

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)(12) and (14) through (16)).

Document Submission

Section 401(h) of the PROTECT Act, which became effective April 30, 2003, amended 28 U.S.C. § 944(w) to require that the chief judge of each district ensure that, within 30 days after entry of judgment in a criminal case, the sentencing court submits a report of sentence to the Commission which includes (1) the judgment and commitment order (J&C); (2) the statement of reasons (SOR); (3) any plea agreement; (4) the indictment or other charging document; (5) the presentence report (PSR); and (6) any other information as the Commission finds appropriate. The Commission is required to submit to Congress at least annually an analysis of these documents, as well as any recommendations for legislation thought to be warranted, and an accounting of any districts that the Commission believes have not submitted the information and documents required by this section.

Prior to the PROTECT Act, the Commission and the Administrative Office of the United States Courts, in consultation with the Committee on Criminal Law of the Judicial Conference of the United States, had requested that the sentencing court submit these documents to the Commission. Section 994(w) of

title 28, United States Code, as amended, mandates their timely submission. On March 9, 2006, the President signed into law the USA PATRIOT Improvement and Reauthorization Act, Pub. L. No. 109-177, which amended section 994(w) with a provision that requires that the statement of reasons for the sentence imposed be "stated on the written statement of reasons form issued by the Judicial Conference and approved by the United States Sentencing Commission." On May 15, 2006, the Sentencing Commission approved AO Form 245B/C, (Rev. 06/05) for individual defendants, and the sentencing courts are now required to use this form.

For fiscal year 2007, the Commission received 338,493 documents related to 72,865 cases received. See Table 1, *Sourcebook of Federal Sentencing Statistics*. The vast majority of districts submitted complete documentation related to these cases. The rate of missing documents was more than five percent in only three districts. The Commission continues to work with the courts to facilitate document submission.

Data Collection

All tables and figures referenced in this chapter can be found in the companion volume to this annual report, the *2007 Sourcebook of Federal Sentencing Statistics*. Data for the figures that appear in this text can be found in the *2007 Sourcebook of Federal Sentencing Statistics*. The year 2007, as used in this report, refers to the fiscal year 2007 (October 1, 2006, through September 30, 2007).

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 sentencing information. In addition, when particular research questions arise, the Commission collects additional information from the documents provided by the courts.

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.³⁶

³⁶ In 1992, the Commission implemented a data collection system to track appellate review of sentence decisions. Each fiscal year, data collection for appellate review is accomplished by a three-step method. First, many appellate courts submit slip opinions of both published and unpublished opinions and orders directly to the Commission. The Commission creates a master list of these opinions as they are received. Second, the Commission performs a supplemental computer search for all published and unpublished opinions and orders using commercially available legal databases, and adds any available decisions not received directly from the courts to the master list. Last, because courts do not submit all relevant opinions and orders to commercially available databases, the Commission checks individual court websites and adds any available cases from the fiscal year. This three-step method may not provide the Commission with every appellate sentencing decision rendered in a fiscal year. The Commission's Appeals Database, therefore, may not report the universe of appellate decisions rendered in that fiscal year.

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 website address is <http://www.ICPSR.umich.edu/>. Commission data that have 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://fisrc.urban.org/index.cfm>. In addition to the *2007 Sourcebook of Federal Sentencing Statistics*, the Commission provides on its website federal sentencing data organized by district and circuit. See <http://www.ussc.gov/linktojp.htm>.

Data Collection Issues

The Commission received documentation on 72,865 cases sentenced under the Sentencing Reform Act (SRA) between October 1, 2006, and September 30, 2007. This represents an increase of 280 cases over the number of cases for which the Commission received documentation for fiscal year 2006. Note, however, that all data collected and analyzed by the Commission reflect only cases for which appropriate documentation was forwarded to the Commission by February 11, 2008. As part of its ongoing activities, the Commission occasionally receives case documentation for a case sentenced in a prior fiscal year after the date on which the data was compiled for the *Annual Report* and *Sourcebook of Federal Sentencing Statistics* corresponding to that year.³⁷ This data is analyzed and maintained in the Commission's comprehensive database and used in the

³⁷ For example, after the date on which the data was compiled to prepare the fiscal year 2006 *Annual Report* and *Sourcebook of Federal Sentencing Statistics*, the Commission received documentation on 507 additional cases sentenced in that fiscal year. Since 1991, the Commission has received documentation on 10,861 cases after the respective dates on which the data was prepared for the *Annual Report* and *Sourcebook of Federal Sentencing Statistics* for each of those fiscal years. This represents 1.3 percent of all cases reported to the Commission during that period.

Commission's work, although it is not reflected in the *Annual Report* and *Sourcebook of Federal Sentencing Statistics* prepared for the year in which the offenders were sentenced, nor is it contained in the publicly available datasets released each fiscal year, as they are based on the data in the corresponding *Annual Report* and *Sourcebook of Federal Sentencing Statistics*.

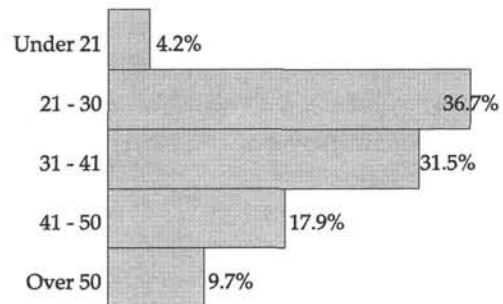
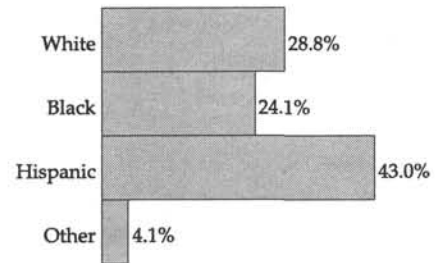
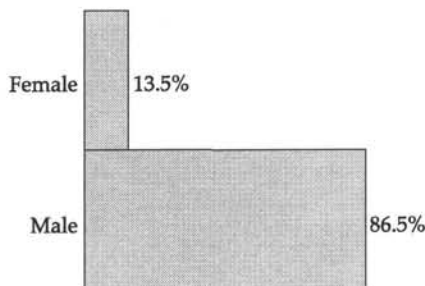
Summary of 2007 Findings

The 2007 *Sourcebook of Federal Sentencing Statistics* presents detailed tables and figures displaying information from the Commission's Offender Dataset concerning offender characteristics, guideline cases, guideline applications, departing 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**.

