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UNCERTAIN JUSTICE: THE STATUS OF FEDERAL SENTENCING AND THE U.S. SENTENCING COMMISSION SIX YEARS AFTER U.S. V. BOOKER

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

OCTOBER 12, 2011

Serial No. 112–142

Printed for the use of the Committee on the Judiciary

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UNCERTAIN JUSTICE: THE STATUS OF FEDERAL SENTENCING AND THE U.S. SENTENCING COMMISSION SIX YEARS AFTER U.S. V. BOOKER

WEDNESDAY, OCTOBER 12, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 10 a.m., in room 2141, Rayburn Office Building, the Honorable F. James Sensenbrenner, Jr. (Chairman of the Subcommittee) presiding.

Present: Representatives Sensenbrenner, Goodlatte, Marino, Griffin, Adams, Quayle, Scott, Conyers, Johnson, Deutch, Jackson Lee, Quigley, and Amodei.

Staff present: (Majority) Caroline Lynch, Subcommittee Chief Counsel; Sam Ramer, Counsel; Lindsay Hamilton, Clerk; (Minority) Bobby Vassar, Subcommittee Chief Counsel; Liliana Coranado, Counsel; Veronica Eligan, Professional Staff Member.

Mr. SENSENBRENNER. The Subcommittee will come to order.

Without objection, the Subcommittee will be allowed to recess during votes on the Floor, which we do not anticipate this morning. I yield myself 5 minutes for an opening statement.

I want to welcome everyone to today's hearing on the status of Federal sentencing in the U.S. Sentencing Commission 6 years after the Supreme Court decided *U.S. v. Booker*.

Well, here we are again. It seems only yesterday that Congress passed the PROTECT Act in an attempt to bring fairness and consistency to Federal sentences across the country.

I said it then and I will say it again. It is because it is still true.

A criminal committing a Federal crime should receive similar punishment regardless of whether the crime was committed in Richmond, Virginia, or Richmond, California, and that is why I am deeply concerned about what is happening to Federal sentencing.

It is also why Congress passed the Sentencing Reform Act in 1984, reflecting Congress' original intent for fair and equal justice throughout the Federal judiciary. That year, there were wide disparities in Federal sentencing nationwide.

Experts on criminal law, including many Federal judges, pushed Congress for an answer. So Congress created the sentencing guidelines—a mandatory sentencing regime that took various factors

into account in crafting criminal sentences that would serve the interests of society and of justice.

And we created the U.S. Sentencing Commission to analyze the judiciary, collect data and to occasionally make small changes to the guidelines under congressional oversight, of course.

In 2005, the Supreme Court in *U.S. v. Booker* undermined the sentencing guidelines, making them advisory. I would say they destroyed the guidelines. In subsequent decisions, the Supreme Court reduced the ability of appellate courts to review and correct sentences made at the district court level.

Over the last 6 years, the justices wrested back most if not all of the old discretion Federal judges used to have—a discretion that Congress found was abused in 1984 when it passed the sentencing guidelines law. And the results of this discretion are becoming clear. The increasing frequency of downward departures is undermining sentencing fairness throughout the Federal system.

As we have learned from the Chairwoman's written testimony, a convicted criminal in the Western District of Wisconsin now has a 40 percent chance of getting a sentence below the guidelines while a convicted criminal in the Middle District of Georgia has a 4 percent chance of getting a sentence below the guidelines.

In New York City, almost half the sentences being handed out are below the guidelines. This is not the way we would expect justice to be delivered in the United States in the 21st century.

The unfairness doesn't stop with region. There are wide sentencing disparity depending upon what crime the defendant commits.

If the defendant is a convicted child porn possessor, he is in luck. Federal judges now lower sentences for child porn professors at the highest rate—30 percent are below the guidelines.

It is better—a better time also to be convicted of fraud, which has the lower than guideline rate of 17 percent. I would expect my colleagues across the aisle to be deeply concerned with these developments because they also involve racial disparities, something we hear a lot about in this Committee.

In the period before we passed the PROTECT Act in 2003, a Black man in the U.S. received a sentence on average of 11.2 percent greater than that of a White man. After we passed the PROTECT Act, that number dropped to 5.5 percent.

Now, however, since the Supreme Court has decided these cases, the Black man receives on average a sentence of 20 percent higher than that of a White man.

These numbers should be chilling to the friends to my left and I expect vigorous questions from them on why these guidelines which protect all Americans regardless of ethnic identity have not been reestablished.

In the last 6 years, as the judiciary has untethered itself from the checks and balances of the legislative branch, one would expect the Sentencing Commission to come up with a plan of action to make the guidelines relevant again.

Yet, we have not received any proposal from the Commission for 6 years. It is as if the Commission is satisfied that the regulations they promulgate can be routinely ignored.

In addition, we have watched with alarm some of the changes to the guidelines the Commission has made. These changes seem to have one effect overall on Federal sentences—reductions across the board.

Recently, the Commission ordered that the new, more lenient crack cocaine sentencing ratio be made retroactive, leading to the release of some 12,000 crack cocaine offenders. This has been done over the strenuous objection of many of us in the majority.

The Commission, however, cost just as much or more to operate than it ever did. Ironically, since 2005 when the guidelines became ephemeral, the budget of the Sentencing Commission has gone up by about 20 percent.

This is another disparity that Congress should look at. I anticipate an open line of communication with the members of the Federal judiciary in the upcoming year on issues of interest such as improving our justice system, the Federal sentencing guidelines and judicial pay.

I look forward to hearing more about this issue and thank all of our witnesses for participating in today's hearing. It is now my pleasure to recognize for his opening statement the Ranking Member of the Subcommittee, the gentleman from Virginia, Mr. Scott?

Mr. SCOTT. Thank you, Mr. Chairman.

Six years ago, the Supreme Court decided in *U.S. v. Booker* in which it held that the mandatory sentencing guideline system was unconstitutional.

This is the third hearing the Subcommittee has held about that case since it was decided and I have the same position I had in 2005 shortly after the decision and 2006, 1 year after the decision, and that is that the decision did not create a problem that needs fixing—that *Booker* in fact was the fix, not the problem, and our response should be don't just do something, stand there.

Six years after the decision, it is even clear to me that—it is clear to me that it was the time *Booker* was decided and the reason I can say that without hesitation is that the Commission's own statistics bear this out.

Now, let's get to the heart of the matter and the impetus for this hearing—how often are judges following the sentencing guidelines. And the answer is over 80 percent of the time, and the compliance rate, in fact, is trending upward.

Notably, the rate of nongovernment-sponsored below range sentencing dropped to 16.9 percent in the third quarter of 2011, down from 18.7 in the fourth quarter of 2010, and this rate is only 4.2 percentage points lower than the rate within the first year after *Booker* when many courts were continuing to treat the guidelines as mandatory pending further clarification from the Supreme Court.

The government-sponsored below range rate is approximately 27 percent. The drop in the below range sentencing during the first three quarters of 2011 corresponds with the reduction in the crack guidelines from November 1, 2010, as a direction—as a consequence of the Fair Sentencing Act of 2010.

A 16.9 percent variance from sentencing guidelines by judging—by judges is hardly cause for alarm. Indeed, it shows that the

judges are sentencing within the guideline range or following the prosecutors' recommendations 83.1 percent of the time.

It is also notable that the government does not object to at least half of the judicial variances even though it wins 60 percent of the time it appeals those cases.

When judges do not follow the guidelines, the extent of variance and departure is less than 13 months and that has remained stable since *Booker* was decided.

Furthermore, judges are following the guideline recommendations for the kind of sentence to impose whether prison, probation or an intermediate sentence such as home detention even more than they were before *Booker*.

Now, this underscores what we should draw as a distinction between warranted and unwarranted disparities. The Sentencing Reform Act was concerned only with eliminating unwarranted sentencing disparities. Simply focusing on the rate of disparities obscures the truth.

All of this tells us two things. First, it tells us the judges are following the guidelines over 80 percent of the time. Although when surveyed many judges disagree with certain parts of the guidelines, judges have shown a great deal of restraint in imposing sentences outside the recommended range. Second, it tells us that the system is working and shows how the system is supposed to function.

When Sentencing Commission amends the guidelines to better reflect statutory purposes and the factors enumerated in the Sentencing Reform Act, judges followed them more frequently. Nothing that I have seen to date demonstrates a need to curtail the limited judicial discretion that *Booker* restored. In fact, it shows just the opposite.

The attack on judicial discretion suggests that Congress or the Commission, who know nothing about the specific offense or the circumstances surrounding it or the prosecutors who play an adversarial role in administering criminal justice, are in a better position to determine a fair sentence than judges who hear all of the facts and the circumstances from both sides.

Now, this defies common sense. And to the extent that equal justice around the country is important, if some prosecutors in one district overcharge as a matter of policy compared to other districts, the judge is in a position to compensate.

So I look forward to hearing testimony of the witnesses and I hope that we can have a productive conversation about sentencing—federal sentencing that is rooted in what the data and research indicates.

So I thank you, Mr. Chairman, and look forward to hearing from our witnesses.

Mr. SENSENBRENNER. Thank you.

The Chairman Emeritus of the Committee, the gentleman from Michigan, Mr. Conyers, is recognized for 5 minutes.

