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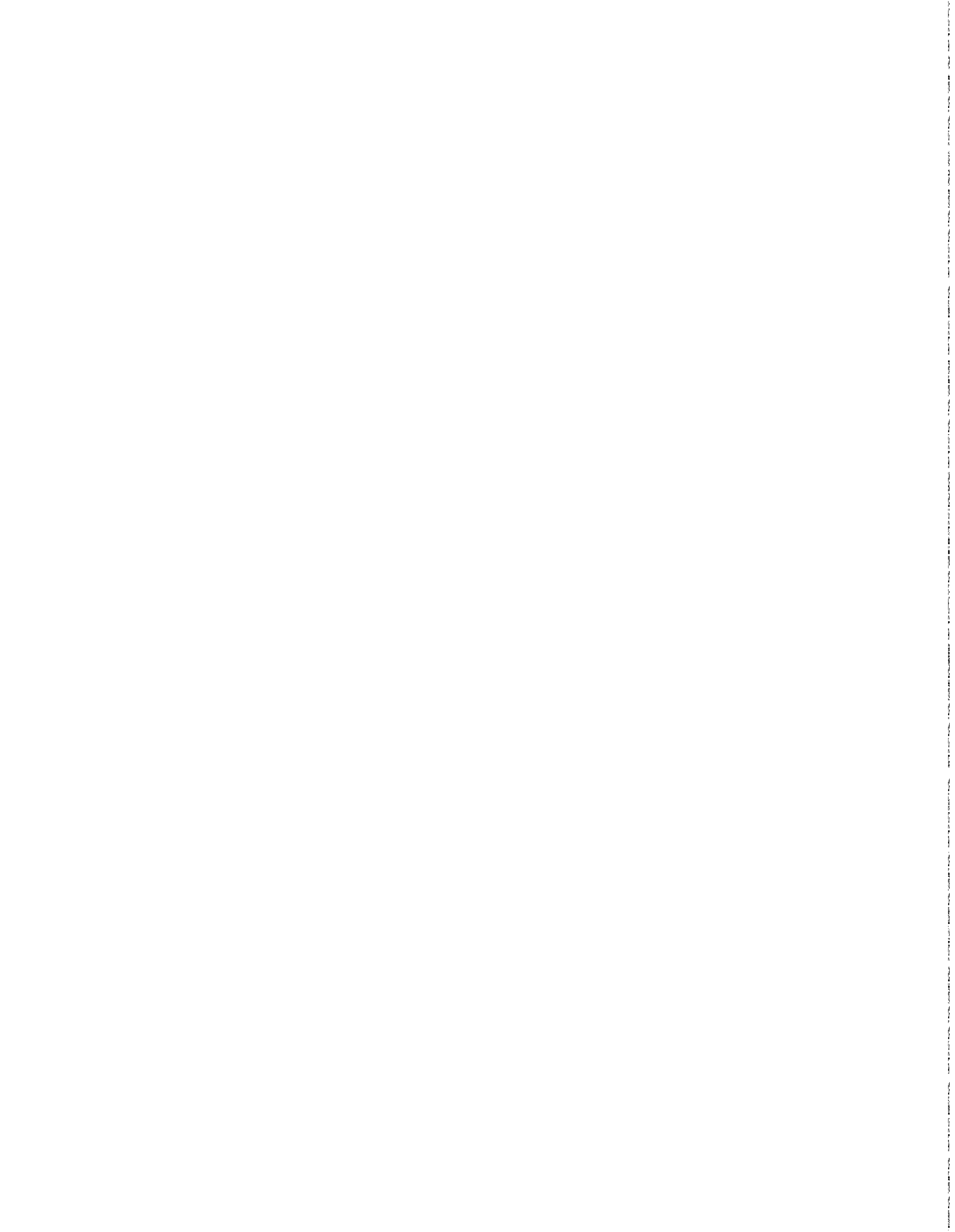
Briefing Report to the Chairman  
Subcommittee on Criminal Law  
Committee on the Judiciary  
United States Senate

December 1986

# CRIMINAL PENALTIES

## Resulting From the Organized Crime Drug Enforcement Task Forces







United States  
General Accounting Office  
Washington, D.C. 20548

General Government Division

B-223391

December 22, 1986

The Honorable Paul Laxalt  
Chairman, Subcommittee on Criminal Law  
Committee on the Judiciary  
United States Senate

Dear Mr. Chairman:

