

CHAPTER FIVE

Research

Statutory Requirements

As authorized by Congress, the Commission's numerous research responsibilities include: (1) establishing a research and development program to serve as a clearinghouse and information center for the collection, preparation and dissemination of information on federal sentencing practices; (2) publishing data concerning the sentencing process; (3) collecting and disseminating information concerning sentences actually imposed and the relationship of such sentences to the factors set forth in section 3553(a) of title 18, United States Code; and (4) collecting and disseminating information regarding the effectiveness of sentences imposed (28 U.S.C. § 995(a)).

Data Collection

The Sentencing Commission maintains a comprehensive data collection system. These data provide the basis for the Commission's role as clearinghouse of federal sentencing information and support the agency's research mission. Pursuant to its authority under 28 U.S.C. §§ 994(w) and 995(a) (8), and after discussions with the Judicial Conference Committee on Criminal Law and the Administrative Office of the U.S. Courts (AO), the Commission requested that each probation office in each judicial district submit the following documents on every offender sentenced under the guidelines:

- Indictment
- Presentence Report (PSR)
- Report on the Sentencing Hearing (statement of reasons for imposing sentence as required by 18 U.S.C. § 3553(c))
- Written Plea Agreement (if applicable)
- Judgment of Conviction

Data from these documents are extracted and coded for input into computerized databases. For each case in its **Offender Dataset**, the Commission routinely collects case identifiers, demographic variables, statutory information, the guideline provisions applied to the case, and departure information. In addition, when extraordinary research questions arise, the Commission collects new information from the documents provided by the courts. In 1999, the Commission conducted additional data collection on identity theft and credit card fraud, copyright infringement, telephone cloning, immigration offenses, sex offenses against children, and firearms offenses.

The Commission also maintains additional datasets to study a variety of sentencing-related issues. The **Organizational Dataset** captures information on organizations sentenced under Chapter Eight of the guidelines. The data describe organizational structure, size, and economic

viability; offense of conviction; mode of adjudication; sanctions imposed; and application of the sentencing guidelines. The **Appeals Dataset** tracks appellate review of sentencing decisions. Information captured includes district, circuit, dates of appeal and opinion, legal issues, and the court's disposition.

The Commission's computerized datasets, without individual identifiers, are available via tape and the Internet through the Inter-University Consortium for Political and Social Research at the University of Michigan (ICPSR). The Consortium's web site address is <http://www.ICPSR.umich.edu/NACJD>. Sentencing Commission data that has been incorporated into the datasets of the Federal Justice Statistics Resource Center, which is sponsored by the Bureau of Justice Statistics and developed by the Urban Institute, is available at <http://fjsrc.urban.org>.

Data Collection Issues

The Commission received documentation on 55,557 cases sentenced under the Sentencing Reform Act (SRA) between October 1, 1998, and September 30, 1999. Note, however, that all data collected and analyzed by the Commission reflect only cases for which appropriate documentation was forwarded to the Commission. Reporting problems specific to individual districts or offices may make analysis at the district level problematic.

The Commission continues to work with other federal agencies to collect comprehensive statistical information for the federal criminal justice system and to reconcile differences among agencies in the number of cases reported, offense category definitions, and other relevant and commonly used variables. An Interagency Working Group on Criminal Case Processing Statistics (composed of the Commission, the Administrative Office of the U.S. Courts, the Executive Office for U.S. Attorneys, the Federal Bureau of Prisons, the Department of Justice's Criminal Division, and the Bureau of Justice Statistics) is seeking to improve data collection across the entire system and to produce a more comprehensive and user-friendly profile of all cases under federal jurisdiction.

Summary of 1999 Findings

The *1999 Sourcebook of Federal Sentencing Statistics* presents detailed tables and figures displaying information from the Commission's **Offender Dataset** concerning offender characteristics, guideline cases, guideline application, departure figures, and special sections highlighting drug and immigration cases. The *Sourcebook* also provides statistics on organizational sentencing practices from the **Organizational Dataset**, and data on appellate review of sentencing decisions from the **Appeals Dataset**.