Mr. CONYERS. Thank you, Chairman Sensenbrenner, and Members of the Committee.

We welcome our panel. This is an important discussion and I am glad we have a variety of former lawyers, prosecutor and others thrown in here—judges. I have some ambivalence and I have been talking it over with my staff.

The bottom line is whether we need the Sentencing Commission—although it has done some good things—or not, and I am—that, to me, is in the back of my mind as we discuss this. I know there are a variety of views and I am going to ask the witnesses to tell me what they think about the continued role of the Sentencing Commission.

But Congress has a role to play in setting sentencing policy but it is limited. The next thing we should talk about is that the *Booker* decision reflects the original intent of the guidelines.

We find 80—some tell me 83 percent—of the decisions go outside—are within the range, and third, I don't think the sentencing guidelines need to be revised. I am surprised that my Chairman still believes firmly that *Booker* destroyed the guidelines.

That is one I am going to study very carefully after this hearing to determine the degree of accuracy in that statement.

But it seems to me that our Ranking Member, Bobby Scott, the former Chairman of this Subcommittee, has paid so much attention to the matter that it is pretty clear that we have a system which a lot of—a lot of factors play into it, and Chairman Sensenbrenner mentioned race in terms of the criminal justice sentencing process.

I compliment him for acknowledging that and I look forward to working with him on developing that part of his presentation as well. So I will ask that my entire statement be included and I thank the Chairman for allowing me to speak.

Mr. SENSENBRENNER. Without objection, and without objection all Members' statements will appear in the record at this point.

[The prepared statement of Mr. Sensenbrenner follows:]

Prepared Statement of the Honorable F. James Sensenbrenner, Jr., a Representative in Congress from the State of Wisconsin, and Chairman, Subcommittee on Crime, Terrorism, and Homeland Security

I want to welcome everyone to today's hearing on the status of Federal sentencing and the U.S. Sentencing Commission six years after *U.S. v. Booker.*

Well, here we are again. It seems only yesterday that Congress passed the PROTECT Act, in an attempt to bring fairness and consistency to Federal sentences across the country. I said it then, and I will say it again, because it is still true: A criminal committing a federal crime should receive a similar punishment regardless of whether the crime was committed in Richmond, Virginia or Richmond, California. And that is why I am deeply concerned about what is happening to Federal sentencing.

And that's also why Congress passed the Sentencing Reform Act in 1984, reflecting Congress's original intent for fair and equal justice throughout the federal judiciary.

In 1984, there were wide disparities in Federal sentencing nationwide. Experts on criminal law, including many Federal judges, pushed Congress for an answer. So Congress created the Sentencing Guidelines, a mandatory sentencing regime that took various factors into account in crafting criminal sentences that would serve the interests of society, and of justice. And we created the U.S. Sentencing Commission to analyze the Judiciary, collect data, and to occasionally make small changes to the Guidelines, under Congressional oversight, of course.

In 2005, the Supreme Court, in *U.S. v. Booker,* undermined the Sentencing Guidelines, by making them advisory. In subsequent decisions, the Supreme Court reduced the ability of appellate courts to review and correct sentences made at the District Court level. Over the last six years, the Justices wrested back most, if not all, the old discretion Federal judges used to have.

And the results of this discretion are becoming clear. The increasing frequency of downward departures is undermining sentencing fairness throughout the federal system. As we have learned from the Chairwoman's written testimony, a convicted criminal in the Western District of Wisconsin now has a 40% chance of getting a sentence below the Guidelines, while a convicted criminal in the Middle District of

Georgia has a 4% chance of getting a sentence below the Guidelines. In New York City, almost half the sentences being handed out are below the Guidelines. That is not the way you expect justice to be delivered in the United States in the 21st century.

The unfairness doesn't stop with region; there are wide sentencing disparities depending on what crime you commit. If you are a convicted child porn possessor, you're in luck: Federal judges now lower sentences for child porn possessors at the highest rate, nearly 30% are below Guidelines. It's also a better time to be convicted of fraud, which has a lower-than-guideline rate of 17%.

I would expect my colleagues across the aisle to be deeply concerned with these developments, because they also involve racial disparities, something we hear a lot about in this Committee. In the period before we passed the PROTECT Act in 2003, a black man in the U.S. received a sentence, on average, 11.2% greater than that of a white man. After we passed the PROTECT Act, that number dropped to 5.5%. Now, however, since the recent Supreme Court decisions, a black man receives, on average, a sentence 20% higher than that of a white man. These numbers should be chilling to Democrats, and I expect vigorous questions from them on why these guidelines, which protect all Americans regardless of ethnic identity, have not been reestablished.

In the last six years, as the Judiciary has untethered itself from the checks and balances of the legislative branch, one would expect the Sentencing Commission to come up with a plan of action to make the Guidelines relevant again. Yet, we have not received any proposal from the Commission for six years. It is as if the Commission is satisfied that the regulations they promulgate can be routinely ignored.

In addition, we have watched with alarm some of the changes to the Guidelines that the Commission has made. The changes seem to have one effect, overall, on Federal sentences: reduction, across the board. Just recently, the Commission ordered that the new, more lenient crack cocaine sentencing ratio be made retroactive, leading to the release of some 12,000 crack cocaine offenders. They have done this over the strenuous objection of many of us in the Majority.

The Commission however, costs just as much, or more, to operate, than in ever did. Ironically, since 2005, when the Guidelines became ephemeral, the budget of the Sentencing Commission has gone up by about 20%. That's another disparity Congress may want to look at.

I anticipate an open line of communication with the members of the Federal Judiciary in the upcoming year on issues of interest such as improving our justice system, the Federal sentencing guidelines, and judicial pay.

I look forward to hearing more about this issue and thank all of our witnesses for participating in today's hearing.

[The prepared statement of Mr. Scott follows:]

Prepared Statement of the Honorable Robert C. "Bobby" Scott, a Representative in Congress from the State of Virginia, and Member, Committee on the Judiciary

Thank you, Mr. Chairman. Six years ago the Supreme Court decided *U.S. v. Booker,* in which it held that the mandatory sentencing guidelines system was unconstitutional. This is the third hearing that the subcommittee has held about this case since it was decided. I have the same position that I had in 2005, shortly after the decision, and in 2006, one year after the decision. The decision did not create a problem that needs fixing. *Booker* WAS the fix—not the problem. Six years after the decision, this is even clearer to me today than it was at the time *Booker* was decided.

The reason that I can say this without hesitation is that the Commission's own statistics bear this out. Let's get right to what seems to be the heart of the matter and the impetus for the hearing. How often are judges following the sentencing guidelines? The answer is in over 80% of the time. And the compliance rate is trending upward. Notably, the rate of non-government sponsored below-range sentences *dropped* to 16.9% in the third quarter of 2011, down from 18.7% in the fourth quarter of 2010. This rate is only 4.2 percentage points lower than the rate within the first year after *Booker* when many courts were continuing to treat the guidelines as mandatory pending further clarification from the Supreme Court. The government sponsored below range rate is approximately 27%.

The drop in below-range sentences during the first three quarters of 2011 corresponds with the reduction in the crack guidelines on November 1, 2010 as directed by the Fair Sentencing Act of 2010. A 16.9% variance rate from sentencing guidelines by judges is hardly cause for alarm. Indeed, it shows that judges are sen-

tencing within the guideline range or following the prosecutor's recommendation 83.1% of the time.

It is also notable that the government does not object to at least half of the judicial variances, even though it wins 60% of the appeals on 3553(a) factors.

And when judges do not follow the guidelines, the extent of variances and departures is less than 13 months, and that has remained stable since *Booker* was decided. Furthermore, judges are following the guidelines' recommendations for the kind of sentence to impose, whether prison, probation, or an intermediate sentence such as home detention, even more than they were before *Booker*.

This underscores that we should draw a distinction between warranted and unwarranted disparities; the Sentencing Reform Act was concerned only with eliminating *unwarranted* sentencing disparities. Simply focusing on the rate of disparities obscures this truth.

All of this data tell us two things: First, it tells us that judges are still following the guidelines over 80% of the time. Although when surveyed many judges disagree with certain parts of the Guidelines, judges have shown a great deal of restraint in imposing sentences outside the recommended range.

Second, it tells us that the system is working and shows how the system is supposed to function. When the Sentencing Commission amends the guidelines to better reflect the statutory purposes and factors enumerated in the Sentencing Reform Act, judges follow them more frequently.

Nothing that I have seen to date demonstrates a need to curtail the limited judicial discretion that *Booker* restored. In fact, it shows the exact opposite.

The attack on judicial discretion suggests that Congress, or the Commission, who know nothing about the offense or the circumstances surrounding it, or prosecutors, who play an adversarial role in administering criminal justice, are in a better position to determine a fair sentence than the judges who hear all of the facts and circumstances from all sides. This defies common sense.

I look forward to hearing the testimony of the witnesses and hope that we can have a productive conversation about federal sentencing that is rooted in what the data and research indicates.

Thank you for attending today's hearing.

[The prepared statement of Mr. Conyers follows:]

Prepared Statement of the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary

While today's hearing provides an important opportunity to have a conversation about federal sentencing policy, I am concerned that the title of this hearing—Uncertain Justice: The Status of Federal Sentencing and the U.S. Sentencing Commission Six Years after U.S. v. Booker—is misleading.

