Taking the Best Advantage of the Definition of "Crime of Violence" in USSG 4B1.2

Advanced Defender Conference

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Definition of "Crime of Violence" in USSG 4B1.2 until June 26, 2015

(a) The term "crime of violence" means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—

(1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or

(2) is burglary of a dwelling, arson, extortion, involves use of explosives, [or otherwise involves conduct that presents a serious potential risk of physical injury to another].

"Commentary offenses" until June 26, 2015

Offenses listed in Application Note 1 to USSG 4B1.2 that are not currently enumerated in the text in 4B1.2(a)(2)

- Murder
- Manslaughter (voluntary and involuntary)
- Kidnapping
- Aggravated assault
- Forcible sex offenses
- Robbery
- Extortionate extension of credit
- "[U]nlawfully possessing a firearm described in 26 USC 5845 (e.g., a sawed-off shotgun or sawed off rifle, silencer, bomb, or machine gun),"
- Aiding and abetting, conspiring, or attempting to commit a "crime of violence."

Limited authority of commentary in the balance of powers

- Comm'n is an administrative agency with only delegated powers
- To be "fully accountable to Congress" and maintain separation of powers, Comm'n is required to submit guideline amendments to Congress at least six months before effective date, which Congress can modify or disapprove. *Mistretta v. United States*, 488 U.S. 361, 393-94 (1989).
- Guidelines are equivalent to legislative rules by other agencies. *Stinson v. United States*, 508 U.S. 46, 45-45 (1993).
- In contrast, commentary only interprets or explains the guidelines and need not be submitted to Congress. *Id.* at 41-43, 45.
- Commentary that "interprets or explains a guideline is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline." *Id.* at 38.

Commentary must interpret guideline text. If it interprets no text or is inconsistent with text, must be disregarded.

E.g.,

- "[W]here commentary is inconsistent with [Guidelines] text, text controls." *United States v. Soto-Rivera*, 811 F.3d 53 (1st Cir. 2016)
- Guidelines commentary "does not have freestanding definitional power." *United States v. Leshen*, 453 F. App'x 408, 413-15 (4th Cir. 2011)
- "To read Application Note 1 as encompassing non-intentional crimes would render it utterly inconsistent with the language of 4B1.2." *United States v. Armijo*, 651 F.3d 1226, 1236-37 (10th Cir. 2011)
- "[I]n case of an inconsistency between an Application Note and Guideline language, we will apply the Guideline and ignore the Note." *United States v. Dison*, 330 F. App'x 56, 61-62 (5th Cir. 2009)

Circuit split – see commentary memo

- First, Fourth, and Tenth Circuits have expressly held that offenses listed in the commentary to 4B1.2 do not have freestanding definitional power.
- Fifth Circuit has required that commentary offenses satisfy one of the definitions in the text, which is the same thing.
- Third, Seventh, and Eleventh Circuits have held that offenses listed in the commentary to 4B1.2 do have freestanding definitional power.
- Sixth Circuit has said it follows *Stinson* and has recognized that commentary must be consistent with guideline text.
- Second Circuit has indicated that an offense listed in commentary must satisfy a definition in the text, but has held that a robbery prior was generic robbery without addressing effect of *Stinson.*

Circuit split: could be resolved soon

- Seventh Circuit will probably overrule *Raupp* in *Rollins*
- Two cert petitions raise the issue, to be conferenced June 2, 2016

  Jones v. United States, No. 15-8629 – Can an offense be a COV just because it is listed in the commentary when it does not interpret and is inconsistent with the text of the Guideline after Johnson?

  Beckles v. United States, No. 15-8544 – same

Status of commentary offenses after *Johnson* voided ACCA residual clause on June 26, 2015

(a) The term "crime of violence" means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—

(1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or

(2) is burglary of a dwelling, arson, extortion, involves use of explosives, ~~or otherwise involves conduct that presents a serious potential risk of physical injury to another~~.

