents you requested (or to receive a list of agencies or persons to whom information in our files has been disseminated). (Similarly, for that reason we have no regulations regarding disclosure of our files or records under these two Acts.)

If this office can be of further assistance to you, please feel free to correspond with the undersigned.

Yours truly,

U.S. Probation Officer

1. The first part of the document discusses the importance of maintaining accurate records of all transactions.

2. It is essential to ensure that all data is entered correctly and consistently.

3. Regular audits should be conducted to verify the accuracy of the records.

4. The second part of the document outlines the procedures for handling discrepancies.

5. Any errors identified during the audit process should be reported immediately.

6. The third part of the document provides a detailed description of the system's components.

7. Each component is described in terms of its function and how it interacts with the others.

8. The fourth part of the document discusses the future plans for the system.

9. It is hoped that these plans will be implemented in the near future.

10. The document concludes with a summary of the key points discussed.

APPENDIX F

PROB 13A  
(12/76)

# UNITED STATES DISTRICT COURT

-----  
DISTRICT  
-----

-----  
**Defendant's Approval To Institute a Presentence Investigation  
Before Conviction or Plea of Guilty**  
-----

I, -----, hereby consent  
(Name of Defendant)

to a presentence investigation by the probation officers of the United States district courts. This investigation is for the purpose of obtaining information useful to the court in the event I should hereafter plead guilty or nolo contendere or be found guilty.

By this consent, I do not admit any guilt or waive any rights. I understand that any reports prepared will not be shown to the court or any one else unless and until I have been found guilty or entered a plea of guilty or nolo contendere. I understand, however, that I may hereafter agree in writing to disclosure of such reports to the court before I have been found guilty or entered a plea of guilty or nolo contendere.

I have read, or had read to me, the foregoing consent and fully understand it. No promise has been made to me as to what final disposition will be made of my case.

-----  
(Date)

-----  
(Signature of Defendant)

-----  
(Date)

-----  
(Defendant's Attorney)

# UNITED STATES DISTRICT COURT

\_\_\_\_\_  
DISTRICT \_\_\_\_\_  
\_\_\_\_\_

## Defendant's Consent to the Court's Inspection of Presentence Report Prior to Plea of Guilty, Nolo Contendere, or Finding of Guilt

\_\_\_\_\_

I, \_\_\_\_\_, hereby consent  
(Name of Defendant)

to review of my presentence report by a judge at any time, including the time prior to entry of a plea of guilty or nolo contendere or a finding of guilt.

I have read, or had read to me, the foregoing consent and fully understand it. No promise has been made to me as to what the final disposition of my case will be.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of Defendant)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Defendant's Attorney)

# UNITED STATES DISTRICT COURT

\_\_\_\_\_  
DISTRICT \_\_\_\_\_

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## Defendant's Waiver of Preparation of Presentence Investigation and Report

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I, \_\_\_\_\_, hereby waive  
(Name of Defendant)

my right to have the probation officers of the United States district courts conduct a presentence investigation for presentation to the sentencing court. This investigation and report which I now forego is for the purpose of obtaining information useful to the court in setting sentence.

I have read, or had read to me, and fully understand the preceding waiver form.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of Defendant)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Defendant's Attorney)



SAMPLE

PRESENTENCE INVESTIGATION REPORTS:

David H. Long  
Herman P. Hesse

UNITED STATES DISTRICT COURT

PRESENTENCE REPORT

NAME (Last, First, Middle)				DATE
Long, David H.				August 6, 1977
ADDRESS		LEGAL ADDRESS		DOCKET NO.
29 Everett Street Springfield, Ma 01104		Same		77-0084M-02
				RACE
				Caucasian
				CITIZENSHIP
				U.S.
AGE	DATE OF BIRTH	PLACE OF BIRTH	SEX	EDUCATION
19	9-25-57	Springfield, Ma.	Male	12th grade
MARITAL STATUS		DEPENDENTS		
Single		None		
SOC. SEC. NO.		FBI NO.		OTHER IDENTIFYING NO.
111-22-3333		123 456 A7		

OFFENSE

Obstruction of mail, 18 U.S.C. 1701  
One Count Information

PENALTY

6 mos. and/or \$100  
ELIGIBLE FOR YOUTH CORRECTIONS ACT

CUSTODIAL STATUS

Personal recognizance

PLEA

Offered plea of guilty pursuant to Rule 11(e) agreement, 7-18-77.