Most numbers cited in this Chapter may be found in tables or figures from the *1999 Sourcebook of Federal Sentencing Statistics*.

Sentencing Individual Offenders

Offender Characteristics

Historically, females have accounted for approximately 15 percent of federal criminal cases. This remained true in 1999 (15.4%). The racial/ethnic composition of the offender population continued a shift that began several years ago. The proportions of White and Black offenders have been decreasing, and the proportion of Hispanic offenders has been steadily increasing. During 1999, the percentage of White (30.8%) and Black (26.2%) offenders each decreased from 1998 levels, while the percentage of offenders of Hispanic origin increased by two percentage points to 39.0 percent. The average age of federal offenders remained largely unchanged, with a mean of 34.1 years and a median of 32 years. The percentage of offenders who did not graduate from high school has been increasing, reaching 45 percent in 1999, while the percentage of those who graduated from college decreased to less than seven percent (6.6%).

The proportion of offenders who are not U.S. citizens increased two percent to 33.9 percent, continuing an eight-year trend. Non-citizens comprised approximately one-third of kidnapping (39.7%), drug trafficking (31.5%), and money laundering (32.1%) offenses; and 92.4 percent of immigration offenses. For additional demographic information about the federal offender population, see Table 4 through Table 9 in the Commission's *1999 Sourcebook of Federal Sentencing Statistics*.

Guideline Cases

Trial rates under the guidelines have declined from a high of approximately 12 percent of cases in 1993 to 5.4 percent in 1999, a drop of a full percentage point in just one year. However, these rates have varied historically by both district and offense type. In 1999, district trial rates ranged from 0.8 percent in Arizona to 15.1 percent in the Northern District of Florida. Among offense types with more than 100 cases in 1999, the range was from 1.5 percent in gambling cases to 11.8 percent in cases involving sexual abuse.

The vast majority of offenders (79.5%) were sentenced to imprisonment without a provision for any period of alternative confinement. More than 90 percent of offenders sentenced for murder, kidnapping, robbery, arson, drug trafficking, firearms, racketeering, immigration, or prison offenses received a sentence that included imprisonment. In contrast, more than half of the offenders sentenced for simple drug possession, larceny, tax violations, gambling, environmental offenses, or food and drug offenses received a probationary sentence alone or a sentence of probation with a condition of alternative confinement.

The average sentence (either imprisonment or alternative confinement) for all offenders in 1999 was 47.8 months (median of 24 months), counting probation-only sentences as zero months imprisonment. Of those offenders sentenced to some form of imprisonment, the average term was 57.3 months (median= 33 months), continuing a small but steady decline in the length of prison sentences that began in 1993. With the exception of immigration offenders, the majority of offenders who were in zones of the Sentencing Table that made them eligible for non-prison sentences did, in fact, receive alternative confinement. In addition to a term of prison or probation, 32.4 percent of the offenders were also ordered to pay a fine, restitution, or both. For a detailed statistical description of the mode of disposition and sentences imposed, see Table 12 through Table 16 and Figure D through Figure F of the *1999 Sourcebook of Federal Sentencing Statistics*.

Guideline Application

In 1999, the most frequently applied primary guidelines were (in order) – Drug Trafficking (§2D1.1), Fraud (§2F1.1), Unlawful Entry into U.S. (§2L1.2), Theft (§2B1.1), Firearms (§2K2.1), Robbery (§2B3.1), and Smuggling Unlawful Alien (§2L1.1). The three victim-related enhancements (part of Chapter Three of the guidelines) were applied at a consistently low rate (each in less than one percent of all cases). More than 20 percent of offenders (20.4%) received a sentence adjustment for their role in the offense. Of these, 6.4 percent received an aggravating role adjustment, 14 percent received a mitigating role adjustment, 2.1 percent received an abuse of position of trust adjustment, and 0.4 percent received an adjustment for use of a minor in the commission of an offense. The adjustments for obstruction of justice (3.5%) and reckless endangerment (0.3%) were also applied infrequently. The rate of those receiving the acceptance of responsibility adjustment (90.5%) continued the consistent trend (since 1991) of an annual one-to-two percentage point increase. The percentage of offenders receiving the three-level reduction option has also been increasing at a rate of between two-to-four percentage points over each of the past several years, reaching 59.3 percent in 1999.