Status of commentary offenses after *Johnson* voided ACCA residual clause on June 26, 2015

- Under *Stinson*, any offense listed in commentary that does not satisfy the force clause and is not enumerated in the text does not interpret or explain any text in the guideline that exists after *Johnson*.
- It is therefore "inconsistent with" the text of the guideline because "following one will result in violating the dictates of the other." *Stinson* at 43.
- As such, the SRA "commands compliance with the guideline" and the commentary must be disregarded. *Id.*

Status of commentary offenses after *Johnson* voided ACCA residual clause on June 26, 2015

Analysis:

- The listed commentary offense does not have as an element the use, attempted use, or threatened use of violent force against the person of another, so does not interpret or explain 4B1.2(a)(1).
- It is not one of the offenses enumerated in the text of 4B1.2(a)(2), so does not interpret or explain that clause.
- Could only interpret or explain the residual clause, but can't because residual clause is void.
- As a result, the commentary is flatly inconsistent with the guideline "in that following [the commentary] will result in violating the dictates of [the guideline]. *Stinson.*
- "SRA itself commands compliance with the guideline," *id.,* so that offense is not a COV within meaning of 4B1.2(a).

Although it does not matter if the prior does not satisfy the force clause or the enumerated offense clause, the Commission has confirmed that "commentary offenses" interpreted the now-void residual clause

After *Johnson*, the Comm'n deleted the residual clause and moved "all enumerated offenses to the guideline" in order to "make the guideline consistent with *Johnson*."

COV Amends., 81 Fed. Reg. 4741, 4743 (Reason for Amendment).

More confirmation . . .

- In 2004, the Comm'n expressly included "unlawfully possessing a firearm described in 26 USC 5845 (e.g., a sawed-off shotgun or sawed off rifle, silencer, bomb, or machine gun)" because some courts held (pre-*Begay*) that possession of a sawed-off shotgun is a COV "due to the serious potential risk of physical injury to another person." USSG, App C Amend. 674.
  - In 2016, explained it moved possessing a sawed-off shotgun to text to "maintain status quo," no empirical data, Commission's "belief" that these offenses "present a serious potential risk of injury to another person"
- In 2016, explained movement of voluntary manslaughter and elimination of involuntary manslaughter as "consistent with *Begay*" (i.e., the residual clause)

Amendments – Effective August 1, 2016 to "make the guidelines consistent with Johnson"

(a) The term "crime of violence" means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—

(1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or

(2) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, ~~burglary of a dwelling,~~ arson, ~~or~~ extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. § 5845(a) or explosive material as defined in 18 U.S.C. § 841(c)~~involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another~~.

Gone

- Residual Clause
  - to make consistent with *Johnson*
- Burglary of a Dwelling
  - actually based on empirical evidence (!) that the vast majority of burglaries involve no physical violence and that career offenders have only 5% rate rearrest for burglary upon release
  - also considered courts' struggle to identify elements of generic "burglary of a dwelling"
  - added upward departure for "unusual" burglary involving physical violence
- Involuntary Manslaughter
  - Rare to be deemed a COV, and also consistent with *Begay*
- Extortionate Extension of Credit
  - no reason given

Moved Most Commentary Offenses to Guideline Text as Enumerated Offenses

- Murder
- Voluntary Manslaughter
- Kidnapping
- Aggravated assault
- A forcible sex offense
- Robbery
- Arson
- Extortion
- Use [added] or unlawful possession of a firearm described in 26 USC 5845(a) or explosive material as defined in 18 U.S.C. 841(c)

Two New Definitions in the New Commentary

Extortion:

- "obtaining something of value from another by the wrongful use of (A) force, (B) fear of physical injury, or (C) threat of physical injury."
- "limit[s] the offense to those having an element of fear or threats 'of physical injury,' as opposed to non-violent threats such as injury to reputation."
- "[c]onsistent with [its] goal of focusing the career offender and related enhancements on the most dangerous offenders."

Forcible Sex Offense

- "includes where [an element of the offense is that] consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced"
- **But** "sexual abuse of a minor and statutory rape are included only if the sexual abuse of a minor or statutory rape was
  - (A) an offense described in 18 U.S.C. § 2241(c) or
  - (B) an offense under state law that would have been an offense under section 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States."

