

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) inclusive).

Document Submission

Section 401(h) of the PROTECT Act, which became effective April 30, 2003, requires the chief judge of each district to ensure that within 30 days after entry of judgment in a criminal case, the sentencing court submit a report of sentence to the Commission which includes (1) the judgment and commitment order; (2) the statement of reasons (including the reasons for any departures); (3) any plea agreement; (4) the indictment or other charging document; (5) the presentence report; and (6) any other information the Commission needs. 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 to report to Congress if any districts have not submitted the required information and documents.

Prior to the PROTECT Act, the Commission and the Administrative Office of the U.S. Courts, in consultation with the Committee on Criminal Law of the Judicial Conference, had requested that the sentencing court submit these documents to the Commission. The PROTECT Act now mandates their timely submission.

In reviewing the document submission rates for 2003, it should be noted that the PROTECT Act's mandatory submission requirement was only in effect for the last five months of the 2003 fiscal year (October 1, 2002, through September 30, 2003).

For fiscal year 2003, the Commission received 315,473 documents related to 70,258 cases sentenced. See Table 1. The vast majority of districts sent in complete documentation related to the cases. The J&C was received in more than 99 percent of cases in all but six districts. The PSR was received in more than 95 percent of cases in all but five districts. The SOR form was submitted in more than 95 percent of cases in all but 25 districts. The *2003 Sourcebook of Federal Sentencing Statistics* reports for the first time document receipt rates for both charging documents (indictment/information) and written plea agreements. The rate of missing documents was more than five percent in only 23 districts (for charging documents) and 25 districts (for written plea agreements). The Commission continues to modify its document collection procedures in response

The data in this report pertain to cases sentenced both before and after enactment of the PROTECT Act, Pub. L. 108-21. Seven months of the fiscal year were prior to the effective date of the Act (October 1, 2002–April 30, 2003), and five months were after (May 1, 2003–September 30, 2003).

to the judiciary's revisions to the Statement of Reasons form, and continues to work with the courts to facilitate document submission. See Table 1A.

Data Collection

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.

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 website address is <http://www.ICPSR.umich.edu/NACJD>. Sentencing 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://ffsrc.urban.org>. In addition to the *2003 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 70,258 cases sentenced under the Sentencing Reform Act (SRA) between October 1, 2002, and September 30, 2003. 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 due to missing or incomplete information. Analyses of smaller datasets (*e.g.*, the organizational guidelines) may also prove problematic due to the limited number of cases involved.

The Commission continues to work with the federal judiciary and 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.

Summary of 2003 Findings

The *2003 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, 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**.

Numbers cited in this Chapter may be found in tables or figures from the *2003 Sourcebook of Federal Sentencing Statistics*.

Sentencing Individual Offenders

Offender Characteristics

Historically, females have accounted for approximately 15 percent of federal criminal cases. The proportion of females, however, has declined for the past two years. As seen in Table 5, females make up 13.1 percent of those sentenced in 2003, down from 14.0 percent the previous year. The racial/ethnic composition is shown in Table 4. During 2003, the racial/ethnic composition was – White 30.4 percent; Black 23.2 percent; and Hispanic 42.9 percent. The average age of federal offenders sentenced, as shown in Table 6, remained largely unchanged from 2002 to 2003, with a mean age of 34 years and a median of 32 years. Nearly half (47.7%) of the offenders sentenced did not graduate from high school (Table 8), and only 5.6 percent graduated from college.

The proportion of offenders who are not U.S. citizens changed slightly between 2002 and 2003. As Table 9 shows, non-citizens made up 35.2 percent of all offenders sentenced in 2003, up 1.6 percent from the previous year. Table 9 also shows that, for offenses with 50 or more offenders, the offense categories with the largest percentages of non-citizens were the following: immigration (88.5%); kidnapping (44.8%); simple possession (39.9%); money laundering (29.6%); drug trafficking (28.7%); administration of justice (23.5%); and fraud (20.1%). For additional demographic information about the federal offender population, see Table 4 through Table 9 in the Commission's *2003 Sourcebook of Federal Sentencing Statistics*.