It suggests that the Supreme Court's decision in *Booker* created some type of uncertainty in federal sentencing, which is neither accurate nor supported by the data.

In reality, the *Booker* decision did not have as much of an impact on our Nation's sentencing system as was predicted.

For the most part, our current system is very similar to the mandatory sentencing guidelines system that existed before *Booker*. To some, including myself, this is disappointing.

Yet others, including the Majority's witnesses, are sounding an alarm—this hearing is part of that—that would make one believe that there is some type of crisis with the system, namely, that judges have gone rogue after *Booker*. That is simply not the case.

I would like to share three critical principles about federal sentencing that should inform our conversation here today. **First, Congress clearly has an important role to play in setting sentencing policy, but it is a limited role.**

Although there is no proposal on the table as of yet, I understand that the majority's witnesses, including the Chair of the Sentencing Commission, recommend Congressional action.

Given the fact that the data indicate judges are sentencing within the sentencing guideline range over 80% of the time, I fail to see a need for such action.

Congress should decline the invitation to act to change federal sentencing policy. The proper role of Congress is to set the *outer* limits of a sentence, known as the statutory maximum, under the statute that criminalizes the conduct, which we do each time we create a new criminal offense.

Limiting Congress' role in this way is consistent with the original intent of the Sentencing Reform Act, which was passed as a part of the 1984 Comprehensive Crime Control Act.

This Act was possibly the most comprehensive change in sentencing law and practice in American history.

The legislation created two of the most important components of federal sentencing policy in this country: the United States Sentencing Commission and the Federal Sentencing Guidelines.

Twenty-five years ago there was considerable debate about whether the Federal Sentencing Guidelines as created under the Sentencing Reform Act should be mandatory or advisory.

However, the U.S. Supreme Court 6 years ago decided in the case of *United States v. Booker* that the guidelines should no longer be mandatory. In the *Booker* decision, the Court held that federal district courts must consult the sentencing guidelines, but were not bound by them.

This brings me to my second point, namely, that the *Booker* decision was the right decision by the Court, and it reflects the original intent of the guidelines.

As Senator Ted Kenney, the author of the Sentencing Reform Act, envisioned the sentencing system, he did not intend for judges to be bound by the guidelines. So it seems that we have come full circle.

Perhaps more importantly, the *Booker* decision was firmly rooted in the Constitution, in that the high court held that a mandatory guidelines system violated a defendant's Sixth Amendment right to trial.

The current advisory system established by *Booker* gives judges the discretion to set a sentence outside of the guideline range, when appropriate.

This limited discretion allows judges to impose a sentence that fits the crime and the offender, and provides the Sentencing Commission important feedback, as contemplated by the Sentencing Reform Act and the Supreme Court, all of which was eviscerated in the mandatory guideline era.

We should not be afraid of judicial discretion, because federal judges play the most important and most neutral role in the sentencing process.

Sentences outside of the guideline range will decrease, and have already done so this year as compared to last, as the Commission heeds judges and researchers and incorporates both of these important pieces into the guidelines.

This is how fair sentencing policies are set and fair sentences are achieved. Thus, any efforts to alter the current advisory nature of the guidelines are wrong and unnecessary.

Third, while I do not believe that the sentencing guidelines need to be revised, there remain several obstacles to fairness in criminal justice sentencing, and to fulfilling the original intent of the sentencing guidelines, that must be addressed.

One of the biggest obstacles is mandatory minimum sentences. Mandatory minimum sentences in the federal system began to be enacted around the same time as the sentencing guidelines. As a result, we have never had a chance to understand how the guidelines would work without the overarching shadow of mandatory minimums.

It is time to give the federal sentencing guidelines an opportunity to work without being linked to mandatory minimums.

Mandatory minimums have resulted in a perception of unfairness in our justice system.

One of the most glaring examples of injustice in our sentencing policy, and where mandatory minimums have had the most pernicious effect, is the federal crack cocaine law.

The message I have today is primarily for my colleagues in Congress—stop interfering in the important work of the Commission and our judges in ways that perpetuate and exacerbate inequities in the criminal justice system.

Our role now should be to undo the damage that we have done with the creation of so many mandatory minimums and directives to the Sentencing Commission. And, we should provide appropriate guidance to the Commission and judges.

It is only through this delicate dance between the three Cs—Congress, the Commission, and Courts—that we can ever hope to achieve fair and just sentencing policies.

Thank you for attending today's hearing. I thank the witnesses in advance and look forward to hearing from each of you.

Mr. SENSENBRENNER. It is now my pleasure to introduce today's witnesses. Judge Patti B. Saris was confirmed as a member and

chair of the United States Sentencing Commission in 2010. Judge Saris has served as a U.S. district judge for the district of Massachusetts since 1994.

Prior to her appointment to the district court, Judge Saris served as an associate justice for the Massachusetts Superior Court from 1989 to 1993.

From 1986 to 1989, Judge Saris served as a Federal magistrate judge for the United States District Court for the District of Massachusetts. She was an attorney in the Civil Division of the Justice Department from 1982 to 1986 and held the position of chief of the Civil Division Office of the United States Attorney for Massachusetts from 1984 to 1986.

From 1989 until 1981 Judge Saris served as a counsel to the United States Senate Committee on the Judiciary. She received her Bachelor of Arts from Radcliffe College in 1973 and her J.D. from Harvard Law School in 1976.

Matthew Miner is a partner at White & Case in Washington, D.C. Prior to joining the firm, Mr. Miner was minority staff director at the Senate Judiciary Committee. During his tenure with the Senate, Mr. Miner served in many other senior roles such as majority chief counsel of the Subcommittee on Administrative Oversight and the Courts.

He has also held the positions of majority chief counsel for Crime, Terrorism and Oversight for the Senate Judiciary Committee and majority counsel for the Senate Permanent Committee on Investigations.

Prior to his Senate committee service, Mr. Miner was an assistant U.S. attorney in the Middle District of Alabama. He also worked in private practice in Philadelphia handling civil litigation and compliance matters. He received a Bachelor of Arts degree from the University of Cincinnati in 1992 and his J.D. from the University of Michigan Law School in 1997.

Mr. William Otis is presently an adjunct professor of law at Georgetown Law School. Prior to his current position, he was a counselor to the head of the Drug Enforcement Administration from 2003 to 2007. From 2002 to 2003, Mr. Otis was the special assistant to the secretary of Energy.

Previously, Mr. Otis worked as head of the Appellate Division of U.S. Attorneys Office for the Eastern District of Virginia from 1981 through 1999.

In 1992, he was detailed to the White House as a special counsel for President George H. W. Bush. He received his Bachelor of Arts degree from the University of North Carolina in 1968 and his J.D. degree from Stanford Law School in 1974.

Mr. JAMES E. Felman is a partner at Kynes, Markman and Felman in Tampa, Florida, and has been with the firm since 1991.

Prior to joining the firm, he was an associate at Winkles, Trombley, Kynes & Markman, P.A., from 1989 to 1981. He taught as an adjunct professor at Stetson University College Law from 1990 to 1993. He was a member of the Practitioners Advisory Group to the Sentencing Commission from 1994 to 2009 and served as co-chair of the group from 1998 to 2002.

He is the co-chair of the Committee on Sentencing of the American Bar Association and has served as a member of the Governing

Counsel of the ABA Criminal Justice section since 2008. He received his B.A. from Wake Forest in 1984 and his M.A. in philosophy and juris doctor from Duke University in 1987.

All of the witnesses' written statements will be entered into the record in their entirety and I ask that each witness summarize his or her testimony in 5 minutes or less.

I now recognize Judge Saris. Could you pull the microphone a little closer and make sure that it is on so the reporter can hear you?

TESTIMONY OF PATTI B. SARIS, CHAIR, UNITED STATES SENTENCING COMMISSION

Judge SARIS. Is that on? [Laughter.]

Mr. SENSENBRENNER. Yes.

Judge SARIS. Yes. All right. Chairman Sensenbrenner, Ranking Member Scott, and Members of the Subcommittee, thank you for inviting me to testify today on behalf of the United States Sentencing Commission.

The Commission is an independent bipartisan agency in the judicial branch. In the Sentencing Reform Act of 1984, Congress charged the Commission with ensuring that the purposes of sentencing—certainty, fairness, transparency, consistency, and proportionality—be met.

Commissioners come from judicial, prosecutorial and defense backgrounds and we work by consensus wherever possible. As you know, in its landmark decision *Booker* in 2005, the Supreme Court held that the mandatory guidelines violated the Sixth Amendment. Since then, the Federal sentencing scheme has changed dramatically.

After making the guidelines advisory, the Supreme Court has issued seven additional sentencing decisions that have, one, changed the appellate standard from de novo to a more deferential standard of reasonableness; two, informed sentencing courts that a guideline sentence may not be presumed reasonable; three, instructed sentencing courts to consider all of the statutory factors in 3553(a) including individual offender characteristics; and four, indicated to sentencing courts that they may sentence outside the guidelines for policy reasons.

Under this Supreme Court case law, the guidelines remain the starting point and baseline for all sentences. There were more than 80,000 felony and Class A misdemeanor sentences issued last year and in approximately 80 percent of those cases judges issued a sentence within the guideline range or below that range at the government's request.