Sentencing Individual Offenders

Offender Characteristics

Historically, males have accounted for approximately 85 percent of federal criminal cases. As seen in Table 5, males make up 86.5 percent of offenders sentenced in 2007, down slightly from 86.7 percent the previous year. The racial/ethnic composition is shown in Table 4. During 2007, the racial/ethnic composition was — White 28.8 percent; Black 24.1 percent; and Hispanic 43.0 percent. The average age of federal offenders sentenced as shown in Table 6, was 35 years and a median of 33 years. Nearly half (48.2%) of the offenders sentenced did not graduate from high school (Table 8), and only 5.9 percent graduated from college.



The proportion of offenders who are not United States citizens increased slightly between 2006 and 2007. As Table 9 shows, non-citizens made up 37.4 percent of all offenders sentenced in 2007, up 0.3 percent from the previous year. Table 9 also shows that, for offenses with 100 or more offenders, the offense categories with the largest percentages of non-citizens were the following: immigration (89.3%); money laundering (33.9%); drug trafficking (29.8%); drug communication facility (22.7%); administration of justice (21.5%); fraud (20.0%); and racketeering/extortion (18.4%). For additional demographic information about the federal offender population, see Tables 4 through 9 in the Commission's 2007 *Sourcebook of Federal Sentencing Statistics*.

Guideline Cases

As seen in Figure C and Table 10 of the *Sourcebook*, trial rates were 4.2 percent of all cases sentenced in 2007. However, these rates have varied historically by both district and offense type. Table 11 shows that among offense types with more than 100 cases, trial rates ranged from 0.1 percent for gambling cases to 14.1 percent for sexual abuse cases.

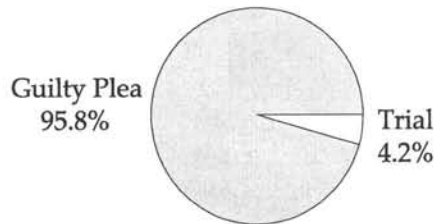


Table 12 shows that the vast majority of offenders (88.4%) were sentenced to imprisonment. More than 90 percent of all offenders in each of the following offense categories received a prison sentence: murder, manslaughter, kidnapping, sexual abuse, robbery, arson, drug trafficking, firearms offenses, burglary/B&E, racketeering/extortion, immigration offenses, pornography/prostitution, and prison offenses. In contrast, more than half of the offenders sentenced for simple drug possession, larceny, embezzlement, gambling, environmental offenses, food and drug offenses, or other miscellaneous offenses received a probationary sentence alone or a sentence of probation with a condition of alternative confinement.

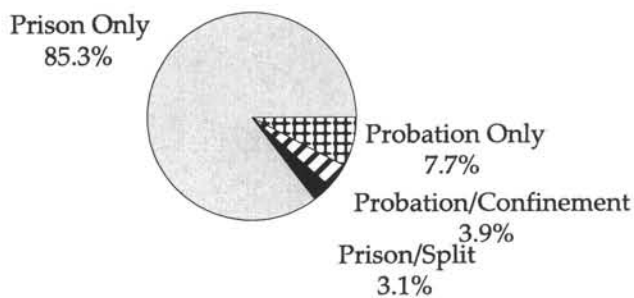
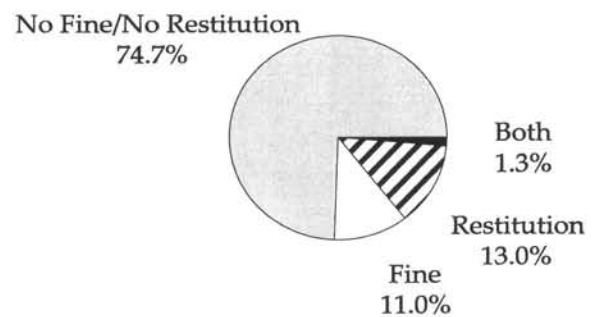


Table 13 shows that the average sentence for all offenders sentenced in 2007, counting probation-only sentences as zero months' imprisonment, was 51.8 months (median of 28 months). For those offenders sentenced to imprisonment, Table 14 shows the average prison term was 60.4 months (median 37 months). As seen in Figure F, the majority of offenders who were in zones of the Sentencing Table

that made them eligible for non-prison sentences, with the exception of immigration, received alternative confinement.

Table 15 shows that 74.7 percent of the offenders had no fine or restitution ordered; and, therefore, 25.3 percent of the offenders were ordered to pay a fine, restitution, or both, in addition to a prison term or probation. For a detailed statistical description of the mode of disposition and sentences imposed, see Tables 10 through 16 and Figures D through F of the 2007 *Sourcebook of Federal Sentencing Statistics*.



Guideline Application

Table 17 of the *Sourcebook* shows that in 2007 the most frequently applied primary guidelines were – Drug Trafficking (§2D1.1), Unlawful Entry into U.S. (§2L1.2), Theft and Fraud (§2B1.1), Firearms (§2K2.1), Smuggling Unlawful Alien (§2L1.1), and Robbery (§2B3.1).

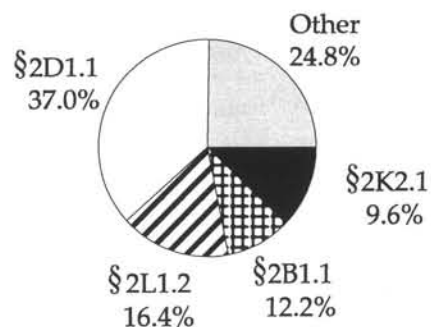
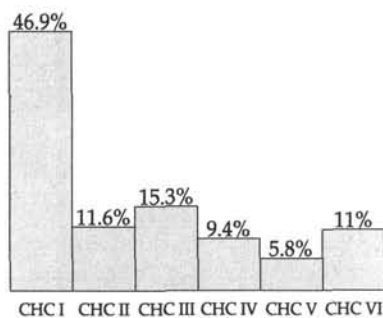


Table 18 shows that the four victim-related adjustments (part of Chapter Three of the guidelines) each were applied in less than one percent of all cases. Regarding role adjustments, Table 18 shows that 4.6 percent of all offenders received an aggravating role adjustment, 9.9 percent received a mitigating role adjustment, 2.4 percent received an abuse of position of trust adjustment, and 0.3 percent received an adjustment for use of a minor in the commission of an offense. Table 18 also shows the application rates of the adjustments for obstruction of justice (2.7%) and reckless endangerment (0.7%). The rate of those receiving the acceptance of responsibility adjustment was 93.4 percent, as shown in Table 18.