Guideline Cases

As seen in Figure C, trial rates under the guidelines increased for the first time in five years, rising to 4.3 percent of all cases in 2003, up from 2.9 percent in 2002. However, these rates have varied historically by both district and offense type. As Table 10 shows, the national trial rate was 4.3 percent. Table 11 shows that among offense types with more than 100 cases, trial rates ranged from 0 percent for drug communication facility cases to 11.6 percent for money laundering cases.

Table 12 shows that the vast majority of offenders (83.3%) were sentenced to imprisonment without provision for any period of alternative confinement. 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, racketeering, immigration offenses, pornography, prison offenses, and national defense offenses. In contrast, more than half of the offenders sentenced for larceny, 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.

In Table 13 we see that the average sentence for all offenders sentenced in 2003, counting probation-only sentences as zero months imprisonment, was 47.9 months (median of 24 months). For those offenders sentenced to imprisonment, Table 14 shows the average prison term was 56.8 months (median 33 months), ending a decline in the length of prison sentences that began in 1993. 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 and simple drug possession, received alternative confinement. Table 15 shows that 74.2 percent of the offenders had no fine or restitution ordered; and therefore, 25.8 percent of the offenders were ordered to pay a fine, restitution, or both, in addition to a term of prison or probation. For a detailed statistical description of the mode of disposition and sentences imposed, see Table 10 through Table 16 and Figure D through Figure F of the *2003 Sourcebook of Federal Sentencing Statistics*.

Guideline Application

In Table 17 we see that in 2003 the most frequently applied primary guidelines were – Drug Trafficking (§2D1.1), Unlawful Entry into U.S. (§2L1.2), Theft (§2B1.1), Firearms (§2K2.1), Fraud (§2F1.1), Smuggling Unlawful Alien (§2L1.1), and Robbery (§2B3.1). Table 18 shows that the four victim-related enhancements (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 5.3 percent of all offenders received an aggravating role adjustment, 10.5 percent received a mitigating role adjustment, 2.2 percent received an abuse of position of trust adjustment, and 0.5 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 (3.5%) and reckless endangerment (0.4%). The rate of those receiving the acceptance of responsibility adjustment (92.6%), as shown in Table 18, continued a consistent annual increase (since 1991).

As seen in Table 20, 39.5 percent did not receive criminal history points under the guideline's criminal history computations. Conversely, more than half of all offenders (60.5%) received points for prior criminal convictions (Chapter Four of the guidelines). Table 21 shows that in 2003 fewer than half (48.3%) of the offenders were placed in Criminal History Category I and 9.7 percent were placed in Category VI. Table 22 shows that 1,713 offenders received a career offender adjustment and 461 received an armed career criminal adjustment. For further details of the guideline application components, see Table 17 through Table 23 of the *2003 Sourcebook of Federal Sentencing Statistics*.

Departures and Sentences Within the Guideline Range

Table 26 shows, by district, both the number and percent of cases sentenced within the guideline range or receiving a departure below the guideline range (combining substantial assistance, government initiated downward departures, and other downward departures) or an upward departure. Beginning with 2003, the Commission augmented its data coding procedures to determine the proportion of non-substantial assistance downward departures that were initiated by the government. Reasons identifying government initiated downward departures are listed in Table 25. This *Sourcebook* includes a number of modified tables presenting departure data that initially combine all forms of departures below the guideline range (substantial assistance departures, government initiated downward departures, and other downward departures). In each case, a new table follows that presents the relevant rates for these three specific classes of departure. More than two-thirds (69.4%) of 2003 sentences were within their applicable guideline ranges. The percentage of within-guideline sentences was lowest in the District of Arizona (41.0%), with only one other district having a rate lower than 50 percent: Idaho (48.8%). The highest within-guideline sentencing rates were in Southern West Virginia (95.5%) and Northern West Virginia (92.5%). See Table 26.

Rates of Within-Range and Departure Sentences	
69.4%	Sentences Within Guideline Range
15.9%	Sentences Below Guideline Range for Substantial Assistance on Motion of Government
6.3%	Government Initiated Departures Below Guideline Range
7.5%	Other Departures Below Guideline Range
0.8%	Sentences Above Guideline Range

As seen in Figure G, substantial assistance departures decreased to 15.9 percent of all the cases in 2003 and the percentage of downward departures (government initiated downward departures and other downward departures) (13.8%) decreased by three percent between 2002 and 2003. Table 26A shows the departure rates by district for each of the three types of departure below the guideline range. The rates of substantial assistance departures ranged from a low of 2.6 percent in Southern West Virginia to a high of 38.8 percent in Eastern Pennsylvania.