The guidelines exert a demonstrable gravitational pull on nonguideline sentences and many believe an advisory *Booker* system best serves the goals of sentencing in the SRA.

The Commission believes that the status quo has some weaknesses. Statistically, the Commission has observed an increase in nongovernment-sponsored below range sentences from 12.5 percent in 2006 to 17.8 percent in 2010.

The Commission also found differences among different districts and for certain demographic groups. For example, in fiscal year 2010, the variance rate ranged from below 5 percent in one district to nearly 50 percent in another district.

Further, the difference between sentences for Black and White male offenders nationally has increased since *Booker* and Black males now receive more than 20 percent longer sentences than White males.

As the Supreme Court put it in *Booker*, the ball now lies in Congress' court and the Commission proposes the following legislative changes.

First, Congress should enact a more robust appellate review standard that requires appellate courts to apply a presumption of reasonableness to sentences within the properly calculated guideline range.

The Commission also believes that Congress should require that the greater the variance from a guideline the greater should be the sentencing court's justification for the variance.

Congress also should create a heightened standard of review for sentences imposed as a result of a policy disagreement with the guidelines.

Second, the Commission recommends that Congress clarify the statutory directives to the courts and the Commission that are currently in tension. Section 994 instructs the Commission not to incorporate certain offender characteristics—for example, family ties—into the guidelines but Section 3553(a) directs courts to consider the same characteristics.

Accordingly, judges often determine that the guidelines have not sufficiently addressed offender characteristics and impose a sentence outside the guidelines.

Third, as the Commission testified in 2005 and 2006, Congress should require that sentencing courts give substantial weight to the guidelines at sentencing and codify the three-part sentencing process.

I would like to briefly mention what we have been doing in the last year and what we have on our plate for the future.

In the last 9 months, the Commission has issued amendments that will take effect on November 1st absent congressional action. These amendments implemented the Fair Sentencing Act of 2010, which reduced crack cocaine penalties.

The Commission also increased penalties for certain straw purchases of firearms and for offenders who illegally traffic firearms across the border, and we addressed health care fraud. Mortgage fraud is one of our priorities for the next year.

We also hope to focus on recidivism upon reentry after prison. The Commission is also preparing three major reports—first, a report on statutory mandatory minimums, which should come out soon; second, a report on child pornography offenses; and finally, a report that incorporates today's testimony on the impact of *Booker* on the Federal system.

The Commission continues to code, analyze and report record numbers of cases—in fact, 11,000 more cases a year than when *Booker* issued. In fact, today's hearing is based on that work.

We train people in all the districts. I want to conclude by saying—I am catching the gavel—in conclusion, the sentencing system is different than that envisaged by Congress in 1984 and we think the proposals we offer today will make the guideline system even more effective. Thank you.

[The prepared statement of Judge Saris follows:]

PREPARED TESTIMONY
of
Judge Patti B. Saris
Chair, United States Sentencing Commission
Before the
Subcommittee on Crime, Terrorism, and Homeland Security
Committee on the Judiciary
United States House of Representatives

October 12, 2011

Chairman Sensenbrenner, Ranking Member Scott, and Distinguished Members of the Subcommittee, thank you for inviting me to testify today on behalf of the United States Sentencing Commission regarding the state of federal sentencing since the Supreme Court's 2005 decision in *United States v. Booker*,[1] and the role of the Commission in federal sentencing after *Booker*.

Since 2005, the Court has issued seven opinions dramatically changing the state of federal sentencing. The federal sentencing guidelines continue to play a central role in federal sentencing. In the more than 83,000 federal felony and Class A misdemeanor cases sentenced annually, over 80 percent of federal offenders continue to be sentenced within the applicable advisory guideline range or pursuant to a request from the government for a sentence below the otherwise applicable advisory guideline range.[2]

While sentencing data and case law demonstrate that the federal sentencing guidelines continue to provide gravitational pull in federal sentencing, the Commission has observed an increase in the numbers of variances from the guidelines in the wake of the Supreme Court's recent jurisprudence. There are troubling trends in sentencing, including growing disparities among circuits and districts and demographic disparities which the Commission has been evaluating.

The Commission believes that a strong and effective guidelines system is an essential component of the flexible, certain, and fair sentencing scheme envisioned by Congress when it passed the SRA.

To improve sentencing in light of *Booker* and its progeny, the Commission has the following statutory suggestions: First, Congress should enact a more robust appellate review standard that requires appellate courts to apply a presumption of reasonableness to sentences within the properly calculated guidelines range. The Commission also believes that Congress should require that the greater the variance from a guideline, the greater should be the sentencing court's justification for the variance. Congress also should create a heightened standard of review for sentences imposed as a result of a "policy disagreement" with the guidelines. Second, the Commission recommends that Congress clarify statutory directives to the sentencing courts

[1] 543 U.S. 220 (2005).
[2] The Commission refers to a sentence that results from a government request for a sentence below the otherwise applicable advisory guideline range as "government-sponsored."

and Commission that are currently in tension. Section 994 of title 28, United States Code, instructs *the Commission* to assure the guidelines reflect the general inappropriateness of considering certain offender characteristics (for example "family ties and responsibilities") in the guidelines, but 18 U.S.C. § 3553(a) can be read to direct the *sentencing courts* to consider those same characteristics. Accordingly, judges often determine that the guidelines have not sufficiently addressed offender characteristics and impose a sentence outside the guidelines. Third, as the Commission testified in 2005 and 2006, Congress should require that sentencing courts give substantial weight to the guidelines at sentencing, and codify the three-part sentencing process.

Congress created the bipartisan Commission to fulfill the unique role of standing at the crossroads of all three branches of government, and acting as a steward for the purposes of sentencing as set forth in the Sentencing Reform Act of 1984 (SRA), a bipartisan piece of legislation.[3] Congress specifically charged the Commission with ensuring that the federal sentencing guidelines meet these purposes, provide certainty and fairness, avoid unwarranted disparities while maintaining sufficient flexibility to permit individualized sentences when warranted, reflect advances in the knowledge of human behavior as it relates to sentencing, and assessing whether sentencing, penal, and correctional practices are meeting the purposes of sentencing.[4]

Today, the Commission remains extraordinarily busy carrying out its statutory mandates.[5] The Commission promulgated amendments specifically implementing five congressional directives in the areas of fraud and drugs during the last amendment cycle, for which amendments are currently pending before Congress. It also promulgated an amendment addressing straw purchases of firearms, illegal reentry offenses, and supervised release. In the coming months, the Commission will release comprehensive reports on mandatory minimums and their role in the current federal sentencing system; child pornography offenses; and the state of federal sentencing since *Booker*. The Commission recently published its priorities for the upcoming amendment cycle,[6] and it continues to process sentencing information from over 80,000 cases annually, answer numerous requests from all three branches of government and follow an important research agenda.

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[3] 18 U.S.C. § 3553(a)(2). These purposes include the need for a sentence imposed to: (A) reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) afford adequate deterrence to criminal conduct; (C) protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

[4] 28 U.S.C. § 991.

[5] The specific statutory duties of the Commission include, but are not limited to: (1) promulgating sentencing guidelines to be determined, calculated, and considered in all federal criminal cases; (2) collecting, analyzing, and reporting sentencing data systematically to detect new criminal trends, to determine if federal crime policies are achieving their goals, and to serve as a clearinghouse for federal sentencing statistics; (3) conducting research on sentencing issues and serving as an information center for the collection, preparation, and dissemination of information on federal sentencing practices; and (4) providing specialized training to judges, probation officers, staff attorneys, law clerks, prosecutors, defense attorneys, and other members of the federal criminal justice community on federal sentencing issues, including application of the guidelines. *See* 28 U.S.C. §§ 991, *et seq.*

[6] *See* 76 Fed. Reg. 58564-58565 (Sept. 21, 2011).

My testimony today comprises two parts. Part I of my testimony focuses on the state of federal sentencing after *Booker*. Section I of this part provides a brief overview of the federal sentencing system prior to enactment of the SRA through the PROTECT Act and pre-*Booker* era, as well as the state of the federal sentencing system at the time the Commission testified before this subcommittee in 2005 and 2006; Section II discusses the significant Supreme Court case law that has developed since the 2005 *Booker* decision as well the state of appellate review since *Booker*; Section III provides an overview of key federal sentencing practices and trends across time; and Section IV suggests ways in which the current federal sentencing system may be improved to ensure that it meets the purposes of sentencing set forth in the SRA in a manner consistent with the constitutional holdings of *Booker* and its progeny. With several years of experience under the advisory guidelines system, the Commission believes that adjustments to the current federal sentencing system are ripe for consideration by Congress.

Part II of my testimony provides an overview of the Commission's statutory duties and provides examples of its continued importance in the federal sentencing system. The Commission after *Booker* remains vested with "extraordinary powers and responsibilities" and promotes the "fairness and effectiveness of Federal criminal justice as a whole."[7] The policies and practices that it employs remain consistent with the purposes of sentencing and demonstrate the Commission's unique position as a clearinghouse and expert on federal sentencing practices. After *Booker*, the Commission remains uniquely situated to provide Congress, and the entire criminal justice system, with thoughtful, necessary federal sentencing guidelines and the most up to date information on federal sentencing practices in the form of regular data analyses and comprehensive research.

