

# U.S. SENTENCING COMMISSION

## YEAR IN REVIEW

### — Fiscal Year 2005 —

On January 12, 2005, the United States Supreme Court decided *United States v. Booker*, 543 U.S. 220 (2005), and *United States v. Fanfan*, 543 U.S. 220 (2005). The Court held that the lower courts had correctly concluded that the right to trial by jury under the Sixth Amendment of the United States Constitution, as construed in *Blakely v. Washington*, 542 U.S. 296 (2004), applies to the federal sentencing guidelines. To remedy the constitutional defect, the Court severed the provision of the sentencing guideline statute that makes the guidelines mandatory, rendering the guidelines effectively advisory. The Court reaffirmed the constitutionality of the Commission and stated that “the Sentencing Commission remains in place, writing Guidelines, collecting information about actual district court sentencing decisions, undertaking research, and revising the Guidelines accordingly.”

In anticipation of the Court’s ruling in the *Booker* and *Fanfan* cases, the Sentencing Commission, on November 16 and 17, 2004, held a public hearing in Washington, D.C., to allow judges, prosecutors, the defense bar, victims rights groups, and academics to testify before the Commission.

On November 21, 2004, the Senate confirmed Judge Ricardo H. Hinojosa as chair of the Sentencing Commission; confirmed Ms. Beryl A. Howell as commissioner to the Sentencing Commission; and confirmed the reappointments to the Commission of Judge Ruben Castillo (vice chair) and Professor Michael E. O’Neill. Judge Hinojosa has been a member of the Sentencing Commission since May 2003 and has served on the United States District Court for the Southern District of Texas since 1983. Ms. Howell serves as managing director, general counsel of the Washington, D.C., Office of Stroz Friedberg, LLC; Judge Castillo has served as a United States district judge for the Northern District of Illinois since 1994; and Commissioner O’Neill is an associate professor of law at George Mason University School of Law.<sup>1</sup>

On November 23, 2004, the Sentencing Commission issued *Fifteen Years of Guidelines Sentencing*, a comprehensive review of the research literature and sentencing data to assess how well the guidelines have achieved the goals for sentencing reform established by Congress in the Sentencing Reform Act of 1984.

On January 4, 2005, the Sentencing Commission released another of its recidivism project reports, *A Comparison of the U.S. Sentencing Commission’s Criminal History Category and the U.S. Parole Commission Salient Factor Score*. It is the third report in the Commission’s research series on the recidivism of federal guideline offenders.

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<sup>1</sup> Commissioner O’Neill resigned his position as sentencing commissioner effective January 13, 2005, to take the position of chief counsel for the United States Senate’s Committee on the Judiciary.

The Sentencing Commission, on February 15-16, 2005, held a public hearing in Washington, D.C., to allow judges, prosecutors, the defense bar, victims rights groups, and academics another opportunity to testify before the Commission regarding the Court's ruling in the *Booker* and *Fanfan* cases. During the year, the Commission also assisted the Administrative Office of the U.S. Courts with revisions to the Statement of Reasons Form (AO 245B (Rev. 12/03)). These revisions were designed to capture more accurately the courts' reasons for imposing sentences outside the guideline range, thereby enabling the Commission to report with more specificity the impact of the *Booker* decision on federal sentences. The revised Statement of Reasons Form (AO 245B (Rev. 06/05)) was issued by the Executive Committee of the Judicial Conference of the United States in June 2005.

During the year, the Commission also reorganized its data receipt, analysis, editing, and reporting tasks to provide "real time" post-*Booker* information to the federal criminal justice community. In addition, the Commission apprised the general public of legal developments arising from the circuits' application of *Booker* by posting on the Commission's website, and regularly updating, a case law document that contained summaries of each circuit's post-*Booker* cases.

On April 13, 2005, responding to the Antitrust Criminal Penalty Enhancement and Reform Act of 2004, Pub. L. No. 108-237, which increased the statutory maximum term of imprisonment for Sherman Act violations from three years to ten years, the Commission voted unanimously to adopt sentencing guideline amendments that increase penalties for antitrust offenses. The Commission also voted unanimously to create a new guideline for aggravated identity theft in response to the Identity Theft Penalty Enhancement Act, Pub. L. No. 108-275 (2004). The amendments became effective November 1, 2005.

More than 500 attendees participated in the Fourteenth Annual National Seminar on the Federal Sentencing Guidelines. The seminar, co-sponsored by the Sentencing Commission and the Federal Bar Association, was held May 25-27, 2005, in San Francisco.

On May 30, 2005, the Commission named Judith W. Sheon as its interim staff director, succeeding Timothy B. McGrath, who became the clerk of court for the United States Bankruptcy Court in the Eastern District of Pennsylvania.

Associate Justice David H. Souter, at an investiture ceremony held at the Supreme Court of the United States on June 15, 2005, administered the oath of office to two re-appointed vice chairs of the Commission – United States Chief District Court Judge William K. Sessions III and United States District Court Judge Ruben Castillo – and a new member of the Commission, Ms. Beryl A. Howell. The chair of the Sentencing Commission, United States District Court Judge Ricardo H. Hinojosa, delivered the ceremony's closing remarks.

On August 24, 2005, the Sentencing Commission adopted its policy priorities for the amendment cycle ending May 1, 2006, with plans to address crime legislation related to issues such as terrorism, intellectual property, obstruction of justice, felonies committed online, anabolic steroids, and victims' rights legislation, and plans to continue its work on a number of policy initiatives including immigration offenses and firearms offenses.

In fiscal year 2005, the Sentencing Commission received documentation on more than 72,000 cases sentenced under the guidelines. The Commission coded and assimilated the

information from these sentencings into its comprehensive, computerized data collection system.

During 2005, the Sentencing Commission continued implementation of its Electronic Submission System which enables federal districts to submit major court documents to the Commission across the courts' network, thereby improving efficiencies and avoiding delays in the mailing process.

The Commission's training staff continued to provide guideline application and sentencing-related training to judges, probation officers, prosecutors, defense attorneys, and others. During fiscal year 2005, Commission staff trained more than 10,000 individuals at approximately 150 training sessions across the country (including ongoing programs sponsored by the Federal Judicial Center and other agencies).

During the year, the Commission's "HelpLine" provided guideline application assistance to more than 100 callers each month. The Commission continues to use its Internet site ([www.ussc.gov](http://www.ussc.gov)) as a means of providing information about the agency and its work and to develop its online collection of guideline training materials.