Chapter Five:
Summary and Conclusions

Chapter One described the goals of sentencing reform set out in the Sentencing Reform Act [SRA] and discussed the components of guidelines development and implementation that were created to achieve these goals. This final chapter assesses how fully the components of reform have been implemented and how successfully the goals have been achieved.

A. Substantially Achieved Goals of the SRA

1. Increased Rationality and Transparency

The most basic achievement of sentencing reform is so fundamental that it can easily be taken for granted—the guidelines have increased the rationality and transparency of federal sentencing. Recall that the SRA was initially part of a larger project to revise the federal criminal code. This project was ultimately abandoned (Gainer, 1998). Under the existing code, similar conduct can be charged in a variety of ways and there is no systematic grading of offenses to ensure punishment proportionate to the seriousness of the crime (Robinson, 2000). The guidelines brought order to the code by assigning the plethora of statutory offenses to generic categories representing the basic classifications of criminal conduct. These generic offenses were then graded in terms of seriousness, and specific adjustments for aggravating and mitigating circumstances were provided to adjust for the facts of each particular case. As described by one expert, the guidelines "are a systematic body of law in which a large amount of material relating to crime and punishment has been collected and organized. The guidelines impose a logical and rational order on most federal offenses and clarify the ambiguities that result from having a superfluity of sections describing virtually identical conduct" (Joost, 1997). In short, the guidelines have helped to rationalize the federal criminal law.

In terms of regulating criminal sentences, the SRA authorized the Commission to create an instrument of policy control—the sentencing guidelines—that simply did not exist in the era of indeterminate sentencing. This instrument allows policymakers to establish a consistent sentencing philosophy for the entire federal court system. Adjustments in policy, for example, to encourage the use of particular types of sanctions or to more severely punish certain types of crimes, are now possible in ways that were not feasible in a decentralized, discretionary system. Formalized rule making has replaced judicial discretion; the rule of law has replaced "law without order" (Frankel, 1972).

Advantages of the new instrument. Guidelines sentencing means that the *reasons* for sentences are much better understood today than they were in the preguidelines era. Statistics

provide a method for quantifying this increased understanding. Researchers could not account for most of the variance—the deviation of sentences around the average—among sentences in preguidelines statistical studies, meaning that we poorly understood the factors that controlled judges' decisions (Rhodes, 1991). Today, approximately 80 percent of the variance in sentences can be explained by the guidelines rules themselves. This greater transparency makes it easier to dispel concerns that sentences vary arbitrarily among judges, or that irrelevant factors, such as race or ethnicity, significantly affect sentences.

Because most of the factors that determine sentences are known in advance, practitioners report that it is easier to predict sentences based on the facts of the case than it was in the discretionary preguidelines era (USSC, 1991; Bowman, 1996). The effects of changes in sentencing policy can also be anticipated more precisely. The prison impact model developed by the Sentencing Commission, and further elaborated by the Bureau of Prisons, has proven very accurate at projecting the need for prison beds and supervision resources (Gaes, et al., 1993). Managing correctional resources is made easier by the guidelines.

By making sentencing policies more transparent, the guidelines also facilitate debate and evaluation of the merits of particular policies. Evaluation of policies has been made easier by another benefit of sentencing reform—the creation of a specialized expert agency with a substantial research mission. The Commission has developed and maintains huge databases on the sentences imposed in each fiscal year, as well as intensive study samples, and numerous other specialized data sets focused on particular issues. These represent the richest sources of information that have ever been assembled on federal crimes, federal offenders, and sentences imposed, and are invaluable resources for policy research.

Risks of the new instrument. While the creation of explicit sentencing rules has many advantages, commentators have noted that it also brings risks. One such risk has been called "factor creep" (Ruback & Wroblewski, 2001). Detailed rules implementing explicit policies make tinkering with the policies and adding to the rules very easy. While many guideline amendments have clarified ambiguous terms or simplified guidelines operation, other amendments have added to their complexity. It is possible to imagine countless circumstances that would make an offense more serious. For example, one might wish to enhance punishment for selling drugs 1) near a school yard, 2) near a prison, 3) near a drug treatment facility, 4) in the presence of a minor, 5) by employing a minor, or 6) to a pregnant woman. It is difficult to argue that any of these considerations are irrelevant, yet, as more and more adjustments are added to the sentencing rules, it is increasingly difficult to ensure that the interactions among them, and their cumulative effect, properly track offense seriousness.