VERDICT

Acceptance deferred.

DETAINERS OR CHARGES PENDING

None

OTHER DEFENDANTS

Lawrence Hill, disposition scheduled 8-15-77

ASSISTANT U.S. ATTORNEY

George Young, Esq.

DEFENSE COUNSEL

William Olds, Esq.  
112 State Street  
Springfield, Ma. (413) 555-1234  
(Appointed)

DISPOSITION

SENTENCING JUDGE

DATE

OFFENSE:

Official Version. On May 1, 1977, Postal Inspectors received an anonymous telephone call that Lawrence Hill had sold items stolen from the mail. Investigation ascertained that Hill worked as a truck driver for the Pioneer Paper Company of Springfield and was frequently sent to pick up mail for his employer. It was also learned that David H. Long, who was employed by Pioneer Paper as a janitor, occasionally accompanied Hill. Postal inspectors instituted surveillance at the Post Office. On May 5, 1977, inspectors saw Hill and Long remove two parcels from a loading dock and place them in their truck. The truck was stopped at the gate and the packages, containing a woman's coat and a hydraulic automobile jack, were found inside. These items had a total retail value of \$357. Both defendants admitted that they had taken packages from the Parcel Post Annex on this and three previous occasions. Total loss is estimated at less than \$750.

On July 18, 1977, Long appeared before Magistrate H. A. Good and offered a plea of guilty pursuant to an agreement under Rule 11 (e)(1)(C) of the F.R.Crim.P. The agreement proposes that imposition of sentence be suspended with probation for one year under the Federal Youth Corrections Act. Acceptance of the plea was deferred pending a presentence report. The defendant has executed consent forms authorizing the preparation of a presentence report and the court's inspection of the same.

Defendant's Version of the Offense. Mr. Long states he was an accomplice to codefendant Hill who originally proposed that they take the packages. The defendant asserts that Hill opened the packages and sold the contents. After the sales, Hill would give Long \$15.00 or \$20.00 for his share. Mr. Long said that he went along because it seemed an easy way to make extra cash.

Codefendant Information. Codefendant Lawrence Hill has also offered a plea of guilty and Hill admitted to the probation officer that he was the prime mover in the theft from the loading dock.

PRIOR RECORD:

Juvenile Adjudications

4-28-74	Dist. the	Springfield, Mass.	6 mos.
Age 16	Peace	Juvenile Court	prob.

The defendant was represented by Attorney Robert Parker. Mr. Long and four other juveniles were arrested for fighting and throwing bottles at a rock concert. The juvenile probation officer reported that David performed satisfactorily under supervision.

PERSONAL AND FAMILY DATA:

David Long is the younger of two children born to Henry and Ruth Brown Long with whom he resides. His early years were unremarkable and he was a happy and outgoing child. However the family circumstances changed in 1970 when Henry Long suffered a stroke which left him partially paralyzed and unable to work. This event forced Ruth Long to seek employment and she now works full time in a factory in Springfield. Both parents agree that the necessity of focusing family resources on Henry Long's medical condition had a detrimental effect on David. Since 1970 David has become withdrawn and uncommunicative with his parents. Mr. and Mrs. Long feel responsible for this and regret that Mrs. Long had to find full time work while David was still in school. The parents feel that part of the blame for David's involvement in the present offense rests with them.