Twenty-five districts reported no government initiated downward departures and many additional districts reported a very small percentage of cases receiving this type of departure in 2003. Six districts reported greater than ten percent of their cases receiving this type of departure: Arizona (41.8%); New Mexico (24.7%); Eastern Oklahoma (12.5%); Southern California (20.5%); Idaho (12.4%); and Southern Texas (11.2%). Rates of other departures below the guideline range ranged from 0.6 percent in Western Wisconsin to 31.3 percent in Connecticut. Forty-four districts had fewer than five percent of their cases receiving an other downward departure. See Table 26A.

Also in Figure G, we see that the rate of upward departures (0.8%) was identical to the rate in 2002. In Table 26 we see that eight districts reported a rate of upward departures greater than two percent: (South Dakota (4.6%), Middle Louisiana (4.1%), New Hampshire (3.7%), Western Wisconsin (3.5%), Wyoming (2.5%), Northern Oklahoma (2.4%), Arizona (2.3%), and the Virgin Islands (2.2%)), while five districts reported no upward departures.

Tables 27 and 27A show, by offense type, the number and percent of sentences within the guideline range, and departures below and above the guideline range. The offense type with the highest within-guideline rate was simple drug possession (88.8%). For substantial assistance departures (Table 27A), the offense type with the lowest rate was manslaughter (0 cases) and the offense type with the highest rate was gambling offenses (29.5%). Among offense types with more than 100 cases, drug trafficking (27.3%), money laundering (26.4%), auto theft (23.2%), and racketeering (22.4%) had the highest percentages receiving substantial assistance departures. For other downward departures, the offense types with the highest rates were national defense offenses (36.8%), environmental offenses (17.7%), tax offenses (17.1%), pornography offenses (14.3%), civil rights offenses (13.8%), manslaughter (12.5%), and embezzlement (10.2%).

For sentences within the applicable guideline range, as shown in Table 29, the sentence most often given (59.7% 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 drug trafficking (71.4%), larceny (69.3%), and other miscellaneous offenses (64.6%). The sentence was at the maximum of the guideline range in 10.3 percent of all within-guideline cases. The offense with the highest proportion of cases at the guideline maximum was manslaughter (48.4%).

Tables 30, 31, 31A, and 32 show the sentencing effects for substantial assistance departures, government initiated downward departures, other downward departures, and upward departures, respectively. Overall, offenders receiving a substantial assistance departure experienced a larger sentence reduction than did offenders receiving either a government initiated or other downward departure. Sentences for offenders receiving substantial assistance departures, shown in Table 30, had a median 26-month sentence reduction from the minimum of the applicable guideline range. This results in a 49.9 percent median decrease in the otherwise applicable guideline minimum. Sentences for offenders receiving a government initiated downward departure, as shown in Table 31, had a median eight-month sentence reduction from the minimum of the applicable guideline range. This results in a 28.1 percent median decrease in the otherwise applicable guideline minimum. Offenders receiving an other downward departure (Table 31A) had a median 12-month sentence reduction from the minimum of the applicable guideline range, resulting in a 40 percent median decrease. Offenders receiving an upward departure, as shown in Table 32, experienced a median 12-month sentence increase above the guideline maximum, amounting to a 39.3 percent median sentence increase. For further departure statistics, see Table 24 through Table 32 and Figure G through Figure H in the *2003 Sourcebook of Federal Sentencing Statistics*.

Drug Cases

As in previous years, drug offenses were the largest single category of federal convictions, making up 37.4 percent of all those sentenced in 2003 (Figure A). As Figure A shows, 43.8 percent of all drug cases involved cocaine (23.1% powder cocaine and 20.7% crack cocaine), followed by marijuana (26.2%), methamphetamine (17.1%), and heroin (7.1%). Table 33 shows that nearly all drug offenses (94.5%) were sentenced under the primary drug trafficking guideline (§2D1.1). The percentage of simple possession cases more than doubled in 2003 to 3.6 percent.

For drug offenders, Tables 34 through 37 show the following: 43.3 percent were of Hispanic origin, 27.2 percent were Black, and 27.1 percent were White; 87.7 percent were male;

and 28.9 percent were non-U.S. citizens. Except for crack cocaine and methamphetamine traffickers, the majority of drug offenders were in Criminal History Category I.