As seen in Table 20, 38.8 percent of offenders did not receive criminal history points under the guidelines' criminal history computations. Conversely, more than half of all offenders (61.2%) received points for prior criminal convictions (Chapter Four of the guidelines). Table 21 shows that in 2007 fewer than half (46.9%) of the offenders were placed in Criminal History Category I and 11.0 percent were placed in Category VI. Table 22 shows that 2,290 offenders received a career offender adjustment, and 656 received an armed career criminal adjustment. For further details of the guideline application components, see Tables 17 through 23 of the 2007 *Sourcebook of Federal Sentencing Statistics*.



Sentences Within the Guideline Range and Outside the Range

On January 12, 2005, the Supreme Court decided *United States v. Booker*,³⁸ holding that the imposition of an enhanced sentence under the federal sentencing guidelines based on the sentencing judge's determination of a fact (other than a prior conviction) that was not found by the jury or admitted to by the defendant violated the Sixth Amendment. The Court remedied the Sixth Amendment violation by excising the provisions in the Sentencing Reform Act that made the federal sentencing guidelines mandatory, thereby rendering the guidelines effectively advisory. The *Booker* decision necessitated changes in the methodology used by the Commission in the collection and analysis of the data.

The *Sourcebook* includes a number of tables, differing from those presented in pre-FY2005 *Sourcebooks*, presenting data on cases sentenced outside the guideline range and sorted into a number of categories created in response to the *Booker* decision. Before the decision in *Booker*, non-government sponsored outside the range sentences were classified as upward departures or downward departures. Subsequent to the *Booker* decision, the Commission began coding outside the range cases, separately for above and below, into four categories: Departure; Departure w/*Booker*; *Booker*; and Remaining. In place of the two categories, the Commission now codes non-government sponsored outside the range cases into a total of eight categories (the four categories described above for above range and those same categories for below range sentences). For expanded definitions of these categories, see Appendix A.

In fiscal year 2006, the Commission added 13 tables to the *Sourcebook*, labeled N through N-11, presenting national and circuit data on sentences within the guideline range and those outside the range. Nationally, 60.8 percent of cases sentenced in 2007 were sentenced within the applicable guideline range. Above range cases accounted for a total of

³⁸ 543 U.S. 220 (2005).

1.5 percent of all cases, with half citing a guideline departure reason and half not citing a departure reason. Of all cases sentenced in 2007, 25.6 percent were sentenced below the guideline range based upon a reason sponsored by the government. Most of these cases (14.4%) were sentenced pursuant to a motion by the government for a reduction because the defendant provided substantial assistance (§5K1.1). An additional 7.5 percent received a reduction based upon an Early Disposition Program (§5K3.1). The remaining below range sentences sponsored by the government accounted for 3.7 percent of the cases. Finally, an additional 12.0 percent of the cases were sentenced below the guideline range. Guideline departure provisions were cited in 3.9 percent of the cases, and 8.1 percent did not cite a departure reason. (See Table N).

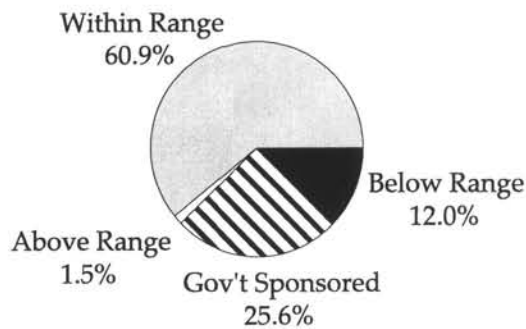


Table 26 shows, by district, both the number and percent of cases sentenced within the guideline range, or receiving a sentence outside the applicable guideline range. Beginning with 2003, the Commission augmented its data coding procedures to determine the proportion of non-substantial assistance downward departures that were sponsored by the government. Reasons identifying government sponsored downward departures are listed in Appendix A. The *Sourcebook* includes a number of modified tables presenting data on cases sentenced outside the guideline range and sorted into a number of categories created in response to the *Booker* decision. See Appendix A. Nationally, the percentage of within-guideline sentences was 60.8 percent and ranged by district from 31.1 percent to

87.0 percent. The total proportion of sentences above the guideline range totaled 1.5 percent. See Table 26.

Government sponsored below range sentences account for 25.6 percent of all cases sentenced during this period and are classified into three categories: §5K1.1 Substantial Assistance; §5K3.1 Early Disposition; and Other Government Sponsored. The national rate of substantial assistance was 14.4 percent and ranged by district from 3.3 percent to 36.0 percent. The rate of below range sentences for early disposition was 7.5 percent nationally and ranged from 0.0 percent (in 74 districts) to 51.8 percent. The rate of other government sponsored below range sentences was 3.7 percent nationally and ranged from 0.0 percent (in seven districts) to 18.2 percent. See Table 26. Nationally, an additional 12.0 percent of cases were sentenced below the guideline range classified into four categories. Nationally, the rate of below range departures was 2.5 percent, ranging from 0.0 percent (in six districts) to 14.3 percent. Below range departures also citing *Booker* were 1.4 percent nationally and ranged from 0.0 percent (in nine districts) to 8.0 percent. The national rate of below range cases that were not departures but which cited *Booker* was 7.1 percent with a range by district of 1.5 percent to 24.9 percent. The rate in the category of remaining below range cases was 1.0 percent nationally and ranged from 0.0 percent (in 17 districts) to 4.9 percent. See Table 26.