David was educated in the Springfield Public School System. He graduated from Vocational High School on June 6, 1976. He completed a general program and he took specialized courses in radio and television repair. David's high school counselor reports that he seldom came to the attention of school authorities and he was considered an average student. David's I.Q. was tested twice and each test placed him in the slightly above average range of intelligence.

David was unemployed for 5 months after graduating from high school. On November 4, 1976, he began working as a janitor at the Pioneer Paper Company where he earned \$3.00 an hour. He stayed at this job until he was fired as a result of the present offense.

David was considered a reliable employee who kept largely to himself. He had indicated a willingness to accept additional responsibility. However, the company would not consider reemploying David who is now dependent on his parents for financial support. He has no substantial assets or liabilities.

David is in good health. He admits to having experimented with marihuana but denies frequent use. He is reluctant to talk about himself and he expresses no strong feelings on any subject. He indicated no particular personal or career goals.

#### EVALUATION:

This young man admits participation in the theft of packages from the mail. He was less culpable than his codefendant who instigated the theft. David's expected compensation was small and his involvement in the offense was casual and impulsive. His participation has cost him his job.

David's family is concerned about him but his parents feel powerless to communicate with him. His father's disability has affected him deeply but he is unsure of how to handle these feelings. David adopts an attitude of indifference which has characterized his performance in school as well as his relations with his family. This attitude results in a passive approach to life although his job seemed to engage his interest.

Alternative Plans. David is eligible for YCA treatment or could be sentenced as an adult if the court makes a "no benefit" finding. If the court decides on probation, the supervision plan would have two main features. First, it would address David's need for employment. David has been referred to the Springfield Regional Skills Center where he was interviewed and took aptitude tests. The Center is funded under the Comprehensive Employment and Training Act and will accept David in their building maintenance program. There he will receive 16 weeks of training in basic carpentry, plumbing, and electrical work. David has aptitude in these areas, is willing to participate, and can enroll in 3 weeks. He will receive a stipend during the training period and he will have good prospects for employment upon completion.

Second, the supervision plan would involve an attempt to improve the relationship between David and his parents. David is likely to continue living at home and his parents can provide important emotional support if he is willing to accept it. The probation officer has consulted with a counselor from the Family Service Agency which runs bimonthly group sessions for disabled people and their families. These sessions seek to contain the emotional hazards of a disability by educating people as to what problems may be encountered. Mr. and Mrs. Long have enthusiastically agreed to participate in these sessions. David is reluctant but has agreed to attend one meeting.

For the first 4 months of supervision, David would have bimonthly contact with his probation officer while the details of this plan are implemented. The skill center would also provide weekly progress reports. If he progresses well, the level of supervision could subsequently be reduced.

Sentencing Data. During 1976, disposition of all postal offenses in this district resulted in probation in 76 percent of the cases. Ten percent received split sentences and 14 percent were committed. Nationwide, 56.2 percent of defendants sentenced for postal theft were placed on probation. The only way this case would fall under the jurisdiction of the U. S. Parole Commission is if the court commits under the Youth Corrections Act. In that event we estimate that the Commission would consider this an offense of "low moderate" severity. David's salient factor score of 9 would result in a parole prognosis of 8 to 12 months.

Respectfully submitted,

Michael Talbot  
U. S. Probation Officer

RECOMMENDATION:

The plea agreement in this case calls upon the court to suspend imposition of sentence and to place the defendant on probation for one year under the Youth Corrections Act. This course of action is reasonable and the Probation Office recommends that the court accept the plea and adopt the proposed disposition. The probation officer would then implement the plan described above.