Sexual Abuse of a Minor or Statutory Rape

Under 2241(c), only if the elements of the offense require that the defendant "knowingly engage[d] in a sexual act" with

(a) a person under the age of 12, or

(b) a person 12 or over and less than 16 and at least 4 years younger **under the circumstances in 2241(a) or (b)**:

(a) "knowingly cause[d]" another person to engage in a sexual act by using **force** against that person, or by threatening or placing that person in fear that any person will be subjected to death, serious bodily injury, or kidnapping; or

(b) "knowingly" rendered another person unconscious and thereby engaged in a sexual act with that person, or administered to another person by **force** or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and "thereby substantially impair[ed] the ability of that other person to appraise or control conduct" and "engage[d] in a sexual act with that other person."

Sexual Abuse of a Minor or Statutory Rape

- "Force" means "actual force," i.e., "restraint sufficient that the other person could not escape the sexual contact."
  - *US v. Fire Thunder*, 908 F.2d 272 (8th Cir. 1990)
  - *US v. Lauck*, 905 F.2d 15 (2d Cir. 1990)
  - *US v. H.B.*, 695 F.3d 931 (9th Cir. 2012)
- E.g., locking or barricading a door does not meet this test.
  - *US v. Serdahl*, 316 F. Supp. 2d 859 (D.N.D. 2008)

Sexual Abuse of a Minor or Statutory Rape

- 2241(c) requires a "sexual act," defined in 2246(2) not to include touching through the clothing
- But "sexual act" for purposes of 2241(c) need not have a purpose of sexual gratification
  - **Unlike** *United States v. Diaz-Ibarra*, 522 F.3d 343 (4th Cir. 2008) (generic sexual abuse of a minor for purposes of 2L1.2); *United States v. Cabrera-Umanzor*, 728 F.3d 347 (4th Cir. 2013) (same).

Other enumerated offenses – elements of the offense of conviction must satisfy generic definition

- Just because offense of conviction is enumerated by name doesn't mean it's a COV
- Elements of the offense of conviction must satisfy the "generic" definition
  - Determined by survey of all state and federal statutes, the Model Penal Code, definitions in respected scholarly treatise (usually LaFave's *Substantive Criminal Law*). *See Taylor*.
  - Elements may not sweep more broadly (e.g., criminalize less culpable conduct) than the generic definition

Elements of Generic "Murder"

[1] causing the death of another person

[2] either

[a] intentionally,

[b] during the commission of a dangerous felony, or

[c] through conduct evincing reckless and depraved indifference to serious dangers posed to human life.

United States v. Marrero, 743 F.3d 389 (3d Cir. 2014).

Elements of Generic "Murder"

- Generic definition includes unintentional murder: "through conduct evincing reckless and depraved indifference to serious dangers posed to human life"
- Third Circuit held pre-*Johnson* that *Begay* does not apply to narrow "murder" for purposes of 4B1.2 to only intentional murder.
  - Contrary to *Stinson*, other courts of appeals. *See* Commentary Memo.
- Commission has since provided support that it intends that the enumerated offenses now in text interpreted the residual clause and should be intentional only, "consistent with *Begay*."

Elements of Generic "Voluntary Manslaughter"

[1] intentional

[2] homicide

[3] committed under extenuating circumstances which mitigate, though they do not justify or excuse, the killing.

- *See United States v. Bonilla*, 524 F.3d 647 (5th Cir. 2008)
- Decisions setting forth elements of broader term "manslaughter" will not usually be helpful.

Elements of Generic "Kidnapping" – No Uniform Definition

Encompasses, *at a minimum*, the concept of a "nefarious purpose[]" motivating restriction of the victim's liberty.

See United States v. Gonzalez-Perez, 472 F.3d 1158 (9th Cir. 2007)

- Wayne R. LaFave, 3 *Substantive Criminal Law* § 18.1(e), at 20, n.154 (2d ed. 2003) (noting that only eleven states do not specify that kidnapping requires a nefarious purpose)
- Model Penal Code § 212.1 (providing that a defendant is guilty of kidnapping only if his or her purpose is "(a) to hold for ransom or reward, or as a shield or hostage; or (b) to facilitate commission of any felony or flight thereafter; or (c) to inflict bodily injury on or to terrorize the victim or another; or (d) to interfere with the performance of any governmental or political function").