Complex rules with many adjustments may foster a perception of a precise moral calculus, but on closer inspection this precision proves false (Breyer, 1999). Adjustments that appear necessary to achieve proportionate punishment may in actuality result in arbitrary distinctions among offenders. The original Commission recognized that "the number of possible relevant distinctions is endless. One can always find an additional characteristic X such that if the bank robber does X,

he is deserving of more punishment" (Breyer, 1988, pp. 13, 14). The Commission's initial draft proposal attempted to identify a comprehensive list of distinctions among offenses and offenders, but it was judged unworkable by many reviewers. To limit such debilitating complexity, the Commission adopted drafting principles that began with offense distinctions that were sufficiently frequent and substantial to be evident in the Commission's statistical analysis of data on past sentencing practices. Additional distinctions were then added only in limited circumstances when a specific policy need could be articulated and was accepted by a majority of the Commission (Nagel, 1990). The judicial departure power was relied on to ensure fine-tuning of sentences in atypical cases when needed to achieve the purposes of sentencing.

Pressure to add further adjustments has continued throughout the guidelines era, however. As evidenced in Appendix C, Congress frequently has directed the Commission to add aggravating adjustments to a wide variety of guidelines, in some cases formulating the specific wording and degree of adjustment. Commentators have noted that the need for these amendments has often not been demonstrated empirically and they have warned of the dangers of congressional "micro-management" (Parker & Block, 1988; 2001). Political pressure to respond to public concerns over high-publicity crimes could result in frequent revision of the guidelines without a sound policy basis (Rappaport, 1999). Regardless of the motivation, the steady accretion of guideline enhancements reflects Congress's increasing interest and involvement in the development of guidelines sentencing policy, as well as Congressional preference for a detailed and "tough" guidelines sentencing scheme.

2. Increased Certainty and Severity of Punishment

Of all the goals for sentencing reform articulated in the SRA, increasing the certainty and severity of punishment has been most fully achieved. The sentencing trends for different offense types, described in Chapter Two, demonstrate substantial increases in the use of incarceration and in the length of prison time served. The guidelines have had effects on severity that are independent of mandatory minimum penalty statutes. Many offenses not subject to minimum penalty statutes have shown severity increases similar to offenses that are subject to statutory minimums. Further, while the severity of punishment has been increased for many types of crime, in some cases, severity has been decreased to create greater uniformity among similar offenses, thus proving that the guidelines are a flexible instrument of policy control that can work in both directions.

Certainty and severity of imprisonment. The use of imprisonment has increased steadily, with 86 percent of all federal offenders in 2002 spending some time in prison, up from 69 percent fifteen years earlier. The percentage of offenders receiving simple probation—probation without confinement conditions—was cut almost in half by 1991 compared to the percentage in 1987. It has continued to decline to just 9.1 percent of all cases in 2002, just a third of the rate in 1987. Most notably, use of simple probation has been reduced by an increased use of intermediate sanctions, such as home, community, or intermittent confinement, which restrict offenders' liberty to their homes, halfway houses, or weekends in jail. The guidelines make intermediate sanctions an explicit sentencing option for offenders in Zones A, B, and C of the Sentencing Table, and the availability of these options was increased early in the guidelines era.

For offenders who are imprisoned, the length of time served has increased substantially in the guidelines era. The average time served more than doubled after implementation of the guidelines. Since 1992 there has been a slight downturn in average time served, but the typical federal offender sentenced in 2002 will still spend almost twice as long in prison as in 1984, (the year the SRA was enacted) increasing from an average of just under 25 months to almost 50 months.

For some offenses, such as violent offenses, sentences imposed have actually decreased. But time served has increased due to the abolition of parole, which results in more of the sentence imposed actually being served. For other offenses, such as drug trafficking, sentences imposed increased even as parole was being abolished, resulting in increases in time actually served of two and a half times (to an average of 80 months) immediately after guidelines implementation. Despite a slight downturn in the late 1990s, following implementation of the "safety valve" and other changes, the average time served for drug trafficking remains over twice as long in 2001 as it was in 1984. Time served for immigration offenses also increased substantially due to both abolition of parole and increases in sentences imposed. For other offenses, such as manslaughter, the abolition of parole was offset by decreases in sentences imposed, resulting in continuity in average time served. This is consistent with the original Commission's use of data on past practices to establish the guidelines levels for some types of crime. Recent amendments to some of these guidelines are likely to increase sentence severity in the future.