Respectfully submitted,

Michael Talbot  
U. S. Probation Officer

Approved: \_\_\_\_\_

J. Grant Hogan  
Chief U. S. Probation Officer

UNITED STATES DISTRICT COURT

PRESENTENCE REPORT

NAME (Last, First, Middle)				DATE
Hesse, Herman P.				October 14, 1977
ADDRESS		LEGAL ADDRESS		DOCKET NO.
Hampden County House of Correction		71 Lee Avenue Holyoke, Mass.		77-00124-01
				RACE
				Caucasian
				CITIZENSHIP
				U.S.
AGE	DATE OF BIRTH	PLACE OF BIRTH	SEX	EDUCATION
28	11-15-48	Boston, Mass.	Male	10th grade
MARITAL STATUS		DEPENDENTS		
Divorced		One, in custody of former wife		
SOC. SEC. NO.		FBI NO.		OTHER IDENTIFYING NO.
987-65-4321		999 888 H		

OFFENSE

D/Mass.--Consp. & Dist. heroin, 21:USC, 841(a)(1) & 846

PENALTY

0-15 yrs. and/or \$25,000 and SPT of at least 3 yrs. on each count

CUSTODIAL STATUS

In custody in lieu of \$100,000 surety bond since 8-15-77

PLEA

Guilty to Mass. Ind. 9-29-77; will plead under Rule 20 to W/D Tx. Ind.

VERDICT

DETAINERS OR CHARGES PENDING

Rule 20, W/D Tx, Doc. #77-00135-01, Violation of 21:USC, 952(a) & 960 (a)(1) & 841(a)(1), same penalty.

OTHER DEFENDANTS

Nancy Rooney, in local custody in Mexico

ASSISTANT U.S. ATTORNEY

David Crawford, Esq.

DEFENSE COUNSEL

Philip Pratt, Esq.  
981 Main Street  
Springfield, Mass. (413) 555-4321  
(Retained)

DISPOSITION

SENTENCING JUDGE

DATE

OFFENSE:

Official Version. Herman Hesse is the subject of two separate indictments, one in the District of Massachusetts and one in the Western District of Texas. On August 20, 1977, the Grand Jury in Massachusetts returned an Indictment against Hesse and Nancy Rooney charging that they conspired between May 28, 1977, and July 30, 1977, to distribute a quantity of heroin and that they distributed that heroin on June 23, 1977.

On August 26, 1977, A grand Jury in El Paso, Texas, returned an Indictment against Hesse and Rooney charging that they imported 101.7 grams of heroin into the United States on or about July 30, 1977, and that they distributed that heroin on the same date at El Paso, Texas. Hesse appeared on September 29, 1977, and pled guilty to the Massachusetts indictment. He has indicated his intention to plead guilty to the Texas indictment under Rule 20.

This investigation began in May 1977 when the Drug Enforcement Agency received information that Hesse was looking for a buyer for a large quantity of heroin. On May 28, 1977, an undercover agent was introduced to Hesse at a bar in Springfield and Hesse acknowledged that he was looking for a buyer for a kilo of heroin. He was initially reluctant to deal with a stranger but, after four meetings, he offered to make the agent a partner if the agent agreed to purchase the heroin as soon as it came across the border into Texas. The agent accepted the offer but insisted on first receiving a sample of the heroin.

On June 23, 1977, the agent and Hesse met in Springfield and drove to a shopping mall where they met Hesse's girlfriend, Nancy Rooney. After receiving instructions from Hesse, Rooney went to her car and returned with a sample of 2.70 grams of heroin which she gave to the agent. The latter paid Hesse \$300. The substance was tested and found to contain 31.7 percent heroin.

On July 21, 1977, the agent informed Hesse that the sample was of acceptable quality. On July 24, Hesse instructed the agent to meet him in El Paso, Texas, on July 29. The agent flew to El Paso where he met with Hesse and Nancy Rooney at the Yellow Rose Hotel. At 8:15 a.m., on July 30, Hesse and Rooney crossed the border into Juarez. They returned 2 hours later and Hesse told the agent that

he was able to obtain only a quarter kilogram of heroin. The agent expressed disappointment but Hesse said that the heroin was of very high quality and could be cut many times. Hesse then sold the agent the first installment of 101.7 grams for \$4,000. Tests determined that this substance contained 44.6 percent heroin. Hesse explained that Rooney and he would return to Mexico that afternoon to obtain the balance.