By letter dated June 19, 1985, you requested that we examine selected accomplishments of the Organized Crime Drug Enforcement Task Force (OCDETF) Program. On June 27, 1986, we issued a fact sheet (Criminal Fines Imposed and Collected as a Result of Investigations of the Organized Crime Drug Enforcement Task Force Program GAO/GGD-86-101FS, June 27, 1986). On August 28, 1986, we briefed your staff on our analysis of court records on 1,697 offenders who were convicted and sentenced under the OCDETF Program. At the briefing, your office requested that for the 1,697 offenders we (1) compare the actual penalties imposed<sup>1</sup> (sentences and fines) with the maximum penalties<sup>2</sup> authorized by statute at the time of sentencing; and (2) compare the dollar amount of criminal fines imposed by the courts with the actual dollar amount collected by the federal government as of December 31, 1985. This briefing report responds to that request.

The 1,697 offenders included all those we could identify from information supplied to us by the Drug Task Force Administrative Unit within the Department of Justice. The 1,697 offenders included those convicted and sentenced during calendar years 1983 and 1984 and any codefendants who were sentenced in calendar year 1985. Our field work was conducted between January 1986 and September 1986. A detailed description of our objectives, scope, and methodology is included in the appendix.

The OCDETF Program was established in January 1983 as the cornerstone of the Administration's efforts against organized

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<sup>1</sup>Many factors enter into the setting of a sentence for an offender. Such factors include the nature of the offense, the offender's prior criminal record, and other mitigating factors.

<sup>2</sup>We defined the maximum penalty (term of imprisonment or criminal fine) as the maximum period of incarceration or criminal fine that the court could have imposed for all charges that a defendant pled guilty to or had been found guilty of without running the terms of imprisonment and/or fines on each charge or separate sentence consecutively.

crime and drug trafficking. The program's mission is to identify, investigate, and prosecute high-level members of drug trafficking enterprises and to destroy their operations by adding new federal resources and fostering coordination and cooperation among the agencies involved.

Of the 1,697 offenders convicted and sentenced as a part of the OCDETF Program in 71 judicial districts,

- 369 (22 percent) received probation or a suspended sentence (no term of imprisonment),
- 842 (50 percent) received prison sentences of 5 years or less,
- 413 (24 percent) received prison sentences of over 5 years to 15 years, and
- 73 (4 percent) received prison sentences of over 15 years to life.

For the 1,328 offenders receiving a term of imprisonment, the median<sup>3</sup> sentence imposed by the courts was 51 months. The median maximum concurrent sentence<sup>4</sup> that could have been imposed was 180 months.

Our examination of court records showed that criminal fines totaling about \$67.3 million could have been imposed by the courts on 1,695 offenders. The two remaining offenders were convicted under statutes which do not authorize the court to impose fines. Criminal fines totaling about \$9.5 million were imposed by the courts for 385 of the 1,695 offenders. The median fine imposed by the courts was \$10,000, while the median maximum concurrent fine that could have been imposed was \$25,000. For example, if an offender was convicted of two counts each allowing by statute a \$25,000 fine or a total fine of \$50,000, we used the maximum concurrent fine of only \$25,000 and compared it to the actual fine imposed. We determined that \$819,448, or about 8.6 percent of the total fines imposed, had

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<sup>3</sup>The median is the value in a distribution with an equal number of values above and below.

<sup>4</sup>We chose the maximum concurrent term because it was a conservative comparison of the maximum sentence allowed by statute to the actual sentence imposed. For example, if an offender was convicted of two counts each allowing by statute a 5-year term of imprisonment or total sentence of 10 years, we used the maximum concurrent term of only 5 years and compared it to the actual sentence imposed.

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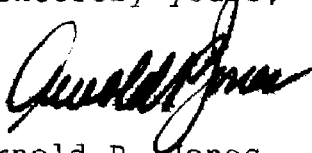
been collected by the federal government as of December 31, 1985. Additional details on the results of our review are presented in the appendix.

Further, as a part of your request we are also (1) assessing the validity of certain accomplishments reported by the task forces, (2) determining whether task force attorneys are using statutes with enhanced drug penalties in cases where a defendant had a prior drug conviction, and (3) determining whether task force attorneys are complying with OCDETF guidelines regarding the use of plea agreements. A separate report will be issued in the future on these matters.