Increasing the certainty and severity of punishment were clear goals of the SRA. These goals were not intended as ends in themselves, but as *means* to the ends of just punishment and crime control through deterrence and incapacitation (Rappaport, 2003). Analyses currently underway at the Commission will measure the degree to which the increases in sentence certainty and severity have been "effective in meeting the purposes of sentencing as set forth in section 3553(1)(2) of Title 18, United States Code."[138]

Independent and bi-directional effects of the guidelines. It is extremely difficult to disentangle the effects of the guidelines from the effects of statutory minimum penalties for offenses subject to statutory minimums; the guidelines structure and severity levels reflect the structure found in the statutes. However, analyses of offenses *not* covered by statutory minimum penalties clearly demonstrate that the guidelines have increased severity levels independent from the statutes. Sentence severity for immigration offenses was increased by guideline amendments in the late 1980s and early 1990s and by additional amendments promulgated pursuant to congressional directives in the late 1990s. Average time served for firearm trafficking and illegal firearm possession under 18 U.S.C. § 922(g) has been doubled in the guidelines era without enactment of any mandatory minimum penalties. (Statutory minimum penalties under 18 U.S.C. § 924(c) for brandishing or discharging a firearm during a drug trafficking or violent offense were increased in 1998.)[139]

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[138] 28 U.S.C. § 991(b)(2).

[139] Pub. L. No. 105-386, 112 Stat. 3469 (Nov. 13, 1998).

Sentencing severity for a small number of offenses was decreased by the guidelines. Average time served for larceny decreased after implementation of the guidelines due to the Commission's decision to decrease severity for simple property crimes, while increasing it for "white collar" offenses, in order to treat economic crimes involving the same amount of money more similarly. Other economic offenses show severity trends in both directions: increases for tax and fraud, decreases for forgery and embezzlement. The Commission's 2001 amendments pursuant to its "economic crimes package" increased sentences for offenses involving large numbers of victims and larger monetary losses. Later amendments pursuant to directives in the Sarbanes-Oxley Act increased sentences for a wider variety of economic crimes and further augmented the 2001 increase. These increases are just beginning to appear in the data currently available.

Clearly, the guidelines have had an effect on sentencing independent of statutory minimum penalties. In addition, while the guidelines have been generally used to increase sentence severity, they can be used to decrease sentence severity for targeted offenses or offenders, if policymakers choose to do so.

B. Partially Achieved Goals of the SRA

1. Reduction of Unwarranted Sentencing Disparity

The central goal of the SRA was reduction of unwarranted sentencing disparity. Congress recognized, however, that disparity is not monolithic; it arises from multiple and discrete sources. Different components of the reformed sentencing system were designed to help control disparity arising from different sources. Evaluating the current system requires evaluating how well each source of disparity has been controlled.

Inter-judge and regional disparity. Rigorous statistical study both inside and outside the Commission confirm that the guidelines have succeeded at the job they were principally designed to do: reduce unwarranted disparity arising from differences among judges. As described in Chapter Three, the "primary judge effect" was reduced by approximately one-third to one-half with the implementation of the guidelines, and "interaction effects" have been reduced even more substantially. Analysis of specific offense types shows that the guidelines reduced inter-judge disparity for most types of crime, with the exception of immigration and robbery offenses.

Although changes in the amount of regional disparity from the preguidelines to the guidelines era cannot be quantified as rigorously as can changes in inter-judge disparity, the available evidence suggests that it was reduced under the guidelines for some offenses. However, regional disparity may have *increased* significantly for drug trafficking offenses, reflecting both different adaptations to the guidelines and different types of offenses prosecuted in different regions. The increased severity of drug trafficking offenses in the guidelines era allows regional differences to be more pronounced. Regional disparity may reflect both the policies of U.S. Attorneys and the practices of judges.

Using hierarchical statistical modeling described in Chapter Three, and the presumptive sentence model described in Chapter Four to control for case differences, analysis reveals that 73 percent of the variation in sentence lengths in federal sentencing today is due to offense and offender differences that affect the guideline range. Though statistically significant, only 2.9 and 2.8 percent of the variation is attributable to judges and districts, respectively. Departures based on defendants' substantial assistance accounted for the greatest amount of variation in sentences—4.4 percent in 2001. Other downward departures contributed 2.2 percent of the variation in sentences. Upward departures and use of the guideline range contributed relatively little to the total variation in sentences. Determining how much, if any, of the variation in sentences created by these mechanisms is *unwarranted* is difficult because of limitations in the data. The available evidence suggests, however, that at least part of the variation in sentences resulting from these mechanisms may represent unwarranted disparity.