Slightly more than half of all offenders (56.3%) received points under the guideline's criminal history computations (Chapter Four of the guidelines). More than half (52.7%) of the 1999 offenders were placed in Category I, and 9.4 percent were placed in Category VI. During 1999, three percent of offenders qualified for career offender or armed career criminal status, a proportion that has remained steady over the past several years. For further details of the guideline application components, see Table 17 through Table 23 of the *1999 Sourcebook of Federal Sentencing Statistics*.

Departures and Sentences Within the Guideline Range

Almost two-thirds (64.9%) of 1999 sentences were within their applicable guideline ranges. The percentage of within-guideline sentences was lowest in the District of Arizona (34.0%), with five additional districts having rates lower than 50 percent: Eastern New York (43.9%), Northern New York (44.8%), Eastern Pennsylvania (49.1%), Vermont (47.2%), and Western North Carolina (42.8%). The highest within-guideline sentencing rate was in Western Kentucky (91.2%). Only two offense types had a percentage of within-guideline sentences less than 50 percent: national defense (41.2%) and antitrust offenses (40.9%), both of which had small numbers of cases. The offense type with the highest within-guideline rate was again simple drug possession (93.8%).

Substantial assistance departures, for the sixth straight year, remained below 20 percent (18.7% in 1999). The rates of substantial assistance departures ranged from a low of 5.3 percent in South Dakota to a high of 52.3 percent in Western North Carolina. (Half of the 14 cases in the Northern Mariana Islands also received this departure.) The offense type with the lowest rate of substantial assistance departures was sexual abuse (1.8%); the offense type with the highest rate was national defense (35.3%). Among offense types with more than 100 cases, gambling (34.1%), bribery (31.6%), and racketeering (30.4%) had the highest rates.

Rates of Within-Range and Departure Sentences	
64.9%	Sentences Within Guideline Range
18.7%	Sentences Below Guideline Range for Substantial Assistance on Motion of Government
15.8%	Sentences Below Guideline Range
0.6%	Sentences Above Guideline Range

Downward departures (other than substantial assistance departures under §5K1.1) continued a nine-year trend, increasing to 15.8 percent. Among districts with more than 100 cases, the rates of downward departures ranged from a low of 1.8 percent in Eastern Virginia to a high of 57.9 percent in the District of Arizona. The Ninth Circuit had the highest downward departure rate (36.4%), while the Fourth Circuit had the lowest (4.6%).

The rate of upward departures continued to decline, falling to approximately half of one percent (0.6%) in 1999. Two districts reported rates of greater than four percent (Middle Louisiana (4.3%) and Western Wisconsin (4.8%)), while 20 districts reported no upward departures at all. The offense type with the highest rate of upward departure was manslaughter (7.1%), followed by kidnapping (6.6%) and murder (6.1%).

Overall, offenders receiving a substantial assistance departure experienced a larger sentence reduction than did offenders receiving a downward departure. Sentences for offenders receiving substantial assistance were a median of 26 months below the applicable guideline range, resulting in a median sentence reduction of 50.0 percent. Sentences for offenders receiving a downward departure were a median of 12 months below the guideline range, resulting in a median sentence reduction of 40.0 percent. Offenders receiving an upward departure experienced a median 18-month sentence increase above the guideline maximum, amounting to a 33.3 percent median sentence increase.