As requested by your office, we did not obtain official agency comments on this report. However, we discussed the report with Justice officials and their views have been considered and incorporated in the report where appropriate. We trust this information will be useful to you in oversight of the Department of Justice's activities. For example, the Anti-Drug Abuse Act of 1986 (Public Law 99-570 dated October 27, 1986) increased the sentences and fines that can be imposed for most drug offenses. The information on criminal penalties in this report provides a baseline of data which can be used to compare the penalties under the new law.

As you requested, we are sending copies of this briefing report to each member of the House and Senate Committees on the Judiciary. Also, we are sending copies to interested parties and will make copies available to others upon request. If there are any questions regarding the contents of this briefing report, please call me on (202) 275-8389.

Sincerely yours,



Arnold P. Jones  
Senior Associate Director

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ABBREVIATIONS

|        |                                               |
|--------|-----------------------------------------------|
| CCE    | Continuing Criminal Enterprise                |
| OCDETF | Organized Crime Drug Enforcement Task Force   |
| RICO   | Racketeer Influenced and Corrupt Organization |

OBJECTIVES, SCOPE, AND METHODOLOGY

By letter dated June 19, 1985, the Chairman, Subcommittee on Criminal Law, Senate Committee on the Judiciary, requested that we examine selected accomplishments of the Organized Crime Drug Enforcement Task Force (OCDETF) Program. As agreed with the Chairman's office, our primary objective in examining defendants convicted and sentenced as a part of the program was to (1) compare the actual penalties (sentences and fines) imposed with the maximum penalties<sup>5</sup> authorized by statute at the time of sentencing; and (2) compare the dollar amount of criminal fines imposed by the courts with the actual dollar amount collected by the government as of December 31, 1985.

The Drug Task Force Administrative Unit within the Department of Justice provided us with a list of 1,484 defendants prosecuted and convicted as a result of investigations by the 13 task forces during the initial 2 years of the program--calendar years 1983 and 1984. Based upon our review of court records, we dropped 141 defendants from further examination because (1) 49 had all charges dismissed; (2) 41 were acquitted of all charges; (3) 18 had not been sentenced; (4) 13 were not prosecuted under the OCDETF Program; and (5) 20 were dropped for other reasons (e.g., convictions were reversed on appeal). We added 121 defendants who, according to court records, were convicted and sentenced as a part of the OCDETF Program but were not included in the list furnished to us by the Department of Justice. Also, we added 64 defendants who had received more than one sentence due to multiple convictions as a part of the OCDETF Program.<sup>6</sup> Because the Chairman's office subsequently requested that we include some defendants sentenced in 1985, we added an additional 169 offenders sentenced in 1985 who, according to court records, were codefendants of offenders sentenced in 1983 and 1984. According to court records, this gave us a total of 1,697 offenders.

To accomplish our objectives, we examined court records in 71 judicial districts for the 1,697 offenders. We contacted court personnel and prosecutors when necessary to clarify questions that arose during our examination of case file material. The calculations used in this report for sentences and fines are based upon the median because we believe it more fairly characterizes the typical sentence or fine imposed than

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<sup>5</sup>See footnote 2.

<sup>6</sup>Justice's data included one sentence for these defendants. For our purposes, we considered each conviction under a separate criminal docket number as a defendant.

would the mean. Our field work was conducted between January 1986 and September 1986. Our work was performed in accordance with generally accepted government auditing standards.

OCDETF PROGRAM ESTABLISHED  
TO BOLSTER ATTACK ON MAJOR  
DRUG TRAFFICKING ORGANIZATIONS

President Reagan announced the formation of the OCDETF Program on October 14, 1982. The program's overall goal is to identify, investigate, and prosecute members of high-level drug trafficking enterprises and destroy the operations of those organizations by means of

- adding new federal resources for the investigation and prosecution of major drug trafficking organizations, and
- fostering interagency coordination and cooperation in the investigation and prosecution of major drug cases.

The task force program was initially comprised of 12 task forces, each covering a specific region of the country. The exception was Florida, where the South Florida task force had been operating under a different program since January 1982. The 12 task forces became operational in 1983. A 13th task force, in the Florida/Carribbean region, was added in 1984. A map depicting the 13 task force regions is shown on page 14.

Each task force region encompasses a number of federal judicial districts, and a major city ("core-city") designated as the regional headquarters. Federal agencies participating in the task forces include the U.S. Attorneys' offices; the Drug Enforcement Administration; the Federal Bureau of Investigation; the U.S. Customs Service; the Bureau of Alcohol, Tobacco and Firearms; the Internal Revenue Service; the U.S. Marshals Service; and the U.S. Coast Guard. Consistent with the objective of fostering interagency coordination, state and local law enforcement agencies also participate in the program.