Elements of Generic "Kidnapping" – D.C. Circuit

[1] an act of restraining, removing, or confining another,

[2] an unlawful means of accomplishing that act, and

[3] criminal purpose beyond the mere intent to restrain the victim, such as holding the victim for ransom or as a hostage

United States v. De Jesus Ventura, 565 F.3d 870, 875–79 (D.C. Cir. 2009)

- conducted 50-state survey and considered MPC

Elements of Generic "Kidnapping" – Fourth Circuit Is Broader

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[1] unlawful restraint or confinement of the victim,

[2] by force, threat or deception**,** or in the case of a minor or incompetent individual without the consent of a parent or guardian,

[3][a] either for a specific nefarious purpose or with a similar element of heightened intent, *or*

[b] in a manner that constitutes a substantial interference with the victim's liberty.

United States v. Flores-Granados, 783 F.3d 487 (4th Cir. 2015)

- considered the statutes of 50 states and the MPC

Elements of Generic "Kidnapping" – Fifth Circuit Is Broader

[1] knowing removal or confinement,

[2] by force, threat, or fraud,

[3] plus an additional aggravating element, such as

[a] substantial interference with the victim's liberty and circumstances exposing the victim to substantial risk of bodily injury or confinement as a condition of involuntary servitude, *or*

[b] with any of the following [MPC] purposes: (a) to hold for ransom or reward, or as a shield or hostage; or (b) to facilitate commission of any felony or flight thereafter; or (c) to inflict bodily injury on or to terrorize the victim or another; or (d) to interfere with the performance of any governmental or political function.

United States v. Gonzalez-Ramirez, 477 F.3d 310, 317-18 (5th Cir. 2007); *United States v. Moreno-Florean*, 542 F.3d 445, 454-55 (5th Cir. 2008); *United States v. Najera-Mendoza*, 683 F.3d 627, 630-31 (5th Cir. 2012).

Elements of Generic "Aggravated Assault"

[1] criminal assault

[2] plus, at a minimum, the aggravating factors of either

[a] intent to cause serious bodily injury to the victim, or

[b] the use of a deadly weapon.

E.g., United *States v. Palomino Garcia*, 606 F.3d 1317 (11th Cir. 2010)

- surveyed state law, MPC, treatises
- does NOT include assault aggravated solely by identity of victim, i.e., police officer or pregnant woman

-See also, e.g., United States v. Fierro-Reyna, 466 F.3d 324 (5th Cir. 2006)

Elements of Generic "Aggravated Assault"

The "assault" element requires proof that the defendant either caused, attempted to cause, or threatened to cause bodily injury or offensive contact to another person.

See United States v. Esparza-Perez, 681 F.3d 228, 231 (5th Cir. 2012)

Elements of Generic "Aggravated Assault"

- Mens rea of "extreme indifference recklessness" is not sufficient to meet generic definition. *United States v. Garcia-Jimenez*, 807 F.3d 1079, 1085 (9th Cir. 2015).
  - Surveyed 50 states, federal law and MPC
- *See also United States v. Duran*, 696 F.3d 1089 (10th Cir. 2012) (holding that "aggravated assault" at 4B1.2 only reaches purposeful or intentional conduct, consistent with *Begay*)
- Should be specific intent, not general intent. *See United States v. Hernandez-Rodriguez*, 788 F.3d 193, 198-200 (5th Cir. 2015) (considering the use of deadly weapon aggravating factor)

Elements of Generic "Aggravated Assault"

- Some jurisdictions retain a distinct offense of "assault" that is not merged with battery and requires only fear of injury to be sufficient for the "assault" element. (E.g., New Mexico)
- In those states, there must be actual intent to cause fear of injury to satisfy the assault element.
  - E.g., [1] intentionally causing another person to believe that he is in danger of receiving an immediate battery, [2] with the use of a deadly weapon.
  - *See United States v. Rede-Mendez*, 680 F.3d 552, 556-58 (6th Cir. 2012)
- But is it really generic "assault"? Is that equivalent to "threat to cause bodily injury"?