PART I: Booker and Federal Sentencing

Section I: An Overview of Federal Sentencing

The SRA brought a new era of sentencing to the courts. Prior to implementation of the SRA, federal crimes carried very broad ranges of penalties, and federal judges had the discretion to choose the sentence they believed most appropriate.[8] Every judge was "left to apply his own notions of the purposes of sentencing."[9] Judges were not required to explain the reasons for the sentence imposed, and defendants had very limited rights to appeal. The time actually served by most offenders was determined by the Parole Commission, and on average, offenders served just 58 percent of the sentences that had been imposed.[10] In 1984, Congress enacted the SRA in response to widespread sentencing disparity that existed in the federal sentencing system.[11] Promulgation of the SRA ushered in a new era of sentencing in federal courts through the creation of the Commission and the promulgation of mandatory sentencing guidelines. For nearly 20 years, the mandatory sentencing guideline system required federal judges to impose

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[7] S. REP. NO. 98–225, at 3343.
[8] U.S. SENTENCING COMM'N, FIFTEEN YEARS OF GUIDELINES SENTENCING: AN ASSESSMENT OF HOW WELL THE FEDERAL CRIMINAL JUSTICE SYSTEM IS ACHIEVING THE GOALS OF SENTENCING REFORM iv (2004) [hereinafter Fifteen Year Report].
[9] SEN. REP. NO. 98-225, at 3221.
[10] FIFTEEN YEAR REPORT, supra note 8, at iv.
[11] Title II, Comprehensive Crime Control Act of 1984, Pub. L. No. 98–473, 98 Stat. 1837 (1984).

sentences within the applicable guideline range, unless the court found the existence of an aggravating or mitigating circumstance not adequately taken into consideration by the Commission in formulating the sentencing guidelines.[12]

The system that resulted, while by no means perfect, injected the federal sentencing process with greater transparency, consistency, and fairness.[13] The system also provided flexibility "in providing the sentencing judge with a range of options from which to fashion an appropriate sentence."[14] Importantly, however, Congress noted that the post-SRA system did not "remove all of the judge's sentencing discretion."[15] While Congress envisioned "that most cases will result in sentences within the guideline range," there would be "appropriate" instances when sentences fell outside the applicable guidelines range.[16]

Over the intervening years, Congress and the Supreme Court examined and refined the federal sentencing system.[17] Two cases in particular are worth noting in this testimony.

The Supreme Court's 1996 decision in *Koon v. United States*[18] was a significant decision in guidelines jurisprudence.[19] In *Koon*, the Supreme Court held that departure decisions by district courts were due deference and that appellate courts should use an abuse of discretion standard in reviewing trial courts' application of the guidelines to the facts.[20] In reaching its conclusion, the Court suggested that Congress "did not intend, by establishing limited appellate review, to vest in appellate courts wide-ranging authority over district court sentencing decisions."[21] It pointed to 18 U.S.C. § 3742(e)(4), as enacted by the SRA, which provided that "[t]he court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous."[22] It further noted that the statute was amended in 1988 to require courts of appeals to "give due deference to the district court's application of the guidelines to the facts."[23] The Court also commented on the "institutional advantage" district courts hold over appellate courts in making the factual findings necessary to determining whether a particular case warrants departure, particularly because the district courts "see so many more Guidelines cases than appellate courts do."[24]

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[12] 18 U.S.C. § 3553 (b)(1), excised by *Booker*.
[13] FIFTEEN YEAR REPORT, supra note 8, at iv.
[14] S. REP. NO. 98–225, at 3233.
[15] *Id.*
[16] *Id.* at 3235. Congress specifically noted that it believed a sentencing judge "has an obligation to consider all the relevant factors in a case and to impose a sentence outside the guidelines in an appropriate case." *Id.*
[17] For an examination of the key cases impacting the development of the federal sentencing guidelines, see U.S. SENTENCING COMM'N, FINAL REPORT ON THE IMPACT OF UNITED STATES V. BOOKER ON FEDERAL SENTENCING 1-8 (2006) [hereinafter Booker Report].
[18] 518 U.S. 81 (1996).
[19] For a more detailed examination of the *Koon* decision, see the U.S. SENTENCING COMM'N, REPORT TO CONGRESS DOWNWARD DEPARTURES FROM THE FEDERAL SENTENCING GUIDELINES (IN RESPONSE TO SECTION 401(M) OF PUB. LAW 108–21) 5-7 (2003) hereinafter Departures Report].
[20] *Koon*, 518 U.S. at 91.
[21] *Id.* at 97.
[22] *Id.*
[23] *Id.* (quoting 18 U.S.C. § 3742(e)).
[24] *Id.* at 98.

The Supreme Court heard a series of cases challenging judicial fact finding under the Sixth Amendment beginning in 2000 with *Apprendi v. New Jersey*.[25] *Apprendi* involved a challenge to a sentence imposed in state court. The defendant was convicted of a firearms violation, which carried a prison term of five to 10 years. After he pleaded guilty to the crime, the State of New Jersey filed a motion to enhance the sentence under the State's hate crime statute, alleging that the defendant committed the crime of conviction to intimidate a person or group because of racial animus. After finding by a preponderance of the evidence that the crime was racially motivated, the trial court imposed a 12-year sentence. The Supreme Court reversed, holding that the Sixth Amendment requires that "[o]ther than the fact of a prior conviction,[26] any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt."[27]

In 2003, Congress enacted the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003.[28] The PROTECT Act set forth some of the most significant legislation since the SRA in the area of sentencing court departure and appellate review of departure decisions. As discussed in more detail, *infra*, the PROTECT Act fundamentally changed the appellate review standard established in *Koon*. The PROTECT Act, among other things, also formally established a new type of departure for "Early Disposition" or "fast track" programs. These new provisions are discussed in Part I, Section III, *infra*. The legislative history of the PROTECT Act, which is more fully set forth in the Commission's Departures Report, expresses congressional concern that the increasing rate of downward departures from the sentencing guidelines at the time was undermining the goals of the SRA, particularly the goals of certainty and uniformity in sentencing and of avoiding unwarranted disparity.

The Supreme Court issued its landmark decision rendering the federal sentencing guidelines "effectively advisory" on January 12, 2005. In *Booker*, the Court held that the imposition of an enhanced sentence under the federal sentencing guidelines based on the sentencing judge's determination of a fact (other than a prior conviction) that was not found by the jury or admitted by the defendant violated the Sixth Amendment.[29] To remedy the Sixth Amendment problem, the Court, therefore, struck two provisions of the SRA and effectively rendered the federal sentencing guidelines advisory.[30]

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[25] 530 U.S. 466 (2000).

[26] The exception for prior convictions is derived from the Court's holding in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). Justice Breyer delivered the opinion of the Court, in which Chief Justice Rehnquist, and Justices O'Connor, Kennedy, and Thomas joined. The Court held that Congress' decision to treat recidivism as a sentencing factor upon an alien's subsequent conviction of an illegal reentry offense, rather than as an element of that offense, did not exceed due process or other constitutional limits on Congress' power to define elements of crime.

[27] *Apprendi*, 530 U.S. at 490. For a more detailed examination of *Apprendi* and the Sixth Amendment case law that developed between *Apprendi* and *Booker*, including a discussion of the *Harris* challenge to statutory mandatory minimum penalties, see the Commission's BOOKER REPORT, supra note 17, at 9-13.

[28] Pub. L. No. 108–21, 117 Stat. 650 (2003) (PROTECT Act).

[29] *Booker*, 543 U.S. at 244.

[30] *Id.* at 245.

A. February 2005 Testimony

The Commission testified before this subcommittee on February 10, 2005, and discussed the possible ramifications on the federal sentencing system. The Commission concluded that the system appeared relatively stable, but it identified key components of the system that required monitoring. First, the Commission noted that *Booker* still required that the guidelines be calculated and considered because they remained an important and essential consideration in the imposition of federal sentences. Second, the Commission recommended that the guidelines be given substantial weight in determining the appropriate sentence because the guidelines take into consideration all of the sentencing factors set forth in 18 U.S.C. § 3553(a). Third, the Commission noted that a post-*Booker* system could operate effectively only if the courts continued to provide sentencing documentation required by 18 U.S.C. § 3553(c) and 28 U.S.C. § 994(w), because without those documents, the Commission would not be able to generate the sentencing data needed by Congress and other stakeholders to evaluate the federal sentencing system.

The Commission identified six possible responses to the *Booker* decision. These responses included: (1) a "wait and see" approach; (2) statutory implementation in some form of the *Booker* sentencing scheme; (3) providing a jury trial mechanism for sentencing guideline enhancements; (4) "simplification" of the guidelines either by reducing the number of guideline adjustments and/or by expanding the sentencing guideline ranges; (5) equating the maximum of the guideline sentencing ranges with the statutory maximum for the offense of conviction, and (6) broader reliance on statutory mandatory minimum penalties.