Hesse and Rooney crossed into Juarez and were arrested by Mexican police later in the day. Nancy Rooney had 147.3 grams of heroin in her possession. No heroin was found on Hesse who was released after two days in custody. Rooney was held for trial. Hesse returned to Massachusetts where he was arrested on August 15, 1977.

Defendant's Version. "I was going to Mexico on a vacation and Nancy decided to come with me. This guy she met in Springfield was pestering her to get him some heroin. I had seen him a couple of times in June. All of a sudden he shows up in El Paso and demands to know where the stuff is. She finally agreed to get him some and she asked me to come in case anything happened. I was there so I guess I'm guilty. All of a sudden I was arrested by the Mexican cops but they let me go because they didn't have anything on me. Then, all of a sudden I'm arrested up here. My lawyer says entrapment is hard to prove so I guess I'm guilty. But I didn't say all those things the narc claims. I don't deserve to go to jail."

#### PRIOR RECORD

##### Juvenile Adjudications

11-05-62	Using motor vehicle	Springfield, Mass.	1 year
Age 14	without authority	Juvenile Court	probation

Mr. Hesse was represented by counsel. He and two other juveniles stole a car and went on a "joy ride." Mr. Hesse made a good adjustment on probation during the initial months, but became increasingly uncooperative thereafter.

10-28-63	Breaking & Entering	Holyoke	Committed, Youth
Age 15		District Ct.	Service Board

Mr. Hesse was represented by counsel. He and one other juvenile broke into a home in Holyoke. The Youth Service Board sent him to the Industrial School at Shirley, Massachusetts, where he remained until June 1964 when he was paroled. He was discharged one year later. His institutional performance was routine. He participated in a woodworking course and was placed on report on one occasion for fighting in the dining hall.

Adult Record

12-23-68	Shoplifting	Springfield P.D.	Dismissed,
Age 20			Lack of Prosecution

Hesse was arrested after he allegedly attempted to steal several jewelry items from a department store. The store manager declined to press charges.

5-11-69	Receiving	Holyoke	4 mos. County Jail
Age 20	Stolen Property	District Ct.	ss; prob. 2 years

Mr. Hesse was represented by counsel. He was arrested after he sold a stolen television set to a pawn shop. The probation officer reports that he had little success with Mr. Hesse who was constantly on the borderline of violation.

9-15-70	Burglary & Entering	Northampton	6 mos. County Jail
Age 21	in the nighttime	District Ct.	

Mr. Hesse was represented by counsel. He was apprehended at 2:15 a.m., inside a drug store. He had activated a silent alarm when he entered the building. Jail officials recall that Mr. Hesse attempted to be reclusive while incarcerated. He voluntarily spent several months in segregation because of his fear of attack by other inmates.

6-27-75	Larceny over	Hampden Cty.	2 yrs. prison ss;
Age 25	\$100 and	Superior Ct.	18 mos. prob. w/
	Forgery		restitution

Mr. Hesse was represented by counsel. He withdrew \$500 from a bank account using a stolen passbook and forged withdrawal slips. He was identified through bank photographs. Mr. Hesse paid \$310 in restitution and the balance was remitted. He performed well under probation supervision.

## PERSONAL AND FAMILY DATA

Defendant. Herman Hesse was born on October 15, 1948, in Boston, Massachusetts. His parents, natives of Austria, came to the United States as displaced persons after World War II. The family has lived for the last fifteen years at their present residence in Holyoke. The defendant's early years were turbulent because of many violent arguments between his parents. These were caused by Mrs. Hesse's belief that her husband was an excessive drinker. She summoned police assistance on several occasions although no arrests were made. In 1955 Mrs. Hesse contracted tuberculosis. She was hospitalized for almost one year and the father was unable to keep the family together. The defendant and his siblings were placed in the Western Massachusetts Home for Children but the family was reunited when Mrs. Hesse recovered. The defendant remained with his family until he married at the age of twenty. He returned to the family home after his divorce three years later.