Racial, ethnic, and gender disparity. As described in Chapter Four, any influence of racial or ethnic discrimination in sentencing decisions has been substantially controlled. By this important measure, sentencing reform has been successful. While some differences among groups in the likelihood of imprisonment or the length of prison terms imposed remains unaccounted for by legally relevant factors, the statistical significance of these differences fluctuate year-to-year, making deeply rooted prejudices or stereotypes an unlikely explanation for the differences. Some different treatment may result from legitimate considerations on which we have no data.

However, a significant difference in the treatment of similar male and female offenders remains unaccounted for, and may reflect lingering paternalism or, perhaps, sentencing-relevant differences between the genders on which data are not collected. Most important, policy changes effected by statutory minimum penalties, and incorporated into the guidelines' rules, have increased the gap in average sentences between African-American and other offenders. A significant part of this gap is due to policies that the Commission has found to be unnecessary to achieve the purposes of sentencing, such as the 100-to-1 quantity ratio between powder and crack cocaine.

Disparity arising at presentencing stages. In order to prevent plea bargaining from undermining sentencing reform, the SRA directed the Commission to promulgate policy statements regarding judicial review of plea agreements. The Commission also established other policies—such as the relevant conduct rule in Chapter One, Part B and the multiple count rule in Chapter Three, Part D of the *Guidelines Manual*, and cross-references among guidelines—designed to ameliorate the effects of uneven charging and plea bargaining decisions.

While it is difficult to quantify the exact extent to which presentencing stages are contributing to unwarranted disparity today, due both to limitations in the data and to recent changes in Department of Justice policies, several lines of evidence suggest that uneven charging and plea bargaining remain a source of unwarranted sentencing disparity. As reviewed in Chapter Three, surveys of judges and probation officers, field research in several districts, and analysis of information provided to the Commission in presentence reports have suggested that uneven charging and plea bargaining undermine the guidelines and result in sentencing disparity in a substantial number of cases.

Presentencing decisions sometimes result in sentences that are disproportionately *lenient* compared to the penalty established by the guidelines as appropriate for the offender's conduct. For example, research from three different time periods throughout the guidelines era has demonstrated that only a small minority of offenders who qualify for enhanced penalties under 21 U.S.C. § 841 for prior drug offenses receive such enhancements. Similarly, about a third of offenders who qualify for an enhanced sentence under 18 U.S.C. § 924(c) for use of a firearm during a violent or drug trafficking offense receive such an enhancement, about another third receive the guidelines' instead of the statutory firearm enhancement instead, while another third receive no increase at all.

At other times, presentencing decisions result in sentences disproportionately *severe* compared to the guidelines range that would otherwise apply to the case. For example, a small number of offenders each year are charged with multiple violations of section 924(c) as part of the same indictment and sentencing hearing. Such "count stacking" increases the statutory minimum sentence far above the top of the otherwise applicable guideline range. The Commission's multiple count rules cannot ameliorate the effects of charging variations involving statutory mandatory sentencing enhancements. The Department's new charging policies attempt to regulate use of statutory sentencing enhancements, but they leave considerable discretion to individual U. S. attorneys and prosecutors to depart from guideline principles.

There is little empirical research exploring why enhanced penalties are sought in some cases and not in others, or whether their use reflects legally relevant factors, extra-legal factors, or arbitrary variation. Field research suggests a variety of explanations, including workload pressures and the desire to create incentives, beyond those contained in the guidelines themselves, for defendant cooperation with the government. Different prosecutors and different courts may simply have different views about how best to handle certain types of cases or what penalties are appropriate. The sentences that result from avoiding applicable penalties may seem to those familiar with a particular defendant sufficient to meet the purposes of sentencing and more just and effective than the sentence required by a strict application of every penalty provided by law. Present practices, however, which lead to inconsistent application or avoidance of statutory and guideline enhancements, result in unwarranted disparity and sentences that are often disproportionate to the seriousness of the offense.

2. A High Standard of Sentencing Uniformity

Congress established an ambitious goal for sentencing reform—"avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing policies."[140] Recognizing that plea bargaining could undermine uniformity, Congress empowered the Commission to issue policy statements regarding judicial review and acceptance of

[140] 28 U.S.C. § 991(b)(1)(B).

plea agreements,[141] and directed the Commission to study the effects of plea agreements and mandatory minimum penalties on sentencing disparity.