Elements of Generic "Robbery" -- Fifth and Ninth Circuits

[1] the misappropriation of property and

[2] immediate danger to the person of another, met either by

[a] bodily injury or

[b] by means of force or putting in fear.

United States v. Santiesteban-Hernandez, 469 F.3d 376, 380 (5th Cir. 2006); *United States v. Becerril-Lopez*, 541 F.3d 881, 891 (9th Cir. 2008)

Elements of Generic "Robbery" -- Eleventh Circuit

[1] the taking of property from another person or from the immediate presence of another person

[2] by force or intimidation

See United States v. Lockley, 632 F.3d 1238, 1244 (11th Cir. 2011), citing 67 Am. Jur. 2d Robbery § 12:

"[Robbery] is the taking, with intent to steal, personal property of another, from his or her person or in his or her presence, against his or her will, by violence, intimidation, or by threatening the imminent use of force."

Elements of Generic "Robbery" -- Details

- Does not encompass mere threats to property.
  - *See, e.g.*, *Becerril-Lopez*, 541 F.3d at 891; *United States v. Castillo*, 811 F.3d 342 (10th Cir. 2015)
  - But Fifth Circuit has interpreted the phrase "immediate danger to the person of another" as encompassing threats to property when the statute at issue requires that the crime be committed "(1) directly against the victim or in his presence; and (2) against his will." *United States v. Tellez-Martinez*, 517 F.3d 813, 815 (5th Cir. 2008).
- Does incorporate continuing offense theory.
  - *United States v. Garcia-Caraveo*, 586 F.3d 1230, 1235-36 (10th Cir. 2009)
  - Use of force or threat of force can be during flight

Elements of Generic "Forcible Sex Offense"

- In context of 2L1.2, requires the use or threatened use of force or compulsion. *See United States v. Chacon*, 533 F.3d 250, 257 (4th Cir. 2008)
- Compulsion may be accomplished through non-physical "power" or "pressure"
  - i.e., rape accomplished by taking advantage of someone who cannot give legal consent
- Commission has expressly stated that the amendment is intended to make § 4B1.2 "[c]onsistent with the definition in § 2L1.2"
- Requires a purpose of sexual gratification, as does "sexual abuse of a minor" for purposes of § 2L1.2?
  - will soon be decided by the Fourth Circuit

Elements of Generic "Arson"

[1] starting a fire or causing an explosion

[2] with the purpose of

[3][a] destroying a building or occupied structure of another, or

[b] destroying or damaging any property, whether his own or another's, to collect insurance for such loss.

Model Penal Code § 220.1(1), cited and quoted in *Begay*

Elements of Generic "Arson" – No Uniform Definition

- All agree that it requires malicious or willful mens rea.
  - *See Brown v. Caraway*, 719 F.3d 583 (7th Cir. 2013)
- And most courts have held that it includes burning of personal property, not just buildings or occupied structures.
- Otherwise, "the elements of generic arson are themselves so uncertain as to pose problems for a court having to decide whether they are present in a given state law." *Luna Torres v. Lynch*, 136 S. Ct. 1619, 1633 (2016)

Elements of Generic "Arson" – No Uniform Definition

- Question whether it must be property "of another" remains open.
- *See* John Poulos, *The Metamorphosis of the Law of Arson*, 51 Mo. L. Rev. 295, 364, 387-402 (1986) (describing the several different ways that states include this element or something that accomplishes a similar purpose) (cited by SCT in *Luna Torres*)
- Some narrowing element may exist in the majority of jurisdictions, *see id.*, but no court has conducted the full 50-state survey.
- *See United States v. Whaley*, 552 F.3d 904 (8th Cir. 2009) (stating that the property (whether real or personal) must be "of another")
  - Cited with approval by *United States v. Knight*, 606 F.3d 171, 173-74 (4th Cir. 2010)

Be Careful Re: Possession of a Firearm Described in 26 U.S.C. 5845(a)

- Unlawful possession of a firearm under 922(g) is *not* unlawful possession of a firearm described in 26 U.S.C. § 5845(a), no matter what the facts of the offense are.
- Categorical approach applies to both instant and prior offenses
  - Some courts incorrectly relied on commentary about the residual clause to mean that they need not apply the categorical approach when determining whether the instant offense is a COV, but could instead apply a "conduct-specific" inquiry.
  - With the residual clause and its commentary deleted, these decisions are no longer good law.