Drug offenders received sentence increases for possession or use of weapons in 14.8 percent of all the drug cases (Table 39). A sentence adjustment for role in the offense (Table 40) was imposed in 27.6 percent of drug cases; 21.3 percent were given a sentence reduction for mitigating role and 6.3 percent received an aggravating role adjustment. Wide variation was observed in application of the mitigating role adjustment across drug types, with approximately one-third of heroin (36.7%) and marijuana (33.1%) offenders receiving a mitigating role adjustment compared to 6.3 percent for crack cocaine offenders. Slightly more than 92 percent (92.3%, Table 41) of drug offenders received a reduction for acceptance of responsibility.

Table 43 shows that 59.6 percent of drug offenders were convicted under statutes carrying a mandatory minimum penalty provision (27.1% a five-year and 32.5% a ten-year or longer mandatory minimum). The highest percentages receiving a mandatory minimum were crack cocaine cases (76.4%) and powder cocaine cases (76.0%). A ten-year or longer mandatory minimum was applicable in nearly half of both crack cocaine cases (47.5%) and methamphetamine cases (47.2%).

In 1994, Congress enacted the “safety valve” provision (§5C1.2) to provide nonviolent, low-level, first-time drug offenders relief from mandatory minimum sentences.³⁷ In Table 44 we see that 38.3 percent of drug offenders received the benefit of the “safety valve,” including 15.4 percent who were not subject to a drug mandatory minimum and 22.9 percent who were subject to a drug mandatory minimum. Heroin and marijuana offenders were the most likely to receive a reduction under the “safety valve” provision, while crack cocaine and methamphetamine offenders were the least likely.

As seen in Table 45, about 26 percent of drug offenders received substantial assistance departures (26.3%), with another 4.5 percent being granted other downward departures. As displayed in Figure J, we see that the average overall prison term for drug offenders varied widely by drug type, from a mean of 123 months for crack cocaine cases (median = 100 months) to approximately 34 months for marijuana cases (median = 21 months). See Table 33 through Table 45 and Figure I through Figure L of the *2003 Sourcebook of Federal Sentencing Statistics* for additional statistics and trends on drug cases.

³⁷ 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 mandatory minimum penalty levels. Effective November 1, 1995, a guideline amendment was passed that provided an additional two-level reduction for qualified offenders 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 receive the “safety valve.”

Immigration Cases

As seen in Table 3 and in Figure B, the number of immigration cases increased over the past three years from 10,458 in 2001 to 11,736 in 2002 to 15,081 in 2003. In total, 21.9 percent (Figure A) of all cases in 2003 were sentenced under one of the immigration guidelines. As seen in Table 46, most immigration offenders were male (94.2%), of Hispanic origin (87.8%), and had less than a high school education (79.3%). A large percentage of immigration convictions involved non-U.S. citizens (86.6%, Table 48) and were the result of a guilty plea (98.7%, Table 46). For detailed statistics on immigration violations, see Table 46 through Table 50 in the Commission's 2003 *Sourcebook of Federal Sentencing Statistics*.

Summary

The number of guideline cases reported to the Commission continued increasing. For the past three years, the number of cases has climbed from 59,897 cases in 2001 to 64,366 in 2002 to 70,258 cases in 2003, a 17.3 percent increase. Federal offenders were sentenced to an average term of 24.1 months in prison (47.9 months when counting sentences of probation as zero months of incarceration). Nearly seventy percent of all offenders were sentenced within their applicable guideline range.

The preceding pages highlight federal sentencing practices on a national level. More detailed individual district profiles are presented in the Commission's 2003 *Sourcebook of Federal Sentencing Statistics* and on the Commission's website at: www.ussc.gov/linktojp.

Organizational Sentencing Practices

Sentencing guidelines for organizations convicted of federal offenses became effective November 1, 1991.³⁸ 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.³⁹ 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.⁴⁰ In addition, the sentencing guidelines for antitrust violations and most bribery and kickback offenses contain specific formulations for calculating fines for organizations.⁴¹

³⁸ See *Guidelines Manual*, Chapter Eight—Sentencing of Organizations.

³⁹ See USSG §8A1.1.

⁴⁰ See USSG §8C2.1.