Mr. and Mrs. Hesse picture their son as a well-intentioned individual whose difficulties with the law were caused by his unwise selection of associates. They are bitter towards codefendant Nancy Rooney whom they believe was responsible for this offense. They view his previous juvenile and adult transgressions as minor matters which were treated with undue harshness by police and the courts. His parents describe the defendant as an intelligent and ambitious individual who values financial success above all else. They are proud of the fact that, in recent years, the defendant has acquired such material possessions as an expensive automobile and a boat. They also note that he has been especially generous with his younger brother and sister.

Parents and Siblings. The father, Henry Hesse, age 59, resides with his family and for the last seventeen years has been employed as a machine operator earning a moderate salary. The home atmosphere improved considerably when Mr. Hesse stopped drinking approximately five years ago. The mother, Geraldine Ericksen Hesse, age 58, resides with her husband and is a housewife. Her health is poor due to respiratory ailments.

There are two siblings. Stanley Hesse, age 24, resides with his parents and is unemployed. Stanley believes that his brother is the victim of harassment by law enforcement authorities. Audrey Hesse, age 19, resides with her parents and is a community college student.

Marital. Herman Hesse married Barbara Raymond in a civil ceremony in Hartford, Connecticut on November 22, 1968. Both parties were 20 years old at the time and she was pregnant. The couple had one child, Herman, Jr., who was born on April 29, 1969. Mrs. Hesse reports that the marriage was troubled from the start by financial problems since the defendant was unemployed. He turned to illegal means of supporting the family and his subsequent arrests caused even more strain on the couple's relationship. There were several brief separations during 1969 and 1970, and a longer separation when the defendant was sentenced to serve 6 months in September of 1970. When he was released, Mrs. Hesse found him a "different man" and it was impossible to reconstitute their relationship. The Hampden County Probate Court granted a divorce on December 28, 1971, on grounds of incompatibility and awarded her custody of the child. The defendant was required to pay \$20 a week child support. Mrs. Hesse is employed as a telephone operator. She reports that her ex-husband's support payments have been sporadic. He often goes for months without visiting the child or making any payments but he will then arrive with lavish gifts for his son and lump sum support payments. Mrs. Hesse says that her relationship with the defendant is now amicable but they see each other infrequently.

Mr. Hesse asserts that he has no plans to marry again. He stated that Nancy Rooney was merely a friend.

Education. Mr. Hesse was educated in local public schools. He left junior high school in October 1963 when he was committed to the Youth Service Board. He returned to Baran High School in Holyoke in the fall of 1964 and dropped out of the eleventh grade in November 1965.

School officials describe Mr. Hesse as an intelligent individual who never worked up to his capabilities. His grades were generally C's and D's. Mr. Hesse left school because he was older than most of his classmates, and wanted to get a job.

Employment. Between November 1976 and the time of his arrest Mr. Hesse was unemployed and collected unemployment compensation of \$72 a week. From August 1974 to November 1976, he was a fork-lift operator at the Smith Chemical Company in Northampton. He earned \$4.10 an hour but he was subject to frequent layoffs. Company officials described him as an uncooperative employee with a high degree of tardiness. He would not be considered for reemployment.

Between March 1972 and December 1973, Mr. Hesse worked in the warehouse of the United Rug Company in Easthampton, Massachusetts. He earned \$2.75 an hour and he quit after a disagreement over hours. Between 1968 and 1971, Mr. Hesse was sporadically employed in the roofing business. This work paid well but he seldom was able to get more than 3 or 4 months work in any year.

After he left high school, Mr. Hesse worked on a delivery truck for Central Bakery, Inc., of Holyoke. He held this job between April 1966 and October 1968 and earned the minimum wage. He lost this job when the company went out of business.