Table 27 shows, by offense type, the number and percent of sentences within the guideline range and outside of the range. The offense type with the highest within-guideline rate was simple drug possession (90.9%). Above range departure rates ranged from 0.0 percent (11 offense types) to 3.1 percent (manslaughter). The rates for above range departure with *Booker* cases ranged from 0.0 percent (12 offense types) to 6.2 percent (manslaughter). The above range with *Booker* rate ranged from 0.0 percent (eight offense types) to 6.2 percent (manslaughter). The rates of the remaining above range cases ranged from 0.0 percent (14 offense types) and 3.2 percent (auto theft).

The rate of substantial assistance departures ranged by offense type from 0.0 percent (burglary/B&E) to 46.7 percent (antitrust). Early disposition rates ranged from 0.0 percent (14 offense types) to 22.8 percent (immigration). The rate of application of other government sponsored below range sentences ranged from 0.0 percent (antitrust) to 20.8 percent (kidnapping/hostage taking). See Table 27.

The rate of below range departures ranged by offense type from 0.0 percent (two offense types) to 6.3 percent (gambling/lottery). Rates of below range departures with *Booker* ranged from 0.0 percent (five offense types) to 13.3 percent (antitrust). Below range with *Booker* had rates by offense type ranging from 1.3 percent (arson) to 26.7 percent (antitrust). The rates for the remaining below range cases ranged from 0.0 percent (five offense types) to 6.9 percent (national defense). See Table 27.

For sentences within the applicable guideline range, as shown in Table 29, the sentence most often given (58.9% of all within-guideline sentences) was at the minimum point of the guideline range. The sentence was at the maximum of the guideline range in 10.3 percent of all within-guideline cases.

Tables 30-32 show the sentencing effects of the 11 categories of outside the range sentences. Overall, offenders receiving a substantial assistance departure experienced the largest reduction among all types of below range sentences. Sentences for offenders receiving substantial assistance reductions, as shown in Table 30, had a median 29-month sentence reduction from the minimum of the applicable guideline range. This results in a 47.4 percent median decrease in the otherwise applicable guideline minimum. Cases receiving a reduction under USSG §5K3.1 (early disposition) had a median decrease of seven months from the guideline range, which is a 27.8 percent median decrease. See Table 30A. Those cases receiving an other government sponsored reduction had a median decrease of ten months from the applicable guideline minimum (a median decrease of 26.8%). See Table 31.

Table 31A shows that the median decrease in cases receiving a below range departure was 10.0 months below the guideline minimum; a median decrease of 26.8 percent. Cases receiving a departure below range with *Booker* saw a median decrease of 15 months from the guideline minimum (39.1% median decrease). See Table 31B. Table 31C presents data on below range cases with *Booker*. The median reduction from the guideline minimum was 12 months (33.3 % median decrease). The median reduction from the guideline minimum for all remaining below range cases is presented in Table 31D. The median sentence reduction was six months (45.9% median decrease).

The relative increase above the applicable guideline maximum is presented in Tables 32 through 32C. Departures above the guideline range were a median 11 months above the guideline maximum. This represents a 33.3 percent median increase above the guideline maximum. See Table 32. Table 32A shows that the median increase for cases receiving a departure above range with *Booker* was 19 months above the guideline maximum (40.6% median increase). Cases with a sentence above range with *Booker* had a median increase of 11 months (50.0% median increase). See Table 32B. The category of all remaining cases above the range had a median increase of 8.5 months above the guideline maximum (25.0% median percent increase). See Table 32C. For further departure statistics, see Tables 24 through 32C and Figures G and H of the 2007 *Sourcebook of Federal Sentencing Statistics*.

Drug Cases

As in previous years, drug offenses were the largest single category of federal convictions, making up 34.4 percent of all offenders sentenced in 2007 (Figure A). Among drug cases, 45.4 percent involved cocaine (24.7% powder cocaine and 20.7% crack cocaine), followed by marijuana (25.2%), methamphetamine (20.3%), and heroin (5.5%). See Figure A.

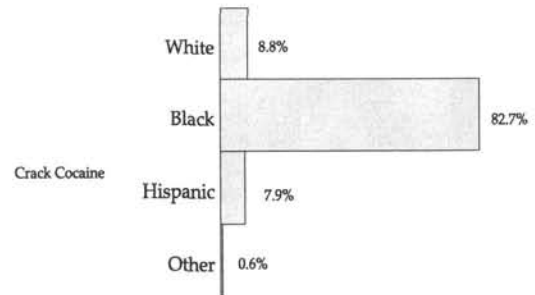
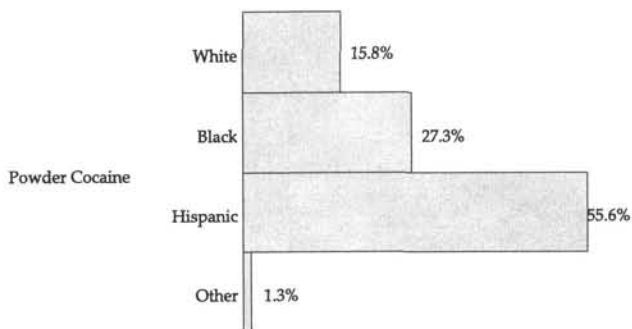
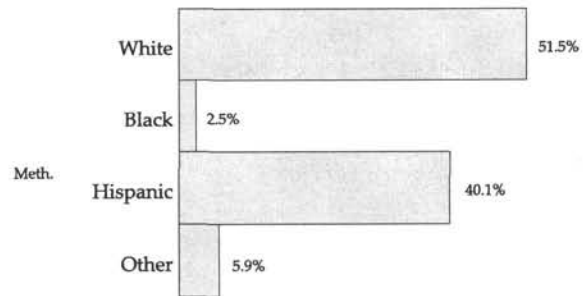


Table 33 of the *Sourcebook* shows that nearly all drug offenses (97.1%) were sentenced under the primary drug trafficking guideline (§2D1.1). Among crack cocaine defendants, the distribution was 7.9 percent Hispanic origin, 82.7 percent Black, and 8.8 percent White. The race/ethnicity distribution of drug defendants involved with methamphetamine was 40.1 percent Hispanic origin, 2.5 percent Black, and 51.5 percent White. Among drug defendants overall, 87.6 percent were male; and 28.8 percent were non-United States citizens. Except for crack cocaine and methamphetamine traffickers, the majority of drug offenders were in Criminal History Category I.