OCDETF Program officials reported that as of December 31, 1985, 1,162 task force cases had been initiated resulting in 6,794 individuals charged in indictments and informations<sup>6</sup> and 2,453 individuals convicted. In addition, the program officials cited large quantities of drugs that were removed from the illegal market through task force seizures. Convictions under the Racketeer Influenced and Corrupt

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<sup>6</sup>Charges are brought against defendants by means of indictments from grand juries or by formal accusations, called informations, brought by a U.S. attorney rather than a grand jury.



Organization (RICO) and Continuing Criminal Enterprise (CCE) statutes--the so-called "kingpin" statutes--indicate that heads of criminal organizations were pursued. The OCDETF Program reported 166 RICO convictions and 105 CCE convictions through December 1985.

#### ANALYSIS OF THE SENTENCES IMPOSED

Sentences imposed on the 1,697 offenders convicted and sentenced as a part of the OCDETF Program in 71 judicial districts follow:<sup>8</sup>

- 369 (22 percent) received probation or suspended sentences (no term of imprisonment),<sup>9</sup>
- 842 (50 percent) received prison sentences of 5 years or less,
- 413 (24 percent) received prison sentences of over 5 years but equal to or less than 15 years, and
- 73 (4 percent) received prison sentences of over 15 years to life.

Once an indictment or information has been returned in an OCDETF case, the prosecutor assigns each defendant 1 of 10 roles which most closely describes his/her role in the criminal organization. For example, the defendant's role may be that of a smuggler, top leader, or money launderer. Table 1 shows the range of sentences imposed.

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<sup>8</sup>Rule 35(b) of the Federal Rules of Criminal Procedure states, among other things, that a court may reduce an offender's sentence, either on the motion of the offender, or without a motion,

"within 120 days after the sentence is imposed or probation is revoked, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal or within 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation."

Under this Rule, a grant of probation from a sentence of incarceration constitutes a reduction.

<sup>9</sup>Includes one defendant convicted under a statute which does not authorize imprisonment as a sanction.