As described in Chapter One, the Commission developed guidelines that sought uniform treatment for most offenders based on their *real offense conduct* rather than merely the offense of conviction. The Department of Justice and the Judicial Conference also recognized that prosecutorial discretion could lead to disparity and put in place supporting policies designed to ensure uniformity in charging, plea bargaining, and sentencing. All of this added up to a highly ambitious program to control disparity and achieve uniform sentences. Commentators have noted that no other sentencing commission has attempted so ambitious a goal and moved so far toward real offense sentencing (Tonry, 1996; Frase, 2002; Reitz, 2003). Thus, it is not entirely surprising—and no reason to dismiss all of federal sentencing reform as a failure—to recognize that this goal has been only partially achieved. It is necessary, however, to assess in what respects the federal guidelines system has fallen short, to examine the implications of current practices, and to draw appropriate lessons.

C. Partial Implementation of the Components of Sentencing Reform

Why has sentencing reform not achieved its goals in every respect? Program evaluators generally begin by examining whether the components of a new program have been fully implemented. Chapter One described the components of sentencing policy development and implementation envisioned in the SRA and in the policies and practices put into place by the Commission, the Department, and the Judicial Conference.

In theory, the Commission was to develop sentencing policy following consultation with judges, prosecutors, and other stakeholders, and after conducting and studying the latest criminological research. Congress was to review guideline amendments and recommendations for legislation in light of the policy reasons offered by the Commission. Prosecutors were to charge similar crimes uniformly. Plea agreements were to include complete and accurate accounts of offender's readily provable conduct. Defendant cooperation with the government was to be encouraged through sentence reductions built into the guidelines rules. As a check on prosecutorial discretion and the disparity that might result, probation officers were to conduct presentence investigations to inform judges' review of plea agreements. If necessary, judges were to reject agreements that would undermine the guidelines. Judicial departures were allowed only in consideration of aggravating or mitigating circumstances not adequately considered by the Commission, and appellate review of these departures and other guideline applications was intended to correct misapplications and ensure consistent sentencing nationwide.

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[141] 28 U.S.C. § 994(a)(2)(E).

In practice, the reformed sentencing system has fallen short of this ideal in several respects, which helps explain why the goals of sentencing reform have been only partially achieved.

1. Components of Guidelines Implementation

Problems with presentencing stages. Uniform charging and plea bargaining have been implemented only partially. Guidelines mechanisms designed to control the effects of uneven charging and plea agreements successfully compensate in some cases, but these mechanisms do not always work as intended. The multiple count rules successfully compensate for charging variations in many cases, but cannot undo the effects of trumping statutory minimum penalties or "count stacking" of offenses carrying mandatory consecutive penalty enhancements.

The relevant conduct rule has long been a subject of critical commentary (*see, e.g.,* Sands & Coates, 1991; Lear, 1993; Reitz, 1993; Yellin, 1993; American College of Trial Lawyers, 2001) and is an admitted policy compromise that treats some offenses involving quantifiable amounts, such as drug trafficking, differently from other offenses, such as robbery. Evidence from field research suggests that remaining ambiguity in the rule, and reluctance to upset plea agreements that stipulate less than the full relevant conduct and subject defendants to the severe penalties that would result, limits the rule's application. Preventing disparity due to uneven charging or plea agreements that limit offenders' exposure to punishment has always depended on probation officers informing the court of each defendant's real offense conduct. Informational asymmetry between the prosecution and the court, and limitations in resources needed to conduct presentence investigations, present a formidable challenge to the operation of the relevant conduct rule as a check on disparity arising from presentencing decisions.

Judicial review of plea agreements pursuant to the policy statements in Chapter Six of the *Guidelines Manual* appears to be very limited. Judges are reluctant (and, in some judges' views, are not institutionally empowered) to infringe on the discretion of prosecutors to choose which charges and evidence to bring forward. Judicial review of plea agreements is sometimes hampered by limitations in the information available to probation officers for their presentence investigations. Tension between the "beyond a reasonable doubt" standard of evidence applicable at trial and the "preponderance of evidence" standard applicable at sentencing during the first fifteen years of the guidelines raises questions about which conduct must be accounted for in plea agreements. Rejection of plea agreements that undermine the guidelines, though not unknown, appears to have been relatively rare throughout the guidelines era (Adair & Slawsky, 1991).