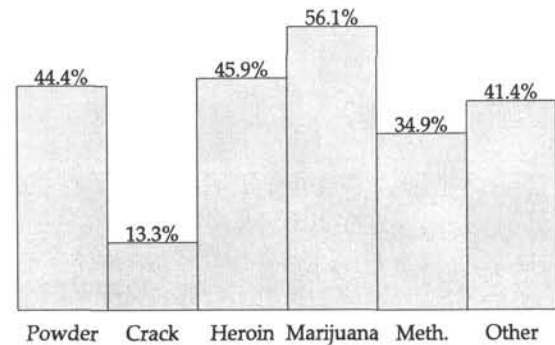
Drug offenders received sentence increases for possession or use of weapons in 17.4 percent of all the drug cases (Table 39). A sentence adjustment for role in the offense (Table 40) was imposed in 25.8 percent of drug cases; 20.5 percent received a mitigating role adjustment and 5.3 percent received an aggravating role adjustment. Wide variation was observed in application of the mitigating role adjustment across drug types, with 38.7 percent of marijuana and 26.4 percent of heroin offenders receiving a mitigating role adjustment compared to 5.5 percent for crack cocaine offenders. Slightly more than 93 percent (93.2%, Table 41) of drug offenders received an adjustment for acceptance of responsibility.

Table 43 of the *Sourcebook* shows that 66.8 percent of drug offenders were convicted under statutes carrying a mandatory minimum penalty (28.0% a five-year and 38.8% a ten-year or longer mandatory minimum). The highest percentages of offenders receiving a mandatory minimum were crack cocaine

cases (81.6%), methamphetamine cases (80.7%), and powder cocaine cases (79.0%). A ten-year or longer mandatory minimum was applicable in more than half of both powder cocaine cases (51.1%) and methamphetamine cases (55.1%).

In 1994, Congress enacted the “safety valve” provision (§5C1.2) to provide nonviolent, low-level, first-time drug offenders relief from statutory mandatory minimum sentences. Under this provision, certain nonviolent drug offenders with little or no criminal history can receive the full benefit of applicable mitigating adjustments under the guidelines and receive sentences below the otherwise applicable statutory mandatory minimum penalties. Effective November 1, 1995, a guideline amendment was promulgated that provided a two-level reduction for offenders who meet the safety valve criteria and whose offense level is 26 or greater. Effective November 1, 2001, the Commission amended this provision, allowing offenders with offense levels less than 26 to also receive this two-level reduction.

Table 44 shows that 38.6 percent of drug offenders received the benefit of the two-level reduction for meeting the “safety valve” criteria, including 13.9 percent who were not subject to a drug statutory mandatory minimum penalty and 24.7 percent who were subject to a drug statutory mandatory minimum penalty. Powder cocaine, heroin, and marijuana offenders and offenders trafficking in “other” drugs were the most likely to receive the reduction for meeting the safety valve criteria, while crack cocaine (13.3%) offenders were the least likely.



As displayed in Figure J, the average overall prison term for drug offenders varied widely by drug type, from a mean of 129.0 months for crack cocaine cases (median of 120 months) to 40.4 months for marijuana cases (median of 24 months). See Tables 33 through 45 and Figures I through L of the 2007 *Sourcebook of Federal Sentencing Statistics* for additional statistics and trends on drug cases.

Immigration Cases

As seen in Table 46, most immigration offenders were male (92.6%), of Hispanic origin (88.8%), and had less than a high school education (79.1%). A large percentage of immigration convictions involved non-United States citizens (88.1%, Table 48) and were the result of a guilty plea (98.7%, Table 46). For detailed statistics on immigration violations, see Tables 46 through 50 of the 2007 *Sourcebook of Federal Sentencing Statistics*.

Organizational Sentencing Practices

Sentencing guidelines for organizations convicted of federal offenses became effective November 1, 1991.³⁹ 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

³⁹ See *Guidelines Manual*, Chapter Eight – Sentencing of Organizations.

sentences; and implement other statutory penalties such as forfeiture and the assessment of prosecution costs.

The Chapter Eight organizational guidelines apply to federal felonies and Class A misdemeanors committed by organizational offenders.⁴⁰ 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.⁴¹ In addition, the sentencing guidelines for antitrust violations and most bribery and kickback offenses contain specific formulations for calculating fines for organizations.⁴²

The organizational guidelines do not contain fine provisions for most offenses involving environmental pollution, food, drugs, agricultural and consumer products, civil/individual rights, administration of justice (e.g., contempt, obstruction of justice, and perjury), and national defense.⁴³ In those cases in which the Chapter Eight fine guidelines do not apply, the statutory provisions of sections 3553 and 3572 of title 18, United States Code, govern the determination of an appropriate fine.

In 2007, the Commission received information on 196 organizations⁴⁴ that were sentenced under Chapter Eight, a 9.7 percent decrease from 2006 and a 4.8 percent increase from 2005.⁴⁵ The sentenced organizations pled guilty in 166 (84.7%) of the cases;

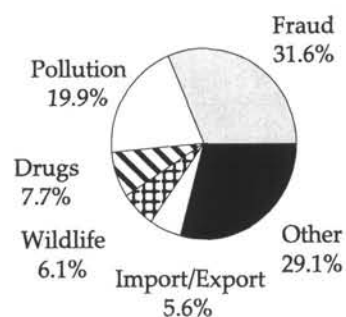
29 (14.8%) were convicted after a jury trial.⁴⁶ See Table 53 of the 2007 *Sourcebook of Federal Sentencing Statistics*.

Changes from Prior Annual Reports

The organizational sentencing data reported in the 2000 *Sourcebook* marked the beginning of a new system for recording organizational sentencing data, including the capturing of new data, such as the frequency with which courts ordered organizations to make compliance and ethics-related improvements as a condition of probation. Also beginning with the 2000 *Sourcebook*, the Commission instituted new designations for some offense types, which continue to be refined to more accurately report the data captured. Consequently, some direct comparisons of the 2007 *Annual Report* to prior annual reports may not be possible.