⁴¹ See USSG §§2B4.1(c); 2C1.1(d); 2R1.1(d).

The organizational guidelines do not presently 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.⁴² 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 2003, the Commission received information on 200 organizations that were sentenced under Chapter Eight, a 20.6 percent decrease from 2002 and a 16.0 percent decrease from 2001.⁴³ Fines were imposed on 134 organizations. The sentenced organizations pled guilty in 91.0 percent of the cases; 9.0 percent were convicted after trial. See Tables 51 and 53 of the *2003 Sourcebook of Federal Sentencing Statistics*.

Changes from Prior Annual Reports

The organizational sentencing data reported in the *2000 Annual Report* 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 implement effective compliance programs as a term of probation. Also, beginning with that report, the Commission instituted new designations for some offense types. The offense type designations continue to be refined to more accurately report the data captured. Consequently, some direct comparisons of the *2003 Annual Report* to prior annual reports may not be possible.

Offense Characteristics

As in 2002, fraud remained the most frequent offense committed by an organization, accounting for 63 of the 200 cases sentenced (31.5%). Other significant offense categories included environmental pollution (20.0%),⁴⁴ food, drugs, agricultural and consumer products (7.0%), antitrust (6.5%), and money laundering (6.5%). See Table 51 of the *2003 Sourcebook of Federal Sentencing Statistics*.

Offender Characteristics

In those cases in which the offender organization both has the ability to pay, and the fine provisions of section 8C2.1 apply to the offense, the court calculates a culpability score that may reduce or increase the applicable offense level. Culpability score calculation data is obtained from

⁴² See USSG §8C2.1.

⁴³ 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 34.

⁴⁴ Environmental pollution offenses refer to the aggregate of “Environmental-Water,” “Environmental-Air,” and “Environmental-Hazardous/Toxic Pollutants.”

the sentencing court's Judgment and Commitment Order and/or the probation officer's Presentence Report. Of the 200 cases sentenced in 2003, the court applied the fine provisions of section 8C2.1 to calculate the fine in at least 99 cases. The Commission received detailed culpability score information for 90 of those cases. See Table 54 of the *2003 Sourcebook of Federal Sentencing Statistics*.

In numerous cases, the organization's culpability score was reduced based on the presence of certain culpability factors. Of the 90 cases with detailed culpability score calculations, no organizations received reductions in their culpability scores for having in place an "effective program to prevent and detect violations of law."⁴⁵ Once under investigation by the authorities, 36 organizations (40.0%) were given credit at sentencing for cooperating with the government's investigation,⁴⁶ and another 37 organizations (41.1%) were given credit for accepting responsibility for their wrongdoing.⁴⁷ One organization received full credit for reporting the offense to governmental authorities,⁴⁸ cooperating with the investigation, and accepting responsibility for the offense. Sixteen organizations (17.8%) received no mitigating credit inasmuch as they did not self-report, cooperate with the authorities, or accept responsibility. See Table 54 of the *2003 Sourcebook of Federal Sentencing Statistics*.

In several cases, the organization's culpability score also was increased based on the presence of culpability factors. Specifically, the culpability scores of three organizations (3.3%) were increased, pursuant to section 8C2.5(c) of the sentencing guidelines, because they had a history of prior criminal or administrative offenses. One organization received an increase under section 8C2.5(d) for having violated a judicial order, injunction, or condition of probation; and three organizations (3.3%) received an increase pursuant to section 8C2.5(e) for having obstructed justice, which resulted in increased culpability scores for sentencing purposes. See Table 54 of the *2003 Sourcebook of Federal Sentencing Statistics*.

Sanctions Imposed

The largest fine in 2003, approximately \$63.87 million, was imposed on a pharmaceutical manufacturing company for conspiracy to violate the Prescription Drug Marketing Act. The second highest fine in 2003, \$32.5 million, was imposed on a medical technology company for interstate shipment of a misbranded medical device and failure to report to the Food and Drug Administration. The third highest fine was \$28.5 million in an antitrust case. In addition, the largest restitution order imposed in 2003, \$36.8 million, was imposed in two related trademark infringement cases in which companies smuggled into the United States and trafficked in counterfeit goods. For the 200 cases overall, restitution was ordered in 83 cases, and a fine was imposed in 134 cases. The mean restitution ordered was \$2,256,237, and the mean fine imposed was \$1,702,897. See Tables 51 and 52 of the *2003 Sourcebook of Federal Sentencing Statistics*.