For sentences within the applicable guideline range, the sentence most often given (61.7 percent of all within-guideline sentences) was at the minimum point of the guideline range. Among offenses with more than 100 cases, those with the highest proportion of cases at the guideline minimum were environmental (81.2%), tax (78.3), and drug trafficking (71.2). In 14.3 percent of within-guideline cases, the sentence was at the maximum of the guideline range. The offense with the highest proportion of cases at the guideline maximum was the use of communication facility for drug trafficking (68.3%). For further departure statistics, see Table 24 through Table 32 and Figure G through Figure H in the *1999 Sourcebook of Federal Sentencing Statistics*.

Drug Cases

As in previous years, drug offenses were the largest single category of federal convictions in 1999 (41.7%). Just under half of these cases involved cocaine trafficking (22.1% powder cocaine and 22.9% crack cocaine), followed by marijuana (31.5%), methamphetamine (12.8%), and heroin (8.0%). Nearly all drug offenses (95.9%) were sentenced under the primary drug trafficking guideline (§2D1.1). Of all drug offenders, 42.0 percent were of Hispanic origin, 31.2 percent were Black, and 25.0 percent were White; 86.1 percent were male; and 30.9 percent were non-U.S. citizens. Except for crack cocaine and methamphetamine traffickers, the majority of drug offenders were in Criminal History Category I.

Offenders received sentence increases for possession or use of weapons in 12.2 percent of all the drug cases; for crack cocaine and methamphetamine cases, this figure rose to approximately 20 percent (21.6% and 19.2%, respectively). Slightly more than 30 percent of drug offenders received a sentence adjustment for their role in the offense; 26.2 percent were given a sentence reduction for mitigating role and 6.7 percent received an aggravating role adjustment. There was wide variation in the application of the mitigating role adjustment across drug types (roughly 43.2 percent for marijuana offenses, compared to 8.2 percent for crack cocaine cases). Almost 90 percent (89.7%) of drug offenders received a reduction for acceptance of responsibility.

Nearly two-thirds of drug offenders were convicted under statutes carrying a mandatory minimum penalty provision, with the highest proportion occurring in crack cocaine cases (79.9%). A ten-year mandatory minimum was applicable in more than half of the crack cocaine cases (54.9%) and nearly half of the methamphetamine cases (49.9%). The “safety valve” provision (§5C1.2) was enacted to give nonviolent, low-level, first-time drug offenders an opportunity for a lower sentence.⁵⁹ The 24.9 percent of drug offenders receiving the benefit of the “safety valve” included both 21.8 percent of drug offenders who were subject to a drug mandatory minimum, and 3.1 percent who were not. Heroin and powder cocaine offenders were the most likely to receive a reduction under the “safety valve” provision, while crack cocaine and marijuana offenders were the least likely.

Almost 30 percent of drug offenders received substantial assistance departures (28.5%), with another 15.3 percent being granted other downward departures. The average overall prison term for drug offenders varied widely by drug type, from a mean of 120.3 months for crack cocaine cases (median= 94 months) to 33.7 months for marijuana cases (median= 21 months). See Table 33 through Table 45 and Figure I through Figure L of the *1999 Sourcebook of Federal Sentencing Statistics* for additional statistics and trends on drug cases.

Immigration Cases

In 1999 there was another significant increase in the number of immigration offenses. In total, 16.2 percent of all cases in 1999 were sentenced under one of the immigration guidelines. Most immigration offenders were male (93.6%), of Hispanic origin (89.5%), and had less than a high school education (78.7%). Almost all immigration convictions involved non-U.S. citizens (91.3%) and were the result of a guilty plea (93.8%). Compared to other offenders, non-citizen immigration offenders had somewhat higher criminal history scores. For detailed statistics on immigration violations, see Table 46 through Table 50 in the Commission’s *1999 Sourcebook of Federal Sentencing Statistics*.

Summary

The number of guideline cases reported to the Commission rose almost ten percent from 50,754 in 1998 to 55,557 in 1999. Federal offenders were sentenced to an average term of 57.3 months in prison (47.8 months when counting sentences of probation as zero months of incarceration). Almost two-thirds of all offenders were sentenced within their applicable guideline range. The rate of departures for substantial assistance remained stable at 18.7 percent, but other downward departures increased slightly.