B. March 2006 Testimony

When the Commission testified before this subcommittee in March 2006, the federal sentencing system appeared relatively stable. The Commission closely monitored federal sentencing during the year after *Booker* and compared it to federal sentencing trends across time.[31] It also released a comprehensive report on the state of federal sentencing in the year after *Booker*, comparing it to key time periods throughout the history of the sentencing guidelines system. In March 2006, the majority of defendants (62.2 %) continued to be sentenced in conformance with the federal sentencing guidelines.[32] Government-sponsored below range sentences also remained stable at 23.7 percent, for a combined conformance rate of 85.9 percent.[33] The Commission's examination of the four major offense categories – drug trafficking, immigration, firearms, and fraud – demonstrated similar patterns of stability. The

[31] The Commission established various time periods for analysis during its 2006 testimony and accompanying 2006 report to Congress on the impact of *Booker*. For those purposes, the Commission examined cases sentenced from October 1, 2002, through April 30, 2003, the date of the enactment of the PROTECT Act (the pre-PROTECT Act period). The second timeframe examined by the Commission included cases sentenced between May 1, 2003, and June 24, 2004, the date of the decision in *Blakely v. Washington*, 542 U.S. 296 (2004) (the PROTECT Act period). The third timeframe examined by the Commission included cases sentenced during the period January 12, 2005, and January 12, 2006 (the *Booker* period).

[32] BOOKER REPORT at 62, supra note 17, at 62, Table 1.

[33] This compared to a conformance rate of 90.6% in the pre-PROTECT Act period (October 1, 2002, through April 30, 2003), and 93.7% in the post-PROTECT Act period (May 1, 2003, and June 24, 2004). BOOKER REPORT, supra note 17, at 46.

Commission's review also indicated that the severity of sentences and average sentence length remained consistent with pre-*Booker* trends.

The Commission did detect, however, an increase in non-government sponsored below range sentences following *Booker*. The Commission determined that, a year after *Booker*, nationally about 12.5 percent of cases had nongovernment sponsored, below-range sentences attributable either to guideline departures or *Booker*.[34] By comparison, the non-government sponsored, below-range sentence rate estimated by the Commission during the pre-PROTECT period was 8.6 percent and during the post-PROTECT Act period was 5.5 percent.[35]

Based on the information available at the time, the Commission recommended that Congress consider the following: (1) codify the three-step process for imposing a sentence;[36] (2) address the standard of review and appellate process as articulated by *Booker*; (3) ensure the timely and uniform use of sentencing documentation; and (4) clarify that a sentence reduction for cooperation or substantial assistance is impermissible absent a motion from the government. In addition, the Commission continued to improve its real-time data collection, analysis and reporting to keep stakeholders informed of the developments in federal sentencing.

Section II: Case Law Development

There have been significant developments in the case law since *Booker* was decided in 2005. The Supreme Court has issued seven decisions directly related to the operation of the federal sentencing guidelines. These cases have not only directly impacted the sentencing practices of district courts but also re-instated a deferential appellate review standard. This section provides brief summaries of these key cases and their holdings, and provides an overview of the current appellate review system.

In the SRA, Congress created meaningful appellate review of federal sentences for the first time. The right of appeal went hand-in-hand with a guideline system: "The Committee believes that section 3742 creates for the first time a comprehensive system of review of sentences that permits the appellate process to focus attention on those sentences whose review is crucial to the functioning of the sentencing guidelines system, while also providing adequate means for the correction of erroneous and clearly unreasonable sentences."[37] Section 1291, of title 28, United States Code, provides appellate courts with "jurisdiction of appeals from all final

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[34] *Id.* at 47.

[35] *See id.* at 63; *United States v. Booker: One Year Later—Chaos or Status Quo?: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security*, 109th Cong. 7 (2006) (statement of Ricardo H. Hinojosa, Chair, U.S. Sentencing Comm'n).

[36] The "three-step process" as articulated in *Booker* and *Rita v. United States*, 551 U.S. 338 (2007), requires the courts to: (1) calculate the appropriate guideline sentence; (2) consider any available departure provisions set forth in the *Guidelines Manual*; then (3) consider whether the sentence reached after steps one and two result in a sentence that is sufficient but not greater than necessary as mandated by 18 U.S.C. § 3553 (a)(2). Variances are cases in which the sentence imposed was below the applicable guideline range and where the court did not cite as a reason a provision listed in *Guidelines Manual* as a basis for imposing a sentence below the applicable guideline range.

[37] S. REP. NO. 98–225, at 3338.

decisions of the district courts of the United States," and section 3742, of title 18, United States Code, sets the parameters for appeals in criminal cases.

A. Evolution of the Appellate Standard of Review

During the first decade of the mandatory guidelines system, review of departure decisions and arguments about the proper interpretation of guidelines provisions dominated federal sentencing appeals. In *Koon v. United States*, the Supreme Court held that departure decisions by the district courts were due deference and that appellate courts should use an abuse of discretion standard in reviewing trial courts' application of the guidelines to the facts.[38] The Court noted that "[d] istrict courts have an institutional advantage over appellate courts in making these sorts of determinations, especially as they see so many more Guidelines cases than appellate courts do."[39]

In 2003, as part of the PROTECT Act, Congress included significant changes to the appellate review standard, as well as limitations on district courts with respect to departures from the federal sentencing guidelines. Specifically, the PROTECT Act amended 18 U.S.C. § 3742(e) to provide for a de novo standard of review. The PROTECT Act also established factors that Courts of Appeals had to consider when reviewing a sentence including whether the sentence: (1) was imposed in violation of the law; (2) resulted from the incorrect application of the guidelines; (3) was outside the guideline range, and the sentencing court did not provide an adequate statement of reasons; (4) departed from the guideline range based on a factor that does not advance the objectives in § 3553(a)(2), was not authorized under § 3553(b)(1), or is not justified by the facts in the case; (5) departed to an unreasonable degree, in view of the factors set forth in § 3553(b); or (6) was imposed for an offense for which there was no applicable guideline and was plainly unreasonable.[40] The PROTECT Act also required district courts to state with specificity the reasons for a sentence outside the otherwise applicable guideline range.[41]

In its 2005 *Booker* decision, the Court excised 18 U.S.C. § 3742(e), holding that the provision "depends upon the Guidelines' mandatory nature."[42] The Court devised a reasonableness standard of review based on "the past two decades of appellate practice in cases involving departures," the "related statutory language," and the "sound administration of justice."[43] Notably, the Court did not excise the jurisdictional provisions of 18 U.S.C. § 3742 that prohibit appellate review of a properly calculated within range sentence.[44] The Courts of Appeals quickly settled this ambiguity, however, by permitting review of a within range sentence under the rationale that such a sentence may still be "unreasonable" and thus "in violation of the law."[45]

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[38] Koon v. United States, 518 U.S. 81, 91 (1996).
[39] *Id.* at 98.
[40] 18 U.S.C. § 3742(e).
[41] 18 U.S.C. § 3582(c).
[42] *Booker*, 543 U.S. at 245.
[43] *Id.* at 260-61.
[44] *See* 18 U.S.C. §§ 3742(a), 3742(b).
[45] *See, e.g.*, United States v. Jimenez-Beltre, 440 F.3d 514 (1st Cir. 2006); United States v. Martinez, 434 F.3d 1318 (11th Cir. 2006) ("[A] post-*Booker* appeal based on the 'unreasonableness' of a sentence, whether within or outside

In 2007, the Supreme Court issued three decisions directly related to federal sentencing in the wake of *Booker*. In *Rita v. United States*,[46] the Supreme Court upheld a federal appellate court's reliance on a rebuttable presumption of reasonableness for a sentence that was imposed within the applicable guideline range, concluding that courts of appeals may but need not apply such a presumption when reviewing a within guideline range sentence. The Court further clarified the reasonableness review called for in *Booker* and emphasized the close relationship between the guidelines and § 3553(a) factors. The Court held that a rebuttable presumption of reasonableness on appeal "simply recognizes the real-world circumstance that when the judge's discretionary decision accords with the Commission's view of the appropriate application of § 3553(a) in the mine run of cases, it is probable that the sentence is reasonable."[47] The Court also made clear such a presumption of reasonableness was not available to the district courts.[48]

In *Gall v. United States*,[49] the Court considered the question whether the standard of review differs for sentences within the applicable guidelines range and those outside the guidelines range. The Court concluded that the abuse of discretion standard applies equally to all sentences "whether inside, outside, or significantly outside the Guidelines range."[50] The Court rejected any "appellate rule that requires 'extraordinary' circumstances to justify a sentence outside the Guidelines range" or "the use of a rigid mathematical formula that uses the percentage of departure as the standard for determining the strength of the justifications required for a specific sentence."[51]

The Court in *Gall* articulated the process by which appellate courts should assess the reasonableness of a sentence. The first step of such review is "to ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence—including an explanation for any deviation from the Guidelines range." Only if there are no procedural defects should the court move to a "substantive" reasonableness analysis using an "abuse of discretion standard."[52]

> When conducting this review, the court will, of course, take into account the totality of the circumstances, including the extent of any variance from the Guidelines range. If the sentence is within the Guidelines range, the appellate court may, but is not required to, apply a presumption of reasonableness. . . . But if the sentence is outside the Guidelines range, the court may not apply a presumption of unreasonableness. It may consider the

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the advisory guidelines range, is an appeal asserting that the sentence was imposed in violation of law pursuant to § 3742(a)(1)."); United States v. Mickelson, 433 F.3d 1050, 1052 (8th Cir. 2006) ("[A]n unreasonable sentence would be 'in violation of law' and subject to review under 18 U.S.C. § 3742(a)(1) regardless of whether it was within the guideline range.").