Mr. Hesse said that he would like some day to open his own business. He had no clear ideas about the nature of this business but stressed that he saw himself in a managerial capacity and would hire others to do the menial labor.

#### HEALTH:

Physical. Mr. Hesse is in good physical condition. He denies having used drugs of any kind and he specifically disclaims the use of heroin. Discussion with family members as well as with law enforcement sources revealed no information that would contradict Mr. Hesse's assertions in this respect. A physical examination and urinalysis test performed at the jail were negative for heroin use.

Mental and Emotional. On two occasions Mr. Hesse was tested in public schools and received I.Q. scores of 102 and 113.

Mr. Hesse has been examined by mental health professionals on two occasions. The first occurred shortly after Mr. Hesse was committed to the Youth Service Board in 1963. A psychologist diagnosed him as, "a person whose anxiety is stimulated by a frustrated need for affection. Herman has developed no healthy conscience. His response to social demands is not based on any close commitment to moral principles."

Mr. Hesse was examined once again as a result of this court's pretrial order. Dr. Robert Land administered a battery of psychological tests, the results of which suggested, "that he seems to be unusually fearful of being overpowered and destroyed. It is obvious that he has been unable to resolve childhood problems and continues to feel quite rejected. He tends to view threatening environmental forces as coming outside his control."

#### FINANCIAL CONDITION:

Assets. Mr. Hesse lists two main assets: one is a 1977 Cadillac purchased in January of this year for \$10,640. This automobile was confiscated by the Drug Enforcement Administration. The other asset is a 19-foot fiberglass speedboat with a 115 horsepower Mercury outboard engine worth approximately \$4,000.

Mr. Hesse's parents displayed to the probation officer a savings account passbook with a present balance of \$7,146.23. The account was listed to Mr. Hesse and his mother, but the parents made it clear that the defendant had made the deposits. When questioned about this, Mr. Hesse asserted that the account in fact belonged to his mother and that his name was on it only as a matter of convenience. His mother subsequently contacted the probation officer and retracted her earlier statement. She said that she made a mistake and that the money in the account belonged to her.

Liabilities. The only debt Mr. Hesse lists is a loan from GMAC to finance the purchase of his 1977 Cadillac. The loan balance is presently \$4,200 and Mr. Hesse plans to make no further payments until such time as his car is returned to him by the Government.

#### EVALUATION:

Although he attempts to shift responsibility to his codefendant, Mr. Hesse was the principal figure in the importation and sale of over 100 grams of high quality heroin. Were it not for the intervention of the Mexican authorities, he would have completed the sale of a quarter kilogram to an undercover agent. Mr. Hesse is not a user of the drug. He apparently values financial success to the point that he made a calculated decision that heroin trafficking was profitable. His lack of concern about the moral aspects of his decision confirms the observation of mental health professionals that his personality lacks some of the constraints under which most people operate. For Mr. Hesse, participation in this offense, as well as in earlier offenses, was a logical means of satisfying his economic motives.

The members of Mr. Hesse's family are intensely loyal to him and they have an unrealistic view of his participation in criminal activities. They do not question the sources of his assets, which are surprisingly large for a person with his employment history. The family cannot be counted upon to exert the pressure that might

convince Mr. Hesse to conform to law abiding behavior. Mr. Hesse himself is unrealistic in his personal goals. Without much education or skill, he expects a high degree of financial compensation, but he has not thus far shown a willingness to work towards that goal. It is unlikely that Mr. Hesse will attempt conventional paths to economic success until he is convinced that illegal means are too hazardous.