Table 1:  
RANGE OF SENTENCES IMPOSED

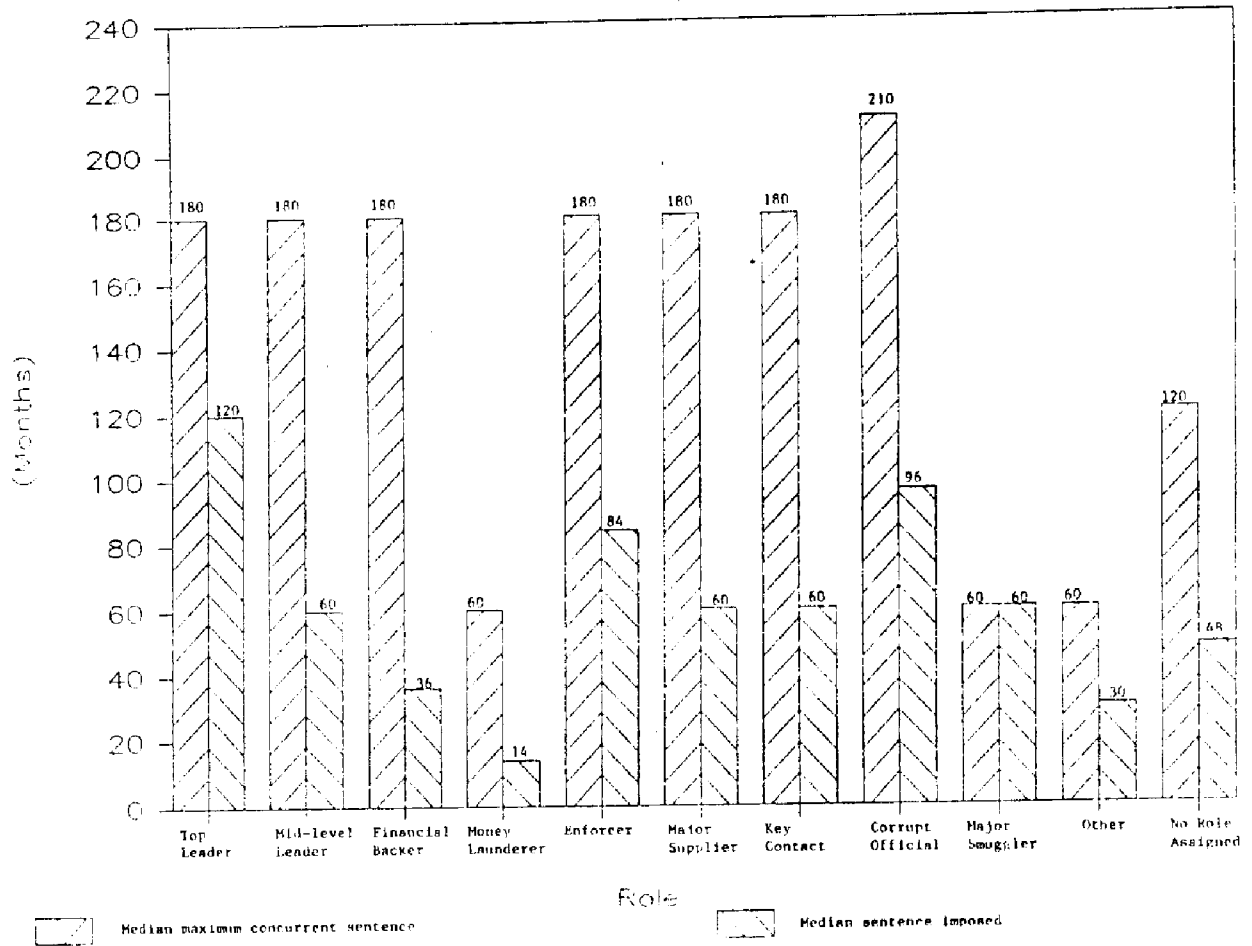
| <u>Role assigned</u>                     | <u>No term of imprisonment</u> | <u>5 years or less</u> | <u>Over 5 years to 15 years</u> | <u>Over 15 years</u> |
|------------------------------------------|--------------------------------|------------------------|---------------------------------|----------------------|
| Top leader                               | 10                             | 57                     | 92                              | 36                   |
| Mid-level leader                         | 49                             | 154                    | 98                              | 10                   |
| Financial backer                         | 2                              | 10                     | 2                               | 1                    |
| Money launderer                          | 2                              | 21                     | 1                               | 0                    |
| Enforcer                                 | 3                              | 7                      | 8                               | 2                    |
| Major supplier                           | 52                             | 140                    | 76                              | 13                   |
| Key contact                              | 9                              | 31                     | 19                              | 3                    |
| Corrupt official                         | 0                              | 1                      | 1                               | 0                    |
| Major smuggler                           | 10                             | 12                     | 5                               | 0                    |
| Other <sup>a</sup>                       | 124                            | 253                    | 53                              | 3                    |
| No role assigned by Justice <sup>b</sup> | <u>108</u>                     | <u>156</u>             | <u>58</u>                       | <u>5</u>             |
|                                          | <u>369</u>                     | <u>842</u>             | <u>413</u>                      | <u>73</u>            |

a"Other" is assigned when the defendant does not fit into one of the nine roles.

<sup>b</sup>OCDETF Program records did not indicate why no role was assigned for these defendants.

Of the 1,328 offenders receiving a term of imprisonment, the median sentence imposed by the courts was 51 months. The median maximum concurrent sentence that could have been imposed by the courts was 180 months. Figure 1 compares the median sentence imposed with the median maximum concurrent sentence that could have been imposed.

Figure 1:  
ANALYSIS OF SENTENCES IMPOSED



RANGE OF CRIMINAL FINES IMPOSED

Federal criminal statutes set a maximum fine for most offenses that the court can impose either separately or together with a term of imprisonment or a period of probation. Criminal fines totaling about \$67.3 million could have been imposed by the courts on 1,695 of the 1,697 offenders included in our review. The two remaining offenders were convicted under statutes which do not authorize the court to impose a fine as a sanction. The courts imposed criminal fines totaling about \$9.5 million for 385 of the 1,695 offenders.<sup>10</sup> The median fine imposed for these 385 offenders was \$10,000, while the median maximum concurrent fine that could have been imposed

<sup>10</sup>The fines imposed which have been used in our analysis consider all reductions in fines granted by the court pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure.

was \$25,000. Table 2 shows the range of fines actually imposed by the courts at sentencing.