Offense Characteristics

As in 2006, fraud was the most frequent type of offense committed by an organization sentenced in federal court, accounting for 62 (31.6%) of the 196 cases sentenced. Other significant offense categories included environmental pollution (19.9%)⁴⁷, drugs (7.7%), environmental/wildlife (6.1%), and import and export (5.6%). See Table 51 of the 2007 *Sourcebook of Federal Sentencing Statistics*.



⁴⁰ See USSG §8A1.1.

⁴¹ See USSG §8C2.1.

⁴² See USSG §§2B4.1(c); 2C1.1(d); 2R1.1(d).

⁴³ See USSG §8C2.1.

⁴⁴ One additional case was excluded from this analysis for one or both of the following reasons: missing primary offense category or missing information on type of economic sanction for cases in which orders were made.

⁴⁵ 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. See page 26.

⁴⁶ One of cases was resolved by way of a *nolo contendere* plea.

⁴⁷ Environmental pollution offenses refer to the aggregate of "Environmental-Water," "Environmental-Air," and "Environmental-Hazardous/Toxic Pollutants."

Offender Characteristics

In those cases in which the fine provisions of section 8C2.1 apply to the offense and the offender organization has the ability to pay, the court calculates a culpability score that may decrease or increase the applicable offense level. Culpability score calculation data is obtained from the sentencing court's Judgment and Commitment Order and/or the probation officer's Presentence Report. Of the 196 cases sentenced in 2007, the court ordered a fine in 124 cases (63.3%) and applied the fine provisions of section 8C2.1 to calculate the fine in at least 90 cases (47.4%) for which the Commission received detailed culpability score information.⁴⁸ See Tables 53 and 54 of the *2007 Sourcebook of Federal Sentencing Statistics*.

In numerous cases, the organization's culpability score was reduced based on the presence of certain mitigating culpability factors. Of the 89 cases with detailed culpability score information on self-reporting, cooperation, and acceptance of responsibility, 68 organizations (76.4%) received reductions in their culpability scores, pursuant to section 8C2.5(g), for either self-reporting, cooperating, or accepting responsibility. Forty organizations (44.9%) received reductions in their culpability scores for cooperating with the government's investigation⁴⁹ and another 24 organizations (27%) received reductions for accepting responsibility for their wrongdoing.⁵⁰ Four organizations received the full five-point reduction in their culpability score for reporting the offense to governmental authorities,⁵¹ cooperating with the investigation, and accepting responsibility for the offense (4.5%). One organization received a reduction in its culpability score for having in place

an "effective compliance and ethics program."⁵² Twenty one organizations (23.6%) received no culpability score reductions inasmuch as they did not self-report, cooperate with the authorities, or accept responsibility. See Table 54 of the *2007 Sourcebook of Federal Sentencing Statistics*.

In a number of cases, the organization's culpability score was increased based on the presence of aggravating culpability factors. Among those 89 cases with complete detailed culpability score calculations, five organizations (5.6%) received an increase pursuant to section 8C2.5(e) for having obstructed justice, which resulted in an increased culpability score for sentencing purposes. One organization (1.1%) received an increase under section 8C2.5(c) (for a history of prior criminal or administrative offenses within five years), and one organization (1.1%) received an increase under section 8C2.5(d) (for violation of a judicial order, injunction, or condition of probation). See Table 54 of the *2007 Sourcebook of Federal Sentencing Statistics*.

Sanctions Imposed

Of the 196 cases sentenced in fiscal year 2007, restitution was ordered in 62 cases (31.6%), and a fine was imposed in 134 cases (68.4%). See Table 52. The median restitution ordered was \$245,716 and the median fine imposed was \$131,500. See Table 52 of the *2007 Sourcebook of Federal Sentencing Statistics*.

The highest fines in 2007 were imposed on two commercial carriers for violations of antitrust provisions; both organizations were fined \$300 million for a scheme to fix prices. The second highest fine, \$180 million, was imposed on a corporation for making false statements to a government agency regarding a regulated product. The third highest fine, \$27.8 million⁵³, was imposed on an organization for water pollution violations. The largest restitution

⁴⁸ 107 cases had fine guidelines application data missing or inapplicable due to guideline provisions such as a "preliminary determination of inability to pay a fine" (section 8C2.2), which applied to 61 cases in 2007.

⁴⁹ See USSG §8C2.5(g)(2).

⁵⁰ See USSG §8C2.5(g)(3).

⁵¹ See USSG §8C2.5(g)(1).

⁵² See USSG §8C2.5(f).

⁵³ \$27.8 million was the combined fine paid by the same organization in separate cases resolved with a single plea agreement involving related water pollution allegations.

order in 2007, \$50 million, was imposed on an organization for labor and tax violations.

In addition to restitution and monetary penalties, offenders sentenced under the organizational guidelines were subject to other sanctions. Of the 196 cases sentenced pursuant to Chapter Eight, 147 (75%) received one month or more of probation, and 47 (24%) were ordered to make compliance or ethics-related improvements. See Table 53 of the 2007 *Sourcebook of Federal Sentencing Statistics*.

Appeals Data

The Sentencing Reform Act authorized appellate review of guideline sentences if the sentence (1) was imposed in violation of law; (2) was imposed as a result of an incorrect application of the sentencing guidelines; (3) is greater (appeal by the defendant) or less (appeal by the government) than the sentence specified in the applicable guideline range; or (4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.⁵⁴ In *Booker*,⁵⁵ the Supreme Court excised 18 U.S.C. § 3742(e), which provided a *de novo* standard of review for departures from the guidelines, and replaced it with reasonableness review. The following is a summary of fiscal year 2007 information from the Commission's Appeals Database.⁵⁶

⁵⁴ 18 U.S.C. § 3742(a), (b).

⁵⁵ *U.S. v. Booker*, 543 U.S. 220 (2005).