The preceding pages highlight federal sentencing practices on a national level. Individual district profiles are presented in the Commission’s *1999 Sourcebook of Federal Sentencing Statistics*.

⁵⁹ Under this provision, certain non-violent drug offenders with little or no criminal history can receive the full benefit of applicable mitigating adjustments under the guidelines and receive sentences below mandatory minimum penalty levels. Effective November 1, 1995, a guideline amendment was passed that provided an additional 2-level reduction for qualified offenders whose offense level is 26 or greater.

Organizational Sentencing Practices

Sentencing guidelines for organizations convicted of federal offenses became effective November 1, 1991.⁶⁰ The organizational guidelines establish fine ranges to deter and punish illegal conduct; require full payment of remedial costs to compensate victims for any harm and the disgorgement of illegal gains; regulate probationary sentences; and implement other statutory penalties such as forfeiture and the assessment of prosecution costs.

The Chapter Eight organizational guidelines apply to all federal felonies and Class A misdemeanors committed by organizational offenders.⁶¹ The fine provisions of Chapter Eight are limited to offenses for which pecuniary loss or harm can be more readily quantified, such as fraud, theft, and tax offenses. In addition, the sentencing guidelines for antitrust violations, money laundering offenses, and most bribery and kickback offenses contain specific formulations for calculating fines for organizations.⁶²

The organizational guidelines do not presently contain fine provisions for most offenses involving the environment, food, drug, agricultural and consumer products, individual rights, administration of justice, and national defense.⁶³ In those cases in which the Chapter Eight fine guidelines do not apply, courts must look to the statutory provisions of title 18, sections 3553 and 3572, to determine an appropriate fine.

In 1999, the Commission received information on 255 organizations that were sentenced under Chapter Eight, a 15.9 percent increase from 1998 and a 14.9 percent increase from 1997.⁶⁴ Fines were imposed on 200 organizations. The sentenced organizations pled guilty in 91.4 percent of the cases; 8.2 percent were convicted after trial. There was one case in which the organization pled *nolo contendere*.

Offense Characteristics

As in 1998, fraud was the most frequent offense committed by an organization, accounting for 33.7 percent of the cases sentenced. Other significant offense categories included: environmental pollution (23.5%), tax (7.1%), antitrust (7.1%), and national defense (5.5%).

⁶⁰ See *Guidelines Manual*, Chapter Eight – Sentencing of Organizations.

⁶¹ See USSG §8A1.1.

⁶² See USSG §§2B4.1(c); 2C1.1(d); 2R1.1(d); 2S1.1(c); and 2S1.2(c).

⁶³ See USSG §8C2.1.

⁶⁴ As with individual defendants, the Commission datafile describing organizational defendants is available through the Inter-University Consortium for Political and Social Research at the University of Michigan.

Offender Characteristics

In those cases in which the offender organization has the ability to pay and the fine provisions of section 8C2.5 apply to the offense, the court calculates a culpability score that may reduce or increase the applicable offense level. Culpability score calculations are contained in either the sentencing court's Judgment of Conviction or the probation office's Presentence Report. Of the 255 cases sentenced in 1999, 151 cases involved offenses covered by the fine provisions of section 8C2.5. The Commission received detailed culpability score information for 92 of those cases.

In numerous cases, the organization's culpability score was reduced based on the presence of certain culpability factors. Of the 92 cases with detailed culpability score calculations, one organization received a one-point reduction in its culpability score for having in place an "effective program to prevent and detect violations of law," as provided by section 8C2.5(f) of the sentencing guidelines. It is not clear, however, that the "program" credited in that case was instituted prior to the organization's commission of the offense or the government's investigation of the offense. Once under investigation by the authorities, 53.2 percent of the organizations were given credit at sentencing for cooperating with the government's investigation, pursuant to section 8C2.5(g)(2) of the sentencing guidelines, and another 33.7 percent were given credit for accepting responsibility for their wrongdoing, pursuant to section 8C2.5(g)(3). Two organizations received full credit, pursuant to section 8C2.5(g)(1), for reporting the offense to governmental authorities, cooperating with the investigation, and accepting responsibility for the offense.