⁴⁵ USSG §8C2.5(f).

⁴⁶ See USSG pursuant to §8C2.5(g)(2).

⁴⁷ See USSG §8C2.5(g)(3).

⁴⁸ See USSG §8C2.5(g)(1).

In addition to restitution and monetary penalties, offenders sentenced under the organizational guidelines were subject to other sanctions. Of the 200 cases sentenced pursuant to Chapter Eight, 148 (74%) received one month or more of probation, and 24 (12.0%) were ordered to make some sort of “ethics”-related or “compliance”-related improvement. See Table 53 of the *2003 Sourcebook of Federal Sentencing Statistics*.

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 where the sentence is plainly unreasonable.⁴⁹ What follows is a summary of 2003 information from this database.

Summary of Information Received

In 2003, the Commission gathered information on 6,564 appellate court cases of which 1,663 were “conviction only” cases. See Figure M of the *2003 Sourcebook of Federal Sentencing Statistics*. The defendant was the appellant in 97.2 percent of the cases, and the United States was the appellant in 2.1 percent of the cases.⁵⁰ The remaining cases (0.7 %) involved a cross appeal by one of the parties. The total number of sentencing cases analyzed was 4,393.⁵¹ See Figure M of the *2003 Sourcebook of Federal Sentencing Statistics*. Slightly more than seven percent of the sentencing cases were reversed in full.

⁴⁹ In 1992, the Commission implemented a data collection system to track appellate review of sentencing decisions. The circuit courts of appeals send appellate opinions to the Commission, and the Commission supplements these cases with a computer search of relevant databases. Midway into the fiscal year, appellate standard of review was amended, effective April 30, 2003, by the PROTECT Act (Public Law 108-21).

⁵⁰ 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.

⁵¹ Of the 6,564 cases, 1,663 were “conviction only” cases. Of the 4,901 remaining cases, 508 were missing the type of appeal information, resulting in 4,393 known sentencing cases. See Table 57 (n. 1) of the *2003 Sourcebook of Federal Sentencing Statistics*. Three circuits (the Fourth, Fifth, and Ninth) accounted for approximately 47.3 percent of these cases (n= 2,323). See Tables 56 and 56A of the *2003 Sourcebook of Federal Sentencing Statistics*.

The overall disposition rate for cases appealed in 2003 was:

Affirmed	79.3 percent
Dismissed	8.6 percent
Reversed	7.3 percent
Affirmed in part/Reversed in part	4.8 percent

The affirmance rate of sentencing cases remained virtually unchanged from fiscal year 2002. The Fifth Circuit had the highest rate of affirmed cases (89.3%); the District of Columbia Circuit had the lowest (56.7%). See Table 56 of the *2003 Sourcebook of Federal Sentencing Statistics*. Of the 321 cases reversed, the appellate courts remanded 295 (91.9%) to the district courts for further action. Of the 211 cases that were affirmed in part and reversed in part, the appellate courts remanded 192 (91.0%) to the district courts for further action. See Figure M of the *2003 Sourcebook of Federal Sentencing Statistics*. Thus, in 2003, the appellate courts remanded to the district court about 11 percent (n=487) of the 4,393 sentencing cases reviewed that year. This represents a 90-case (15.6%) decrease in the number of cases remanded compared to 2002.

Issues and Guidelines Appealed

The Commission collects data on the guidelines for appellate cases involving sentencing issues only as well as those cases involving both sentencing and conviction issues. Defendants appealed the drug trafficking guideline (§2D1.1) more than any other guideline, at 9.4 percent (728 appeals). Other guidelines that frequently formed the bases for appeals by defendants were section 2L1.2 (Unlawfully Entering or Remaining in the United States)(8.9%), section 5K2.0 (Departures)(4.5%), section 3E1.1 (Acceptance of Responsibility)(2.9%), section 3B1.2 (Mitigating Role)(2.4%), section 3C1.1 (Obstruction of Justice)(2.4%), and section 3B1.1 (Aggravating Role)(2.3%). See Table 57 of the *2003 Sourcebook of Federal Sentencing Statistics*. For cases in which the government was the appellant, section 5K2.0 (Departures)(21.0%), and section 2D1.1 (Drug Trafficking)(5.7%) were the guidelines most frequently appealed. Governmental appeals of issues involving section 3E1.1 (Acceptance of Responsibility) increased from 2.2 percent to almost 5.7 percent, going from four of 183 in 2002 to ten of 176 in 2003. This section moved from the tenth most frequently appealed section in 2002 to the third most frequently appealed section in 2003. See Table 58 of the *2003 Sourcebook of Federal Sentencing Statistics*.