Table 2:  
RANGE OF CRIMINAL FINES IMPOSED

| <u>Amount of fine</u>           | <u>Number of defendants</u> |
|---------------------------------|-----------------------------|
| No fine                         | 1,310                       |
| Up to \$5,000                   | 185                         |
| Between \$5,001 and \$10,000    | 66                          |
| Between \$10,001 and \$20,000   | 33                          |
| Between \$20,001 and \$30,000   | 27                          |
| Between \$30,001 and \$50,000   | 27                          |
| Between \$50,001 and \$100,000  | 25                          |
| Between \$100,001 and \$150,000 | 14                          |
| Between \$150,001 and \$200,000 | 4                           |
| Over \$200,000                  | 4                           |
|                                 | <u>1,695</u>                |

Table 3 compares the number of defendants who were fined by their respective roles.

Table 3:  
NUMBER OF DEFENDANTS  
FINED BY ROLE ASSIGNED

| <u>Role assigned</u>           | <u>Number fined</u> | <u>Number not fined</u> | <u>Total</u> |
|--------------------------------|---------------------|-------------------------|--------------|
| Top leader                     | 71                  | 124                     | 195          |
| Mid-level leader               | 72                  | 239 <sup>a</sup>        | 311          |
| Financial backer               | 10                  | 5                       | 15           |
| Money launderer                | 11                  | 13                      | 24           |
| Enforcer                       | 2                   | 18                      | 20           |
| Major supplier                 | 59                  | 222                     | 281          |
| Key contact                    | 12                  | 50                      | 62           |
| Corrupt official               | 0                   | 2                       | 2            |
| Major smuggler                 | 5                   | 22                      | 27           |
| Other                          | 89                  | 344 <sup>a</sup>        | 433          |
| No role assigned<br>by Justice | 54                  | 273                     | 327          |
|                                | <u>385</u>          | <u>1,312</u>            | <u>1,697</u> |

<sup>a</sup>Includes one offender for whom a fine was not an authorized penalty.

The median fine imposed by defendant role ranged from \$2,000 for money launderers and major smugglers to \$35,000 for top leaders. The median maximum concurrent fine that could have been imposed by defendant role ranged from \$1,000 for major smugglers to \$125,000 for financial backers. Table 4 compares the median fine imposed with the median maximum concurrent fine that could have been imposed by the court at sentencing by defendant role.

Table 4:  
COMPARISON OF CRIMINAL FINES IMPOSED  
WITH MAXIMUM FINES AUTHORIZED BY DEFENDANT ROLE

| <u>Role assigned</u>        | <u>Median fine imposed</u> | <u>Median maximum concurrent fine</u> |
|-----------------------------|----------------------------|---------------------------------------|
| Top leader                  | \$ 35,000                  | \$ 30,000 <sup>a</sup>                |
| Mid-level leader            | 10,000                     | 25,000                                |
| Financial backer            | 10,000                     | 125,000                               |
| Money launderer             | 2,000                      | 10,000                                |
| Enforcer                    | 3,000                      | 20,000                                |
| Major supplier              | 5,000                      | 25,000                                |
| Key contact                 | 12,500                     | 25,000                                |
| Corrupt official            | - 0 -                      | - 0 -                                 |
| Major smuggler              | 2,000                      | 1,000 <sup>a</sup>                    |
| Other                       | 5,000                      | 25,000                                |
| No role assigned by Justice | 6,750                      | 25,000                                |

<sup>a</sup>The median fine imposed is more than the median maximum concurrent fine that could have been imposed because judges imposed fines for more than one charge consecutively.

#### CRIMINAL FINES COLLECTED

Of the \$9.5 million in criminal fines imposed on 385 offenders, the federal government had collected \$819,448, or about 8.6 percent of the total fines imposed, as of December 31, 1985. Table 5 shows by OCDEF task force the number of offenders fined, the total fines imposed, and the amount collected as of December 31, 1985.