[46] 551 U.S. 338 (2007).

[47] *Rita*, 551 U.S. at 350-51.

[48] *Id.*

[49] 552 U.S. 38 (2007).

[50] *Gall*, 552 U.S. at 41.

[51] *Id.* at 46-47.

[52] *Id.* at 51.

> extent of the deviation, but must give due deference to the district court's decision that the § 3553(a) factors, on a whole, justify the extent of the variance.[53]

In *Kimbrough v. United States*, the Court held that a sentencing judge may consider the disparity between the guidelines' treatment of crack and powder cocaine when determining an applicable sentencing range.[54] The Court observed that, in creating the crack cocaine guidelines, the Commission varied from its usual practice of employing an "empirical approach based on the data about past sentencing practices," instead adopting the "weight-driven scheme" used in the 1986 Anti-Drug Abuse Act that created the 100-to-1 disparity between the two drugs and maintaining that ratio throughout the drug quantity table.[55] The Court determined upon review of the history of the Commission's actions with respect to crack and powder cocaine that the drug trafficking guidelines for crack cocaine offenses did not exemplify what the Court perceived to be "the Commission's exercise of its characteristic institutional role" and resulted in sentences for crack cocaine offenses "'greater than necessary' in light of the purposes of sentencing set forth in § 3553(a)."[56] The Court concluded that "[g]iven all this, it would not be an abuse of discretion for a district court to conclude when sentencing a particular defendant that the crack/powder disparity yields a sentence 'greater than necessary' to achieve §3553(a)'s purposes, even in a mine-run case."[57]

In 2008, the Supreme Court again weighed in on post-*Booker* sentencing. In *Irizarry v. United States*,[58] the Court considered the question whether the notice requirement of Federal Rule of Criminal Procedure 32(h) applied to sentences that "varied" from the applicable guideline range under *Booker* as well as typical guideline "departures." The Court held that Rule 32(h)[59] and its previous holding in *Burns v. United States*[60] did not apply to a variance from a recommended guidelines range.[61] In reaching this decision, the Court concluded that:

> Any expectation subject to due process protection at the time we decided *Burns* that a criminal defendant would receive a sentence within the presumptively applicable guideline range did not survive our decision in *United States* v. *Booker*, (2005), which invalidated the mandatory features of the Guidelines. Now faced with advisory Guidelines, neither the Government nor the defendant may place the same degree of reliance on the type of "expectancy" that gave rise to a special need for notice in *Burns*. Indeed, a sentence outside the Guidelines carries no presumption of unreasonableness.[62]

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[53] *Id.*
[54] 552 U.S. 85, 91 (2007).
[55] *Id.* at 95-97.
[56] *Id.* at 109-10.
[57] *Id.* at 110.
[58] 553 U.S. 708 (2008). In response to *Burns v. United States*, 501 U.S. 129 (1991), Rule 32(h) states that "[b]efore the court may depart from the applicable sentencing range on a ground not identified for departure either in the presentence report or in a party's prehearing submission, the court must give the parties reasonable notice that it is contemplating such a departure."
[59] Federal Rule of Criminal Procedure 32(h) states that "[b]efore the court may depart from the applicable sentencing range on a ground not identified for departure either in the presentence report or in a party's prehearing submission, the court must give the parties reasonable notice that it is contemplating such a departure."
[60] 501 U.S. 129 (1991).
[61] *Irizarry* 553 U.S. at 714-15.
[62] *Id.* at 713-14(citations omitted).

The Court held that Rule 32 "does not apply to § 3553 variances by its terms. 'Departure' is a term of art under the Guidelines and refers only to non-Guidelines sentences imposed under the framework set out in the Guidelines."[63]

In 2009, the Supreme Court issued two per curiam opinions that further weakened the effectiveness of the guidelines. In *Spears v. United States*,[64] the Court (in a 5-4 *per curiam* opinion) held that district courts may categorically disagree with the guidelines, at least with respect to the drug guidelines for crack cocaine offenses. Further explaining its holding in *Kimbrough*, the Court stated "[t]hat was indeed the point of *Kimbrough:* a recognition of district courts' authority to vary from the crack cocaine Guidelines based on *policy* disagreement with them, and not simply based on an individualized determination that they yield an excessive sentence in a particular case."[65] Thus, *Spears* clarified "that district courts are entitled to reject and vary categorically from the crack cocaine Guidelines based on a policy disagreement with those Guidelines."[66]

Similarly in *Nelson v. United States*, the Court (in another per curiam decision) reaffirmed its decisions in *Rita* and *Gall* that a presumption of reasonableness is improper at the district court level. The Court reiterated that "the sentencing court does not enjoy the benefit of a legal presumption that the Guidelines sentence should apply."[67] "Instead, the sentencing court must first calculate the Guidelines range, and then consider what sentence is appropriate for the individual defendant in light of the statutory sentencing factors, , explaining any variance from the former with reference to the latter."[68] The Court concluded "[t]he Guidelines are not only *not mandatory* on sentencing courts; they are also not to be *presumed* reasonable."[69]

Again in 2011, the Supreme Court addressed the authority of district courts to impose sentences based on policy disagreements with the Commission. In *Pepper v. United States*,[70] the Court held that, when a district court resentences a defendant whose original sentence was overturned on appeal, the district court may consider evidence of the defendant's rehabilitation since the original sentence was imposed, and may impose a sentence below the guideline range on the basis of this information. The guidelines explicitly prohibit departures on the basis of post-sentencing rehabilitation, but the Court emphasized that its "post-*Booker* decisions make clear that a district court may in appropriate cases impose a non-Guidelines sentence based on a disagreement with the Commission's views," and that this was such a case.[71]

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[63] *Id.* at 714.
[64] 555 U.S. 261 (2009) (per curiam).
[65] *Id.* at 264.
[66] *Id.* at 265
[67] *Id.* (citations omitted).
[68] *Id.*
[69] *Id.*
[70] __ U.S. __, 131 S. Ct. 1229 (2011).
[71] *Id.* at 1247.

B. The State of Federal Appellate Review

Based on hearings, statistics, and case law, the Commission has concluded that the Court after *Booker* has taken some of the "teeth" from appellate review of federal sentencing decisions. The vast majority of sentencing appeals today are based on guideline application or other procedural issues. Appellate courts rarely address the substantive reasonableness of a sentence.

Several factors limit the effectiveness of appeals in alleviating sentencing differences as envisioned by the Court in *Booker*. First, only a small portion of sentences are appealed each year. Immediately following *Booker*, there was an increase in the number of sentences appealed, but in recent years the numbers have leveled off and are more similar to pre-*Booker* levels. In fiscal year 2006, the first full year after *Booker*, 8,283 appeals were filed challenging criminal sentences.[72] This represents over 11 percent of the 72,510 criminal sentences imposed in that year.[73] In contrast, in fiscal year 2010, 5,269, or roughly six percent of the 83,946 felony and Class A misdemeanor sentences imposed were appealed by either the government or defendant.[74] In the years immediately prior to *Booker*, sentencing issues were raised in the cases of approximately 4,200-4,600 defendants each year.[75]

Second, the Government initiates only a small portion of these appeals. In fiscal year 2010, the government only raised sentencing issues in 86 cases, while defendants raised such issues in 5,215 cases.[76] As noted by some circuit judges and evidenced by the low number of government-initiated sentencing appeals, sentences below the applicable guidelines range are not frequently appealed.[77] Second, the Government initiates only a small portion of these appeals.

There are a number of reasons why appeals by defendants predominate. First, after *Booker* defendants may appeal even those sentences that are within a properly calculated guideline range, as well as those above and even those below the range, arguing that the district court did not go low enough or failed adequately to consider relevant evidence.[78] Unless a defendant is bound by a plea agreement, there is little reason not to appeal.[79] Whereas a defendant's attorney is ethically bound to appeal as long as the defendant requests it,[80] an appeal

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[72] U.S. SENTENCING COMM'N, 2006 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, Table 55.
[73] *Id.* at Table 10.
[74] U.S. SENTENCING COMM'N, 2010 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, Tables 10 and 55.
[75] *See* U.S. SENTENCING COMM'N, 2004 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS Table 55 (4,601 appeals); U.S. SENTENCING COMM'N, 2003 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, Table 55 (4,383 appeals); U.S. SENTENCING COMM'N, 2002 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS ,Table 55 (4,492 appeals); U.S. SENTENCING COMM'N, 2001 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS Table 55 (4,226 appeals).
[76] U.S. SENTENCING COMM'N, 2010 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS Tables 56 and 56A.
[77] *See USSC 2010 National Training Seminar*, New Orleans, LA (June 17, 2010) (Remarks of Honorable Gerald Lynch, U.S. Court of Appeals for the Second Circuit) [hereinafter Lynch 2010 National Training Remarks].
[78] *See, e.g.*, United States v. Olhovsky, 562 F.3d 530, 546-50 (3d Cir. 2009).
[79] Some circumstances in which the defendant might be precluded from appealing include cases in which the defendant signs an appeal waiver in exchange for a benefit at sentencing, and cases in which the government and the defendant agree to a binding sentence recommendation under Rule 11(e)(1)(C).
[80] *See, e.g.*, Roe v. Flores-Ortega, 528 U.S. 470, 479, 484 (2000) (noting that "the better practice is for counsel routinely to consult with the defendant regarding the possibility of an appeal," and holding that "when counsel's constitutionally deficient performance deprives a defendant of an appeal that he otherwise would have taken, the defendant has made out a successful ineffective assistance of counsel claim entitling him to an appeal.").