In numerous cases, the organization's culpability score also was increased based on the presence of culpability factors. Specifically, the culpability score of three organizations was increased, pursuant to section 8C2.5(c) of the sentencing guidelines, because they had a history of prior criminal or administrative offenses during the past ten years. Two organizations violated a judicial order, injunction, or condition of probation pursuant to section 8C2.5(d), and three organizations obstructed justice pursuant to section 8C2.5(e), which resulted in increased culpability scores for sentencing purposes.

Sanctions Imposed

The highest fine in 1999 (\$500 million) was imposed on a corporation convicted of antitrust violations. In addition to monetary penalties and restitution, defendants sentenced under the organizational guidelines were subject to other sanctions. Specifically, 60.9 percent of the organizations sentenced in 1999 were placed on probation.

Appeals Data

The Sentencing Reform Act authorized appellate review of guideline sentences imposed (1) in violation of law; (2) as a result of an incorrect application of the sentencing guidelines; (3) as a departure from the applicable guideline range or from a plea agreement; or (4) for an offense that is plainly unreasonable and for which there is no sentencing guideline.

In 1992, the Commission implemented a data collection system to track appellate review of sentencing decisions. The courts of appeals send to the Commission appellate opinions, and the

Commission supplements with a computer search of relevant databases. What follows is a summary of 1999 information from this growing database.

Summary of Information Received

In 1999, the Commission gathered information on 7,034 appellate court cases of which 2,670 were “conviction only” cases. The defendant was the appellant in 98.9 percent of the cases, and the United States was the appellant in 0.5 percent of the cases.⁶⁵ The remaining cases (0.6%) involved a cross appeal by one of the parties. The total number of sentencing cases analyzed was 4,024.⁶⁶ Less than eight percent of the sentencing cases were reversed in full. The overall disposition rate for 1999 sentencing cases was:

Affirmed	80.1 percent
Dismissed	5.1 percent
Reversed	7.3 percent
Affirmed in part/Reversed in part	7.5 percent

The affirmance rate of sentencing cases remained relatively unchanged from fiscal year 1998. The Eighth Circuit had the highest rate of affirmed cases (88.9%); the Seventh Circuit had the lowest (65.7%). Of the 297 cases reversed, the appellate courts remanded 285 (96.0%) to the district courts for further action. Of the 306 cases that were affirmed in part and reversed in part, the appellate courts remanded 281 (91.8%) to the district courts for further action. Thus, in 1999, the appellate courts remanded to the district court about 14.0 percent (n= 566) of the 4,024 sentencing cases reviewed that year.

Issues and Guidelines Appealed

The Commission collects data on the guidelines for appellate cases involving sentencing issues only and those cases involving both sentencing and conviction issues. Defendants appealed the drug trafficking guideline (§2D1.1) 15.0 percent of the time (1,015 times). Other guidelines that frequently formed the bases for appeals by defendants were section 5K2.0 (Departures) (6.8%), section 3B1.2 (Mitigating Role) (5.1%), section 3E1.1 (Acceptance of Responsibility) (4.8%), section 3B1.1 (Aggravating Role) (4.6%), section 3C1.1 (Obstruction of Justice) (4.2%), and section 2F1.1 (Fraud) (3.3%). For cases in which the government was the appellant, section 5K2.0 (Departures) (38.9%), section 2D1.1 (Drug Trafficking) (11.1%), and section 3E.1.1 (Acceptance of Responsibility) (9.3%) were the guidelines most frequently appealed.

⁶⁵ Although the Commission is interested primarily in information on appellate court cases that involve sentencing issues, it requests that the circuit courts of appeals provide information on all criminal appeals, including appeals of convictions. The statistics used in this report are from the defendant-based files of the appeals database. Each defendant-based file will be referred to as a case.