⁵⁶ In 1992, the Commission implemented a data collection system to track appellate review of sentencing decisions. Each fiscal year, data collection for appellate review is accomplished by a three-step method. First, many appellate courts submit slip opinions of both published and unpublished opinions and orders directly to the Commission. The Commission creates a master list of these opinions as they are received. Second, the Commission performs a supplemental computer search for all published and unpublished opinions and orders using commercially available legal databases, and adds any available decisions not received directly from the courts to the master list. Last, because courts do not submit all relevant opinions and orders to commercially available legal databases,

Summary of Information Received

In fiscal year 2007, the Commission collected information on 8,530 appellate court cases. See Figure M of the 2007 *Sourcebook of Federal Sentencing Statistics*. The defendant was the appellant in 97.27 percent of the appeals collected, and the United States was the appellant in 1.90 percent of the appeals. The remaining appeals (0.83%) involved a cross appeal. Of the total number of appellate court cases collected for 2007, 1,884 were "conviction only" appeals.⁵⁷ See Figure M of the 2007 *Sourcebook of Federal Sentencing Statistics*. The total number of sentence appeals analyzed for 2007 was 6,639,⁵⁸ which represents a 1,644 case (19.9%) decrease in the number of sentencing appeals compared to 2006 (n=8,283).

Defendants were the appellants in 6,525 of the total number of sentence appeals analyzed for 2007. Four circuits (the Fourth, Fifth, Ninth, and Eleventh) accounted for 58.5% of these defendant sentence appeals (n=3,817). The United States was the

the Commission checks individual court websites and adds any available appeals from the fiscal year. This three-step method may not provide the Commission with every appellate sentencing decision rendered in a fiscal year. The Commission's Appeals Database, therefore, may not report the universe of appellate decisions rendered in that fiscal year.

⁵⁷ Although the Commission is interested primarily in information on appellate court cases that involve sentencing issues, it requests the circuit courts of appeals to provide information on all criminal appeals, and its supplemental computer search of commercially available legal databases includes both sentencing appeals and conviction appeals. The database then codes only information involving sentencing issues. 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 an appeal.

⁵⁸ Of the 8,530 appellate court decisions collected, 1,884 were "conviction only" appeals. Of the 6,646 remaining appeals, seven were missing the type of appeal information, resulting in 6,639 known sentencing appeals. See Table 56 (n. 1) of the 2007 *Sourcebook of Federal Sentencing Statistics*.

appellant in 177 of the total number of sentence appeals analyzed for 2007. Three circuits (the Fourth, Sixth, and Eighth) accounted for 54.8 percent of these sentence appeals brought by the government (n=97). See Table 56A of the 2007 *Sourcebook of Federal Sentencing Statistics*.

The overall disposition rates for sentencing appeals in 2007 was —

Affirmed	79.0 percent
Dismissed	6.9 percent
Reversed	9.6 percent
Affirmed in part/ Reversed in part	3.1 percent
Remanded ⁵⁹	1.4 percent

The circuit courts affirmed 80.0 percent of sentence appeals brought by the defendant reviewed in fiscal year 2007, an increase from 68.5 percent in fiscal year 2006. The Eleventh Circuit affirmed the highest percentage of such appeals (89.4%); the Tenth Circuit affirmed the lowest percentage (57.4%).

The circuit courts affirmed 23.2 percent of sentence appeals brought by the government in fiscal year 2007, a slight increase from 22.6 percent in fiscal year 2006. The Ninth Circuit affirmed the highest percent of such cases (45.5%); the D.C., Third and Tenth Circuits affirmed the lowest percentages (0.0% each).

Of the 638 sentence appeals reversed, the appellate courts remanded 614 (96.2%) to the district courts for further action. Of the 207 sentence appeals that were affirmed in part and reversed in part, the appellate courts remanded 194 (93.7%) to the district

courts for further action. An additional 90 (1.4%) sentence appeals were remanded to the district courts without a reversal, a decrease from 770 (88.3%) in fiscal year 2006. Thus, the appellate courts remanded 13.5 percent (n=894) of the 6,639 sentence appeals analyzed for fiscal year 2007, which represents a 1104 (55.2%) decrease in the number of appeals remanded compared to 2006 (n=1998). For defendant sentence appeals that were remanded without a reversal, the D.C. Circuit had the highest rate (5.1%), a decrease from 31.9 percent in fiscal year 2006; the Third and Eleventh Circuits had the lowest (0.3%). See Table 56 of the 2007 *Sourcebook of Federal Sentencing Statistics*. For sentence appeals brought by the government that were remanded without a reversal, each circuit had a 0.0% rate.⁶⁰ See Table 56A of the 2007 *Sourcebook of Federal Sentencing Statistics*.

Issues and Guidelines Appealed

In the 6,639 sentence appeals analyzed for 2007, defendants appealed 16,017 discrete sentencing issues. The sentencing issue appealed by defendants most frequently related to the 18 U.S.C. § 3553(a) factors, at 17.2 percent (n=2,750). See Table 57 of the 2007 *Sourcebook of Federal Sentencing Statistics*. Specific section 3553 issues most often appealed by defendants in fiscal year 2007 concern the history and characteristics of the defendant (9.9%); adequacy of the statement of reasons (7.3%); and avoiding unwarranted disparity with co-defendants (6.9%). See Table 59 of the 2007 *Sourcebook of Federal Sentencing Statistics*.

In fiscal year 2007, defendants most frequently appealed sentences involving application of the drug trafficking guideline (section 2D1.1), at 7.6 percent (n=1,218 appeals), followed by application of section 2L1.2 (Unlawfully Entering or Remaining in the United States)(6.2%); section 2K2.1 (Firearms)(2.6%);

⁵⁹ Prior to fiscal year 2005, the Commission did not report separately the numbers of appeals remanded to the lower courts without vacating the original sentence. Post-*Booker*, all of the circuit courts remanded a statistically significant number of appeals without vacating the original sentence. These data are now included as "remanded" in Tables 56 and 56A of the 2007 *Sourcebook of Federal Sentencing Statistics*.

⁶⁰ Results may be skewed in a circuit in which the appellate court reviewed a statistically small number of appeals. For example, in fiscal year 2007, the D.C. Circuit reviewed only two sentence appeals by the government. See Tables 56 and 56A of the 2007 *Sourcebook of Federal Sentencing Statistics*.

section 3B1.2 (Mitigating Role)(2.0%); section 2B1.1 (Larceny, Embezzlement and Theft)(1.6%); section 3B1.1 (Aggravating Role)(1.5%); and section 3E1.1 (Acceptance of Responsibility)(1.4%). See Table 57 of the 2007 *Sourcebook of Federal Sentencing Statistics*.

