

U.S. SENTENCING COMMISSION

YEAR IN REVIEW

— Fiscal Year 2004 —

During the 2004 fiscal year, the Sentencing Commission bade farewell to its chair, Judge Diana E. Murphy, and welcomed its new chair, United States District Judge Ricardo H. Hinojosa, who was appointed by President George W. Bush on August 2, 2004. Judge Hinojosa has served on the United States District Court for the Southern District of Texas since 1983, and joined the Sentencing Commission in May 2003.

On June 24, 2004, the Supreme Court decided *Blakely v. Washington*, 542 U.S. 296 (2004), a landmark case that invalidated a sentence imposed under the state of Washington's sentencing guidelines statute. The decision held that the judicial application of an enhanced range under the Washington state guidelines violated the defendant's Sixth Amendment right to a jury trial. The Court stated that it expressed no opinion on the federal sentencing guidelines, which were not before it. After the decision, however, federal circuit and district courts voiced varying opinions on the implications of the decision for federal sentencing. The Supreme Court accepted for expedited review two federal sentencing guidelines cases, *United States v. Booker* and *United States v. Fanfan*, to clarify the implications of the decision for the federal sentencing guidelines, and the Sentencing Commission filed an *amicus curiae* brief in the case.

The Commission also continued its statutory mission to collect data on sentencing decisions. In fiscal year 2004, the Commission received documentation on approximately 70,000 cases sentenced under the guidelines. Approximately 52,000 of these cases were sentenced prior to the Supreme Court decision in *Blakely v. Washington*. The Commission coded and assimilated the information from these sentencings into its comprehensive, computerized data collection system.

The Commission also coded and assimilated the information from the approximately 18,000 sentencings conducted after *Blakely*. Because the mandatory nature of the guidelines was uncertain during the post-*Blakely* portion of fiscal year 2004, the Commission decided to create two datasets analyzing the federal sentences imposed in fiscal year 2004. The first dataset contains cases sentenced between October 1, 2003, and June 24, 2004, the date of the *Blakely* decision. During this period, courts clearly were bound by statute and by Supreme Court precedent to mandatorily apply the guidelines. From June 25, 2004, through September 30, 2004, courts arrived at vastly different conclusions regarding the continued viability of the guidelines and did not apply those guidelines in a uniform fashion. As a consequence, the Commission could no longer rely upon the assumption that the guidelines had been mandatorily applied. Accordingly, the Commission created a separate dataset for the post-*Blakely* cases. The second dataset analyzes cases sentenced from June 25, 2004, through September 30, 2004.

The Commission has been conducting outreach with experts in different areas of sentencing, and this year the Commission received reports from its two ad hoc advisory groups, the Ad Hoc Advisory Group on the Organizational Sentencing Guidelines and the Ad Hoc Native American Advisory Group. The report of the Ad Hoc Advisory Group on the Organizational Guidelines was

the culmination of an 18-month process to review the organizational guidelines and to suggest ways in which they may be improved. The Ad Hoc Native American Advisory Group conducted a study of the operation of the federal sentencing guidelines under the Major Crimes Act, and the impact of the sentencing guidelines on Native Americans subject to federal jurisdiction.

In addition to receiving the reports of its advisory groups, the Commission released its comprehensive report to Congress entitled *Downward Departures from the Sentencing Guidelines* and published two reports on recidivism, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* and *Recidivism and the 'First Offender.'*

On November 1, 2003, the package of guideline amendments that had been submitted to Congress during the 2003 fiscal year went into effect. The amendments provided sentencing increases or expanded coverage for a number of offenses including white collar frauds, terrorism, cybercrime, oxycodone trafficking, campaign finance offenses, and manslaughter. The Commission also promulgated a number of amendments during the 2004 fiscal year. In response to the PROTECT Act, the Commission promulgated an amendment prohibiting several grounds for departure and imposing restrictions on the availability of other departures, which became effective on October 27, 2003. On April 30, 2004, the Commission sent to Congress a package of amendments toughening the requirements for corporate compliance and ethics programs and providing sentencing increases for a number of offenses, including public corruption offenses, possession of certain destructive devices, spamming offenses, mishandling hazardous materials offenses, trafficking in GHB, and fraudulently obtaining a U.S. passport. (The amendments became effective November 1, 2004.)

President Bush nominated Chief Judge William K. Sessions III (vice chair) for reappointment to the Sentencing Commission on September 30, 2003, and the nomination was approved by the full Senate on December 9, 2003.

President Bush nominated Professor Michael E. O'Neill for reappointment to the Sentencing Commission on February 23, 2004, and nominated Judge Ruben Castillo (vice chair) for reappointment to the Commission on July 12, 2004.

On September 20, 2004, President Bush nominated Beryl A. Howell for appointment to the Sentencing Commission. Ms. Howell serves as managing director, general counsel of the Washington, D.C., office of Stroz Friedberg, LLC.

In addition to promulgating guideline amendments, the Commission continued its statutory mission to conduct guidelines training. More than 450 attendees participated in the Thirteenth Annual National Seminar on the Federal Sentencing Guidelines. The seminar, co-sponsored by the U.S. Sentencing Commission and the Federal Bar Association, was held May 19-21, 2004, in Miami Beach, Florida. The training staff also provided guideline application and sentencing-related training to judges, probation officers, prosecutors, defense attorneys, and others. During fiscal year 2004, Commission staff trained more than 6,600 individuals at 74 training sessions (including ongoing programs sponsored by the Federal Judicial Center and other agencies). Further, the Commission's "HelpLine" provided guideline application assistance to approximately 1,600 callers. The Commission continues to rely on its popular Internet site (www.ussc.gov) as a means of providing information about the agency and its work.