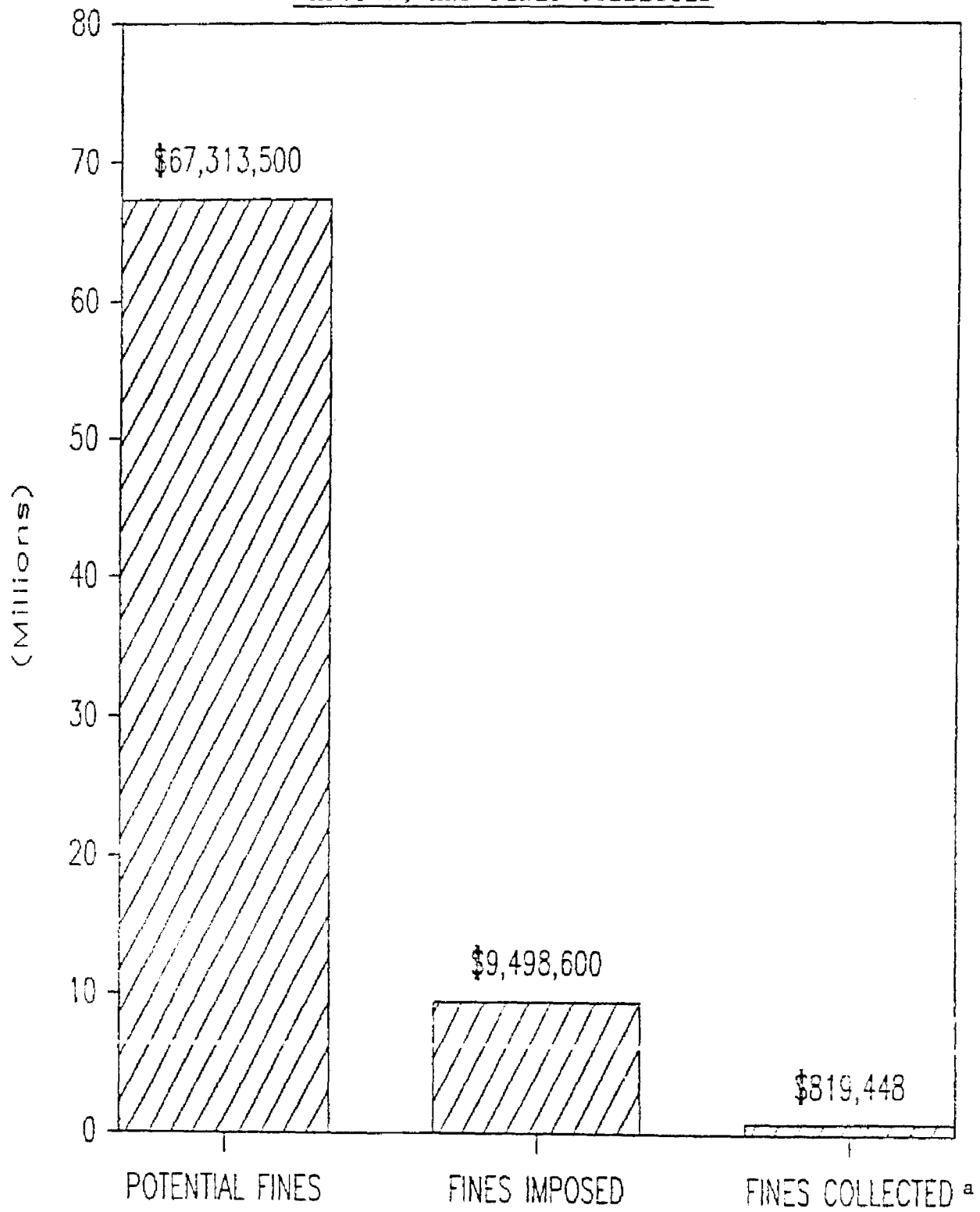
Table 5:  
COMPARISON OF CRIMINAL FINES  
IMPOSED WITH THOSE COLLECTED

| <u>Task force</u>   | <u>Number of offenders fined</u> | <u>Amount of fines imposed</u> | <u>Fines collected as of December 31, 1985</u> |
|---------------------|----------------------------------|--------------------------------|------------------------------------------------|
| New York/New Jersey | 44                               | \$ 1,645,100                   | \$ 25,882                                      |
| Great Lakes         | 72                               | 1,450,200                      | 281,619                                        |
| North Central       | 19                               | 461,900                        | 36,472                                         |
| South Central       | 26                               | 604,000                        | 51,025                                         |
| Gulf Coast          | 33                               | 685,000                        | 35,475                                         |
| Mid Atlantic        | 47                               | 765,900                        | 157,181                                        |
| Northwest           | 22                               | 360,500                        | 14,710                                         |
| Southeast           | 19                               | 1,450,350                      | 6,300                                          |
| Mountain States     | 13                               | 68,250                         | 7,061                                          |
| Southwest           | 19                               | 121,800                        | 42,150                                         |
| New England         | 26                               | 932,100                        | 141,469                                        |
| Los Angeles/Nevada  | 14                               | 180,500                        | 9,504                                          |
| Florida/Carribbean  | 31                               | 773,000                        | 10,600                                         |
|                     | <u>385</u>                       | <u>\$9,498,600</u>             | <u>\$819,448</u>                               |

Figure 2 compares the fines that could have been imposed with those actually imposed and collected as of December 31, 1985.