Alternative Plans. Adult sentencing provisions apply in this case and a special parole term of a least 3 years is required. Under any sentence imposed, Mr. Hesse will eventually come under the supervision of the probation office. An appropriate supervision plan would require immediate attention to Mr. Hesse's lack of marketable skills. The first step would be participation in a GED program either in an institution or in the community. This would prepare him to accept more specialized training under the auspices of the Massachusetts Rehabilitation Commission. At least during the first 6 months of supervision, he would require maximum supervision with weekly reporting. The probation office suggests a requirement that he reside in Northrop House where a highly structured environment is available. Northrop House has a contract with the Division of Legal Medicine and could provide Mr. Hesse with professional mental attention. Over the long term, the probation officer would pay particular attention to Mr. Hesse's financial dealings. He would also be encouraged to live independently of his family.

Sentencing Data. The following information was obtained from the Statistical Analysis and Reports Division of the Administrative Office of the United States Courts for 1977.

Offense:

	<u>NATIONALLY</u>		<u>D/MASS.</u>	
	<u>NUMBER</u>	<u>PERCENT</u>	<u>NUMBER</u>	<u>PERCENT</u>
Total defendants sentenced:	4,426		83	
Fine only:	14	.3		
Received probation:	1,108	25.0	31	37.3
Split sentence:	56	1.3		
Imprisonment:	3,244	73.3	52	62.7
Average sentence of imprisonment was:	54.4	Months	35.5	Months
Salient Factor Score*: 5	Offense Severity: Very High			

Parole Prognosis: If defendant is committed, it is likely he will serve between 48 and 60 months according to the Parole Commission Guidelines.

\*These are estimates of the U. S. Parole Commission score.

# RECOMMENDATION

The probation office recommends commitment to the custody of the Attorney General and a mandatory special parole term of 3 years. This recommendation considers the quantity and quality of the heroin involved, and the defendant's prior record.

The court may wish to consider imposing sentence under 18 U.S.C. 4205(b)(2) so that the Parole Commission can release him in the event that institutional conditions present a critical hazard to his mental health. The court might also consider recommending commitment to a minimum security institution where Mr. Hesse would feel less threatened.

Respectfully submitted,

Matilda Gormally  
U. S. Probation Officer

Approved: \_\_\_\_\_  
J. Grant Hogan  
Chief U. S. Probation Officer

S A M P L E

INFORMATION EXCLUDED FROM THE PRESENTENCE REPORT AS POTENTIALLY  
EXEMPT FROM DISCLOSURE: RULE 32(c)(3)(A)

Marital. The defendant's ex-wife reported that when he was released from jail in early 1971 he showed no interest in resuming sexual relations with her. His behavior was also unusual in other respects, and he exhibited great tension and insomnia. Mrs. Hesse began to suspect that he had some experience in jail that had affected his sexual function. She questioned him about this on several occasions and he responded with bitter denials. Mrs. Hesse became convinced that it was impossible to save the marriage and she filed for divorce. Mrs. Hesse was adamant that her husband not learn that she provided this information.

Officials of the Hampshire County Jail confirmed that Mr. Hesse was the victim of a homosexual assault in the jail. He refused to identify his attackers but he asked to be moved to an isolated cell. This request was granted.

Officials of the Hampden County Jail, where Mr. Hesse is now lodged, report that he has displayed acute anxiety during his confinement. They are not aware of the reasons for this but they note that Mr. Hesse has requested a transfer to the administrative segregation section. The jail has not complied with this request because of overcrowding.

Mental and Emotional. The latest psychological report suggests that Mr. Hesse will continue to experience acute anxiety whenever he is placed in a situation that threatens recurrence of the homosexual assault. The psychologist believes that Mr. Hesse is not overtly homosexual but that his sexual orientation is ambiguous. Since the attack, Mr. Hesse has reportedly experienced complete sexual dysfunction.

## SUMMARY OF WITHHELD FACTUAL INFORMATION

If the court is of the view that the above information is excludable under Rule 32(c)(3)(A) and if the court intends to rely on that information in determining sentence a summary of the withheld factual information is provided for disclosure to the defendant or his counsel.

The court has received information about experiences of the defendant while previously incarcerated which caused him to have serious emotional problems. Subsequent psychological examination confirmed this existence.





**END**