⁶⁶ Five circuits, the Fourth, Fifth, Sixth, Ninth, and Eleventh, accounted for approximately 67 percent of these cases (n= 2719).

Offense and Offender Characteristics

The data reveal that 36.7 percent of defendants in appellate court cases⁶⁷ were White, 34.8 percent Black, 25.0 percent Hispanic, and 3.5 percent other. Whites and Blacks comprise a larger proportion of the appeals population than of the district court population (of the defendants sentenced in district court, 30.7% were White and 26.2% were Black). Seventy-eight percent of the defendants in appellate court cases were United States citizens. In 42.5 percent of the appellate court cases, the defendants were sentenced under mandatory drug sentencing statutes, 4.7 percent were sentenced under mandatory gun sentencing statutes, and 4.3 sentenced under both drug and gun mandatory sentencing statutes. Mandatory minimum penalties applied to 51.5 percent of the appellate court cases, as compared to 26.5 percent of the district court cases.

As might be expected, appealed cases had considerably longer sentences. The mean sentence of appealed cases was 138.0 months (median= 96 months) compared to 47.4 months (median= 24 months) for all district court cases. More than 51 percent of the appellate court cases involved defendants whose primary offense of conviction was drug trafficking, which comprised 39.9 percent of all cases sentenced in district court.

Staff Papers and Presentations

The following studies were prepared by Sentencing Commission staff during 1999. Due to the absence of commissioners and the inability of the agency to act on congressional directives and guideline amendments, these individual research initiatives were completed. The information and opinions contained in these papers and presentations do not necessarily represent the official position of the Commission or the views of any individual commissioner.

Effectiveness of Firearm Enhancements. This paper reviews the research literature about the effectiveness of firearm sentence enhancements. The paper discusses recent changes in federal sentencing statutes and devotes special attention to differences between mandatory minimum penalties – particularly 18 U.S.C. § 924(c) – and the federal sentencing guidelines approach to sentencing for the possession or use of a firearm during a crime. Data from the Commission’s Intensive Study Sample are analyzed and reveal that the currently available firearm sentence enhancements are often not applied in cases in which they appear warranted. Reasons for this under-utilization are reviewed, and suggestions for improving sentencing in this area are made, with an eye toward both reducing gun-related crime and achieving the goals of sentencing reform. This paper also appears in *The American Criminal Law Review*. (“Federal Sentencing for Violent and Drug Trafficking Crimes Involving Firearms: Recent Changes and Prospects for Improvement” by Paul J. Hofer.)

⁶⁷ These data include *all* appellate criminal cases gathered by the Commission, not merely cases involving a sentencing issue.

Sentence Severity Trends Since 1980. This article combines federal sentencing data from different sources to assess changes in sentence severity between 1980 and 1998. The sentencing trends are evaluated in the context of the implementation of the federal guidelines, the abolition of parole, and related legislative actions. Findings indicate a trend toward increased sentencing severity with higher proportions of offenders sentenced to prison and an overall stability in length of imposed prison terms. However, the data show a trend of increasing expected time served, compared to imposed time served, for the 18-year period. Disaggregation of the data by offense type indicates that increases in expected time served for violent, drug trafficking, and firearm offenses are primarily responsible for the overall average increases. This paper also appears in the *Federal Sentencing Reporter*. (“Examining Changes in Federal Sentence Severity: 1980-1998” by Paul J. Hofer and Courtney Semisch.)

Comparisons with Pre-Guideline Drug Sentences. This analysis of heroin and powder cocaine cases from 1985 and 1997 compares the impact on sentencing of factors deemed both relevant and non-relevant to sentencing. Findings indicate that for both drug types, mandatory minimums have had the greatest impact on sentencing outcomes since the inception of the guidelines. During this time frame, the impact of non-sentencing relevant factors decreased for heroin offenders but increased for powder cocaine offenders. (*Guideline Effects on Sentencing Outcomes for Federal Drug Traffickers* by Courtney Semisch.)