Offense and Offender Characteristics

The data reveal that 27.8 percent of defendants in appellate court cases⁵² were White, 31.4 percent Black, 37.5 percent Hispanic, and 3.3 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 in 2003, 30.4% were White, 23.2% were Black, and 42.9% were Hispanic). More

⁵² These data include appellate criminal cases involving a sentencing issue.

than 65 percent (65.3%) of the defendants in appellate court cases were United States citizens, down from almost 69 percent in 2002. In 30.3 percent of the appellate court cases, the defendants were sentenced under mandatory drug sentencing statutes, 3.9 percent were sentenced under mandatory gun sentencing statutes, and 2.4 percent were sentenced under both drug and gun mandatory sentencing statutes. Mandatory minimum penalties applied to 36.6 percent of the appellate court cases, as compared to 24.6 percent of the district court cases. See Table 60 of the *2003 Sourcebook of Federal Sentencing Statistics*.

As might be expected, appealed cases had considerably longer sentences. The mean sentence of appealed cases was 119.3 months (median = 77 months) compared to 47.8 months (median = 24 months) for all district court cases. The mean sentence of appealed cases is down from 132 months (median = 84 months) in 2002, and the mean sentence of district court cases is up from 46.6 months (median = 24 months) in 2002. More than 41 percent of the appellate court cases involved defendants whose primary offense of conviction was drug trafficking, down from 47 percent in 2002. Almost 36 percent of all cases sentenced in district court involved a primary offense of drug trafficking, down from 39.8 percent in 2002. See Table 61 of the *2003 Sourcebook of Federal Sentencing Statistics*.

Government Accountability Office Report

In October 2003, the General Accountability Office (GAO) released *Federal Drug Offenses: Departures from Sentencing Guidelines and Mandatory Minimum Sentences, Fiscal Years 1999-2001*. The report's findings included that the "USSC data were generally sufficient for our analyses . . . across circuits and for most districts," but that "[a]lthough USSC received most of the requested documents, some were missing key information or contained unclear information that was difficult to interpret."

This was consistent with the original design of the dataset for detecting national, circuit, and in certain limited circumstances, district sentencing trends. When attempting to break down the information to establish attribution of departures, GAO concluded that the "data are not recorded, coded, or reported in ways that clearly delineate other downward departures due to judicial discretion from those due to prosecutorial discretion." In setting national sentencing policy, attribution beyond substantial assistance motions had not been captured on the AOUSA standardized forms submitted to the Commission by the courts. As a result, it was recommended that both the USSC and the Administrative Office of the United States Courts "collaborate to

- develop educational programs and information for judges and other officers of the court to encourage the use of AOUSC's standard SOR and more effective ways to complete the SOR and
- revise the standard SOR to better meet the data collection needs of USSC."

Following the issuance of the report, the Sentencing Commission and the Criminal Law Committee started a collaborative effort to continue to revise the AOUSC's standard SOR as needed and to train on the need for complete and accurate data submissions to the Commission.

Data Analyses for the Courts and Congress

Using the Commission's 2002 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.

The statistical informational packets are also designed for members of the House and Senate Judiciary Committees. Distribution of these packets allowed the Commission to better inform the members of the oversight committees about what types of information were collected and available in the Commission's 2002 dataset and allowed members to see what types of cases were being sentenced at the federal level, both nationally and in their individual districts and states. The Commission also responded to individual members of Congress, the Congressional Budget Office, and the Congressional Research Office regarding numerous data requests about the frequency of statute and guideline application, average sentence lengths for specific offenses, and prison and sentencing impact projections. The Commission makes all of the statistical informational packets for each federal district and circuit (as well as each state) available to the general public at the Commission's website, <http://www.usc.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 data requests from the courts in 2003. 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 point of contact about a particular data analysis to performing substantial, sophisticated data analyses.