Figure 2:

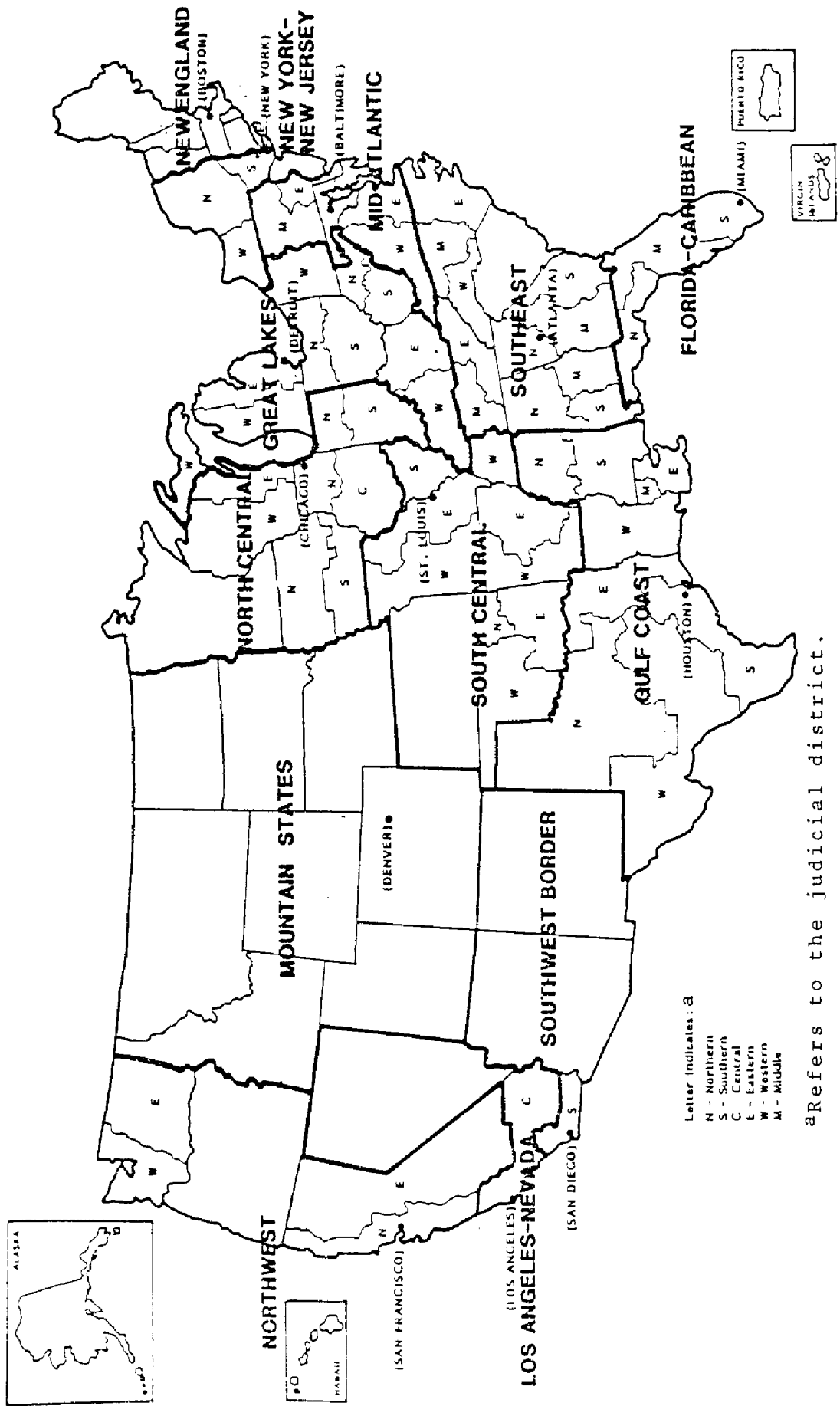
COMPARISON OF POTENTIAL FINES, FINES  
IMPOSED, AND FINES COLLECTED



<sup>a</sup>Fines collected as of December 31, 1985.

Figure 3:

ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCES



Letter indicates: a  
 N - Northern  
 S - Southern  
 C - Central  
 E - Eastern  
 W - Western  
 M - Middle

aRefers to the judicial district.



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