The affirmance rate for all sentencing issues appealed by defendants in fiscal year 2007 increased from 82.6 percent in fiscal year 2006 to 93.0 percent. The affirmance rate of appeals involving section 2D1.1 increased 15.4 percent, from 79.6 percent in 2006 to 95.0 percent in 2007; those involving section 2L1.2 increased 2.3 percent, from 86.6 percent to 88.9 percent; those involving section 2K2.1 increased 17.0 percent, from 77.4 percent to 94.4 percent; those involving section 3B1.2 increased 0.3 percent, from 98.8 percent to 99.1 percent; those involving section 2B1.1 increased 14.8 percent, from 74.6 percent to 89.4 percent; those involving section 3B1.1 increased 19.4 percent, from 75.2 percent to 94.6 percent; and those involving section 3E1.1 increased 2.0 percent, from 95.2 percent in 2006 to 97.2 percent in 2007.

The affirmance rate of appeals by defendants involving the factors at 18 U.S.C. § 3553(a) was 96.9 percent, an increase from 94.9 percent in 2006. The affirmance rate of Constitutional Issues appealed by defendants increased from 73.7 percent in 2006 to 91.6 percent in 2007, and the affirmance rate of defendant-based appeals involving Other Non-guideline Issues stayed the same from 2006 to 2007, at 92.4%. See Table 57 of the 2007 *Sourcebook of Federal Sentencing Statistics*.

The sentencing issue appealed most frequently by the government also related to application of the 18 U.S.C. § 3553(a) factors, at 36.3 percent (n=127). The government most frequently appealed sentences involving application of section 2D1.1 (Drug Trafficking)(6.3%); section 5K2.0 (Departures)(5.1%); section 5K1.1 (Substantial Assistance)(3.7%); and section 5C1.1 (Imposition of a Term of Imprisonment)(1.7%). See Table 58 of the 2007 *Sourcebook of Federal Sentencing Statistics*.

The affirmance rate for all sentencing issues appealed by the government in fiscal year 2007

increased from 28.5 percent in 2006 to 30.0 percent. The affirmance rate of government appeals involving Constitutional Issues increased from 24.6 percent in 2006 to 37.0 percent in 2007, and government based appeals involving Other Non-guideline Issues decreased from 50.0 percent to 36.4 percent. See Table 58 of the 2007 *Sourcebook of Federal Sentencing Statistics*.

Reasonableness

Of the 6,639 sentence appeals analyzed for 2007, the appellate courts reviewed the sentencing issues for reasonableness in 2,348 appeals. Defendants were the appellants in 2,262 of the appeals, the government was the appellant in 62 appeals, and there were 24 cross appeals. Of the appeals by defendants, the circuit courts determined the sentence to be reasonable in 2,216 appeals and unreasonable in 46 appeals. Of the appeals by the government, the circuit courts determined the sentence to be reasonable in 18 appeals and unreasonable in 44 appeals. Of the cross appeals, the circuit courts determined the sentence to be reasonable in eight appeals and unreasonable in 16 appeals.

Overall Offense and Offender Characteristics

The data indicate that 27.6 percent of defendants who appealed sentencing issues in the appellate court cases analyzed for fiscal year 2007 were White, 35.3 percent Black, 33.6 percent Hispanic, and 3.6 percent Other. Blacks comprise a larger proportion of the appeals population than they do of the district court population (of the defendants sentenced in district court, 28.8 percent were White, 24.1 percent were Black, and 43.0 percent were Hispanic). Just over seventy percent (70.4%) of the defendants in the appellate court cases analyzed were United States citizens, up from 65.6 percent in 2006.

In 30.4 percent of the appellate court cases analyzed, the defendants were sentenced under mandatory drug sentencing statutes, 8.0 percent were sentenced under mandatory gun sentencing statutes, and 4.1 percent were sentenced under both drug and gun mandatory sentencing statutes. Mandatory

minimum penalties applied to 42.5 percent of the appellate cases analyzed, as compared to 26.1 percent of the district court cases. See Table 60 of the 2007 *Sourcebook of Federal Sentencing Statistics*.

As might be expected, appealed cases had considerably longer sentences than the typical sentence issued by a district court. The mean sentence of appealed cases was 143 months (median = 108 months) compared to 52 months (median = 30 months) for all district court cases. The mean sentence of appealed cases increased from 132 months (median = 87 months) in 2006, and the mean sentence of district court cases did not change from 52 months (median = 30 months) in fiscal year 2006. Slightly more than forty-one percent (41.4%) of the appellate court cases involved defendants whose primary offense of conviction was drug trafficking, an increase from 38.1 percent in 2006. Drug trafficking was the primary offense in 33.7 percent of all cases sentenced in district court, a decrease from 34.9 percent in fiscal year 2006. See Table 61 of the 2007 *Sourcebook of Federal Sentencing Statistics*.

Data Analyses for the Courts and Congress

Using the Commission's 2007 dataset, the Commission will compile detailed information on sentencing activities for each federal district and circuit. These data will 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 will be organized by circuit and district and provide comparisons to national figures. These informational packets will also be used in the guidelines orientation of new chief circuit and district court judges by Commission staff. Additionally, these packets will be used by the Commission in several training programs for court personnel.

The statistical informational packets will also be designed for members of the House and Senate Judiciary Committees. Distribution of these packets will allow the Commission to better inform the members of the oversight committees about what types of information were collected and are available

in the Commission's 2007 dataset and will allow members to see what types of cases were sentenced at the federal level, both nationally and in their individual districts and states. The Commission will make these statistical informational packets available to the general public at the Commission's website, <http://www.ussc.gov/linktojp.htm>. The website also includes statistical informational packets for several earlier years of data.

In addition to the informational packets, Commission staff responded to numerous data requests from individual members of Congress, the Congressional Budget Office, the Congressional Research Office, and the courts in the past year. Responses to court requests 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 point of contact about a particular data analysis to performing substantial, sophisticated data analyses. In fiscal year 2007, the Commission responded to 14 requests for additional analysis from the courts and 18 requests from individual members of Congress or from congressional committees having oversight jurisdiction over the Commission.