Factors that Explain Racial Sentencing Differences. In 1995, *The Tennessean* newspaper published a series of articles describing how a multivariate statistical model revealed disparity in federal sentencing between White and Black offenders under the federal guidelines. That study reported that Black offenders on average receive ten percent higher sentences than White offenders. Unfortunately, the researchers did not include in the analysis statutory factors (such as mandatory minimum sentences or five-year consecutive mandatory minimums for 18 U.S.C § 924(c)) or prosecutorial factors (such as substantial assistance motions). This paper incorporates these factors into the multivariate statistical model and demonstrates that the ten-percent disparity disappears, with the result that sentences for comparable White and Black offenders are similar. (*The Effect of Prosecutorial Discretion on Sentencing Disparity* by Kevin Blackwell.)

Criminal History and Race. In December 1998, a judge in the District of Massachusetts reduced the guideline exposure of an offender because the offender’s criminal history record reflected a tendency to include offenses that, according to the judge, were the result of traffic stops due to race. This study examines the criminal history score of offenders in the federal system and the impact of two minor traffic offenses (*i.e.*, driving with a suspended license and driving without insurance). Both of these offenses are revealed to law enforcement only after a vehicle is stopped for another reason. The study finds that Black offenders are twice as likely as White offenders, and two and half times more likely than Hispanic offenders, to have their criminal history category affected by these two traffic offenses. As a result, the Black offenders affected would have received sentences, on average, 12.1 months shorter had these offenses not been included in their criminal history scores. (*Race and Traffic Stops: The Effect of Criminal History* by Kevin Blackwell.)

District Practices in Immigration Sentencing. From 1992 to 1998, immigration offenses have increased from 5.1 percent to 15.9 percent (n= 8,073) of all federal convictions. Nearly 20 percent of federal offenders were illegal aliens. This paper examines how prosecutorial charging practices differ across federal districts and result in sentencing differences across districts. Factors analyzed include the relative immigration caseload of the district, the statutes used to charge immigration offenders, plea negotiation practices, the offense characteristics of the conduct, and the

personal characteristics of the offender. Also provided are trend comparisons to highlight the increase in immigration offenses. (*Tracking Federal Prosecutorial and Sentencing Practices Across Districts* by Linda Drazga Maxfield and Keri B. Burchfield.)

Confinement Options. In fiscal year 1998, approximately one-fourth of federal offenders received confinement sentences of one year or less, with three-quarters of these confinement sentences requiring imprisonment. This paper examines a cohort of federal offenders sentenced to one year or less of confinement during calendar year 1997. Data from the U.S. Sentencing Commission, the U.S. Department of Justice Bureau of Prisons, and the Administrative Office of the U.S. Courts are linked to track these offenders through their confinement and supervision periods. The analysis reports on the problems encountered in matching individual offender data across the different agency datafiles and compares time served with sentence length. (*Prison versus Alternative Confinement: Issues for Short-Term Offenders* by Keri B. Burchfield and Linda Drazga Maxfield.)

Data Analyses for the Courts

Using the Commission's 1998 dataset, the Commission compiled detailed information on sentencing activities for each federal district and circuit. The Commission distributed these data to the courts and made them available to the general public via the Commission's Internet web site. These data present the distribution of cases, mode of conviction, type of sentence imposed, incarceration rate, length of imprisonment, and departure rate by primary offense type. The data are organized by circuit and district and provide comparisons to national figures. These informational packets were also used in the guidelines orientation of new chief circuit and district court judges by Commission staff. Additionally, these packets were used by the Commission in several training programs for court personnel.

In addition to these informational packets, Commission staff responded to 64 data requests from the courts in 1999. Responses included providing information for district- or circuit-based annual reports, supplying the courts with Commission data on specific types of offenses or guideline applications (*e.g.*, drug offenses, departure rates), and examining relationships between guideline application characteristics and offender demographic characteristics (*e.g.*, gender and role in the offense). Commission staff involvement in the various requests ranged from serving as a consultant about a particular data analysis to performing substantial, sophisticated data analyses.