Inchoate offenses

Still in commentary after 8/1/16 amendments. Before and after amendments, inchoate offenses must interpret text of the guideline. *See Stinson*.

- Attempt
  - Included in force clause so can qualify if the underlying crime satisfies force clause and the attempt is generic attempt, *i.e.*, requires a substantial step. *US v. Gonzalez-Monterroso*, 745 F.3d 1237 (9th Cir. 2014); *US v. Martinez*, 602 F.3d 1166, 1173 (10th Cir. 2010); *US v. Mansur*, 375 Fed. Appx. 458, 465 (6th Cir. 2010); *US v. Davis*, 689 F.3d 349, 356 (4th Cir. 2012); *US v. Moore*, 108 F.3d 878, 880 (9th Cir. 1997)
  - Must also include the "probable desistance" test, i.e., the "requirement that the defendant's actions unequivocally demonstrate that the crime will take place unless interrupted by independent circumstances." *See Garcia-Jimenez*, 807 F.3d 1079 (9th Cir. 2015) (internal quotation marks omitted).
  - Attempted *enumerated* offense cannot qualify because 4B1.2(a)(2) refers only to completed offenses, *James*, and residual clause is gone.
- Conspiracy
  - Can never qualify because not included in force clause or enumerated offense clause. See cases cited in Commentary Memo. As back up, argue not "generic" conspiracy.

Inchoate offenses

Aiding and Abetting

- May qualify if it is generic aiding and abetting and underlying offense satisfies the force clause or is a generic enumerated offense
- Requires proof that the defendant [1] took an affirmative act in furtherance of the underlying offense [2] with the intent of facilitating the commission of the offense. *See Rosemond v. United States*, 134 S. Ct. 1240, 1245 (2014).
- The intent requirement is satisfied only when the government proves the person "actively participate[d] in a criminal venture with full knowledge of the circumstances constituting the charged offense." *Id.* at 1248-49.
- The required knowledge must be "advance knowledge," which means "knowledge at a time the accomplice can do something with it—most notably, opt to walk away." *Id.* at 1249-50.

Variances and Departures

- If D committed the offense before 8/1/16 and would not be a career offender (or subject to increased punishment under another guideline that refers to 4B1.2 definition of COV), ask for a policy-based variance now
  - E.g., "burglary of a dwelling" has been eliminated based on mass of empirical evidence showing that "(1) burglary offenses rarely result in physical violence, (2) 'burglary of a dwelling' is rarely the instant offense of conviction or the determinative predicate for purposes of triggering higher penalties under the career offender guideline, and (3) historically, career offenders have rarely been rearrested for a burglary offense after release."
- Downward departure -- one or both priors based on an offense that was classified as a misdemeanor at the time of sentencing for the instant federal offense, although punishable by more than 1 year. In such a case, a downward departure may be warranted **without regard to the one-CHC category limit in § 4A1.3(b)(3)(A)**.
- Upward departure – any kind of burglary that involves violence

Strategies re Commentary Offenses

- If sentence imposed before 8/1/16 and client is a career offender based on a commentary offense, make the commentary argument based on *Stinson* -- at sentencing, on appeal, in a 2255. *See* Commentary Memo.
- If sentence will be imposed before 8/1/16 and client is not a career offender based on the 8/1/16 amendments, ask for a policy-based variance now, or a continuance.
- If sentence imposed on or after 8/1/16, and client committed the instant offense before 8/1/16 and would be a career offender under the amendment because of the movement of a commentary offense to the text of the guideline
  - Client has a right to be sentenced under guidelines in effect when crime committed (ex post facto). *Peugh v. United States*, 133 S. Ct. 2072 (2013).
  - Then make the *Stinson* commentary argument.

Resources in Your Materials

- Crime of Violence Practice Guide
- *Commentary Offenses*, Memo (March 2016)
- *Offenses Moved from the Commentary to the Enumerated Offense Clause at USSG § 4B1.2 Effective August 1, 2016 – Generic Definitions and Other Issues*, Working Memo, May 2016