



**U.S. Sentencing Commission**  
**One Columbus Circle, NE**  
**Washington, DC 20002-8002**

## **IN THE NEWS**

**April 15, 2016**

### **THE NEW YORK LAW JOURNAL PUBLISHES EDITORIAL BY CHAIR SARIS**

Yesterday the *New York Law Journal* published an editorial by Chief Judge Patti B. Saris, Chair of the U.S. Sentencing Commission, entitled “Commission Targets Changes for Subset of Economic Crimes”:

#### **Commission Targets Changes for Subset of Economic Crimes**

*Chief Judge Patti B. Saris*

In reading the article, "[Rise of ABA Task Force's 'Shadow Sentencing Guidelines,'](#)" (NYLJ, April 5) regarding a proposal set forth by the American Bar Association's Criminal Justice Section, I was struck by the comments in the introductory paragraphs that the sentencing guideline for federal economic crimes is "fundamentally broken" and "dysfunctional." What we learned in our multi-year study of this issue is that such a claim is not borne out by the data or in the collective view of federal judges around the country.

In a 2010 survey of federal district judges, the vast majority, 90 percent in fact, thought the economic crime guideline was either just right or too low. Only 10 percent believed that the range for this guideline was generally too high. Furthermore, the commission's analysis demonstrated that the economic crime guideline was generally working across the loss amounts that apply to most defendants. Offenders with loss amounts under \$1 million, accounting for 83 percent of all economic crime offenders, were generally sentenced at or near the advisory guideline range.

The authors, Robert Anello and Richard Albert, are, nevertheless, correct that offenders in the very high loss categories typically are sentenced below the guideline range. And it is true that these very high loss cases, usually securities and investment fraud, often receive multiple guideline enhancements because they affect numerous victims, often abuse positions of trust or involve the use of sophisticated means.

We found, however, that the anecdotal cases—the high loss but low culpability offenders—that were the basis of the most vocal criticisms are generally concentrated in just a few districts. This helps explain the concerns of judges in the Southern and Eastern Districts of New York, who

sentence defendants involving very high loss amounts significantly more often than in the nation generally.

It is also important to keep in mind that the most heightened concerns centered on a very small group of offenders. In fiscal year 2012, it was the less than 1 percent of all fraud offenders with loss amounts above \$50 million—largely composed of securities and investment fraud cases which were the focus of legislative changes in the Sarbanes-Oxley Act of 2002—that constituted the subset of cases with the greatest divergence from the recommended sentencing range.

The fact that courts vary based on individual offender characteristics in a relatively small subset of cases, though, does not mean a guideline is "broken" or in need of a wholesale revision.

In this instance, however, the hard data and concerns raised by judges and others did lead the commission to conclude that targeted changes to focus the economic crime guideline more closely on individual culpability and actual harm to the victim were in order. We believe these revisions should make a meaningful difference for both fraud offenders and their victims.

Readers can also find a more expansive discussion of the commission's work in this area in a law review article that I authored for the Fall 2015 edition of the New York University Journal of Law & Business.

*Patti B. Saris is the Chief District Judge for the District of Massachusetts. President Obama nominated Judge Saris to be a member and chair of the Commission on April 28, 2010. The Senate confirmed her nomination on December 22, 2010.*

*Judge Saris has served as a United States district judge for the District of Massachusetts since 1994, having been nominated to the federal bench by President Clinton on October 27, 1993.*

*— Bill Pryor was appointed by president George W Bush to the U.S. Court of Appeals for the Eleventh Circuit, where he currently serves. He also serves on the U.S. Sentencing Commission. From 1997 to 2004, he was the attorney general of Alabama.*