The Department of Justice and the Commission have recently taken steps designed to bolster the previously existing policies calling for uniform charging, plea agreements consistent with the goals of the SRA,[142] and judicial review and rejection of plea agreements that undermine the

[142] Ashcroft Charging Memo, *supra* note 24, Sept. 22, 2003.

guidelines.[143] While it is too early to assess the effects of these changes, it may be unrealistic to expect them to fully address these longstanding problems. Experience with previous Department policies that sought to impose uniform practices nationwide suggests that these recent policy changes alone may be insufficient to eliminate all disparate practices at presentencing stages. Commitment to the SRA's goal of systemwide uniformity naturally is more limited among front-line actors in different regions, facing different local conditions, than it is among national policymakers (Sifton, 1993). A fundamental issue for the future is how to increase the commitment of front-line implementers to their new responsibilities to ensure that the goals of sentencing reform are achieved.

Sentencing and appeal. Other components of guidelines implementation appear to be more fully operational. Probation officers continue to conduct investigations and write comprehensive presentence reports, although workload and budgetary pressures have recently raised questions about the continuing viability of these efforts, particularly in districts implementing early disposition programs. Judges are conscientiously applying the guidelines to the facts as they know them. The availability of appellate review to correct guidelines misapplications has likely served to enforce the guidelines system, although the effects of waivers of the right to appeal, which are increasingly included in plea agreements, are a subject of ongoing investigation. Appellate review has frequently alerted the Commission to areas of ambiguity where clarification of the guidelines is needed, and the Commission has regularly responded with guideline amendments (Wilkins & Steer, 1993).

Appellate review has functioned less successfully in the area of departures. Appeals of downward departures have been relatively rare given the departure rate. The appellate courts have not developed a "common law" of departures sufficient to establish uniform national standards and reduce significant variation in the use of departures. The Commission has only recently, pursuant to the PROTECT Act, addressed departures comprehensively to help ensure that they occur only in exceptional circumstances where departures are needed to achieve the purposes of sentencing.

2. Components of Guidelines Policy Development

The three major components of guidelines policy development—collaboration among policymakers, implementers, and other stakeholders, use of research and criminological expertise, and political accountability—were introduced in Chapter One. Of these three, political accountability has been a prominent feature of sentencing policy development throughout the guidelines era. The Commission has worked to be responsive to the concerns of Congress. On only one occasion has Congress used the statutory review period provided in the SRA for guidelines amendments to disapprove Commission actions. The Commission's priorities and policymaking agenda have been greatly influenced by congressional directives and other crime legislation. Statutory minimum penalties and sentence enhancements remain a parallel system of direct legislative control over sentences, which bypass the processes of policy development outlined in the SRA.

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[143] *See* provisions amending commentary to USSG §6B1.2, Amend. 651, App. C (Oct. 27, 2003).

Appendix B details directives from Congress to the Commission, which along with statutory minimum penalties have substantially shaped the penalties for a majority of offenders sentenced in the federal courts today. Congress has sometimes alerted the Commission to its concerns and directed the Commission to study a problem, report its findings, and amend the guidelines as needed. However, at other times Congress has determined the penalties on its own. Legislation has sometimes directed the Commission to increase offense levels by a specific amount.

The PROTECT Act represents an extreme example of direct congressional control over the sentencing guidelines themselves. Congress bypassed the research and consultation procedures outlined in the SRA and directly amended the *Guidelines Manual* by statute. The Sentencing Commission is troubled by any breakdown in collaboration among the legislature, itself, and other criminal justice system policy actors. The Commission believes that it is uniquely qualified to conduct studies using its vast database, obtain the views and comments of various segments of the federal criminal justice community, review the academic literature, and report back to Congress in a timely manner.[144] These are the processes set out in the SRA, which established the Commission as the clearinghouse for information on federal sentencing practices and a forum for collaboration among policymakers, implementers, and other stakeholders. As an independent agency in the Judiciary, but with frequent interaction with the three branches of government, the Commission is well-positioned to develop fair and effective sentencing policy as long as it continues to receive the resources and support it needs to carry out its vital mission.

Policy development through the components created by the SRA offers advantages that have not been fully realized. The national conversation on sentencing policy sparked by the Supreme Court's decision in *Blakely* provides another challenging opportunity to tap the Sentencing Commission's potential as a forum for collaboration and a center of research. The results of the Commission's Fifteen-Year Evaluation of guidelines sentencing can help inform this analysis, as well as ongoing discussions and initiatives aimed at developing just and effective sentencing practices.

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[144] *See* letter from voting members of the United States Sentencing Commission to Senators Orrin Hatch and Patrick Leahy, United States Congress, regarding "S. 151/H.R. 1104, Child Abduction Prevention Act of 2003," April 2, 2003.