on the part of the government is discretionary and requires specific approval from the Solicitor General.[81] *Booker* did not cause this imbalance in the types of appeals being brought; this disparity has always existed.[82]

Second, only a small percentage of sentences are challenged as being too low, while thousands are appealed as being too high.[83] This is true even though the majority of sentences imposed that are outside the guideline range are below, rather than above the range. For example, in fiscal year 2010, sentencing courts elected to impose 14,565 below-range sentences.[84] This represents close to eighteen percent of the 81,859 sentences imposed that year.[85] In contrast, sentencing courts imposed 1,512 above-range sentences.[86] This represents less than two percent of all sentences.[87]

Finally, the circuits are divided on whether a sentence within a properly calculated guideline range is entitled to a presumption of reasonableness. In the case of certain guidelines some circuits have even suggested that a within guideline sentence will often be unreasonable.[88] Other circuits have examined the same guideline and explicitly affirmed that it should be presumed reasonable.[89]

Feedback the Commission has received suggests that district court judges generally view the appeals process as functioning well, whereas some appeals court judges view the appeals process as broken. District court judges generally consider proper the discretion afforded to them under the *Booker* standard of review.[90] Indeed, 75 percent of federal district judges believe

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[81] See U.S. ATTORNEY MANUAL, § 2-2.121 (Necessity of Authorization by Solicitor General – Appeals or Petitions on Behalf of the United States), available at http://www.justice.gov/usao/eousa/foia_reading_room/usam/title2/2mapp.htm#2-2.121.

[82] *See* U.S. SENTENCING COMM'N, 2004 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, Tables 56 and 56A (Sentencing issues raised by the defendant in 4500 cases and the government in 133 cases); U.S. SENTENCING COMM'N, 2003 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS at Tables 56 and 56A (Sentencing issues raised by the defendant in 4,313 cases and the government in 112 cases).

[83] *See* U.S. SENTENCING COMM'N, 2010 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, Tables 56 and 56A.

[84] *Id.* at Table N.

[85] *Id.*

[86] *Id.*

[87] *Id.*

[88] *See, e.g.*, United States v. Dorvee, 616 F.3d 174, 188 (2d Cir. 2010) (encouraging district judges "to take seriously the broad discretion they possess in fashioning sentences under § 2G2.2-ones that can range from non-custodial sentences to the statutory maximum-bearing in mind that they are dealing with an eccentric Guideline of highly unusual provenance which, unless carefully applied, can easily generate unreasonable results.")

[89] United States v. Mantanes, 632 F.3d 372 (7th Cir. 2011); United States v. Gray, 405 F. App'x. 436 (11th Cir. 2010). *See also* United States v. Irey, 612 F.3d 1160, 1203 (11th Cir. 2010) (en banc) (rejecting "as unreasonable and a clear error in judgment the view that the guidelines involving sex crimes against children are too harsh in a mine-run case because pedophiles have impaired volition").

[90] *See, e.g.*, *USSC Public Regional Hearing on the Twenty-Fifth Anniversary of the Passage of the Sentencing Reform Act of 1984 Chicago, IL* (Sept. 9-10, 2009) (Testimony of Honorable Philip Simon, Northern District of Indiana, transcript at 102-03) [hereinafter *Simon 25th Anniversary Testimony*], http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20090909-10/Public_Hearing_Transcript.pdf; *USSC Public Regional Hearing on the Twenty-Fifth Anniversary of the Passage of the Sentencing Reform Act of 1984 Austin, TX* (Nov. 19, 2009) (Statement of Honorable Robin J. Cauthron, Western District of Oklahoma, written statement at 3) [hereinafter *Cauthron 25th Anniversary Statement*], http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20091119-20/Cauthron.pdf.

that the current advisory guidelines system best achieves the purposes of sentencing.[91] The defense bar generally views the post-*Booker* review for reasonableness as "strik[ing] the appropriate balance between the district and appellate courts."[92] Some defense attorneys describe appellate review after *Booker* as a return of discretion to the district courts and a correction of the appellate courts' previous "overly strict enforcement of the guidelines [which] created unwarranted uniformity."[93] In contrast, some prosecutors believe that there is little meaningful appellate review of sentences,[94] which has led to a decrease in the number of cases appealed by the government on sentencing grounds.[95] They note, however, that the number of sentencing appeals by defendants has increased because all sentences are subject to review for both procedural and substantive reasonableness and any defendant who is dissatisfied with his sentence now has a right of appeal.[96]

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[91] U.S. SENTENCING COMM'N, RESULTS OF SURVEY OF UNITED STATES DISTRICT JUDGES JANUARY 2010 THROUGH MARCH 2010 (2010) (response to Question 19).

[92] *USSC Public Regional Hearing on the Twenty-Fifth Anniversary of the Passage of the Sentencing Reform Act of 1984 Austin, TX* (Nov. 19, 2009) (Statement of Jason D. Hawkins, First Assistant Federal Public Defender for the Northern District of Texas, written statement at 23) [hereinafter *Hawkins 25th Anniversary Statement*].

[93] *USSC Public Regional Hearing on the Twenty-Fifth Anniversary of the Passage of the Sentencing Reform Act of 1984 at Chicago, IL* (Sept. 9-10 2009) (Statement of Jacqueline A. Johnson, First Assistant Federal Public Defender for the Northern District of Ohio, written statement at 4) [hereinafter *Johnson 25th Anniversary Statement*].

[94] *See, e.g., USSC Public Regional Hearing on the Twenty-Fifth Anniversary of the Passage of the Sentencing Reform Act of 1984 at Stanford, CA* (May 27-28, 2009) (Testimony of Karin J. Immergut, then- U.S. Attorney for the District of Oregon, transcript at 244) [hereinafter *Immergut 25th Anniversary Testimony*], http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20090527-28/Agenda.htm ; *USSC Public Regional Hearing on the Twenty-Fifth Anniversary of the Passage of the Sentencing Reform Act of 1984 at New York, NY* (July 9-10, 2009) (Testimony of Honorable Benton J. Campbell, Eastern District of New York, transcript at 301-304) [hereinafter *Campbell 25th Anniversary Testimony*], http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20090709-10/Public_Hearing_Transcript.pdf; *USSC Public Regional Hearing on the Twenty-Fifth Anniversary of the Passage of the Sentencing Reform Act of 1984 at Chicago, IL* (Sept. 9-10, 2009) (Statement of Honorable Edward M. Yarbrough, Middle District of Tennessee, statement at 4) [hereinafter *Yarbrough 25th Anniversary Statement*]], http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20091020-21/Gaoette_testimony.pdf ; *USSC Public Regional Hearing on the Twenty-Fifth Anniversary of the Passage of the Sentencing Reform Act of 1984 at Phoenix, AZ* (Jan. 20-21, 2010) (Statement of Dennis Burke, then- U.S. Attorney, District of Arizona, statement at 8-10), http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20100120-21/Burke_Testimony.pdf; *USSC Public Regional Hearing on the Twenty-Fifth Anniversary of the Passage of the Sentencing Reform Act of 1984 at Austin, TX* (Nov. 19-20, 2009) (Testimony of Joyce W. Vance, U.S. Attorney, Northern District of Alabama, transcript at 317-319), http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20091119-20/Austin_Transcript.pdf.

[95] *See See, Campbell 25th Anniversary Testimony, supra* note 95, transcript at 318; *USSC Public Regional Hearing on the Twenty-Fifth Anniversary of the Passage of the Sentencing Reform Act of 1984 at Chicago, IL* (Sept. 9-10, 2009), (Testimony of Edward M. Yarbrough, U.S. Attorney, Middle District of Tennessee, transcript at 247), http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20090909-10/Public_Hearing_Transcript.pdf; *USSC Public Regional Hearing on the Twenty-Fifth Anniversary of the Passage of the Sentencing Reform Act of 1984 at Denver, CO* (Oct. 20-21, 2009) (Testimony of B. Todd Jones, U.S. Attorney, District of Minnesota, transcript at 156), http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20091020-21/Public_Hearing_Transcript.pdf.

[96] *See,* Immergut 25th Anniversary Testimony, supra note 95, transcript at 244-45; Yarbrough 25th Anniversary Statement, at 4.

In contrast, some circuit judges have expressed concern about the lack of clarity in the Supreme Court's directives in *Booker*, particularly with respect to substantive reasonableness.[97] Even those judges who describe the post-*Booker* advisory guideline system as "working well" seek additional guidance regarding the standard for substantive reasonableness.[98] Perhaps most telling is that judges in two circuits with robust appellate dockets, the Fifth Circuit and the Ninth Circuit, expressed significant concern over both the lack of clarity regarding the standard to be applied when reviewing a sentence for substantive reasonableness and the resulting deference to the district court's discretion.[99] Moreover, some judges in circuits with a high volume of sentencing appeals view the development of a reasonableness standard based on a review of past cases as "unrealistic."[100]

In dissenting opinions circuit judges have voiced concerns regarding the courts' inability to apply a consistent standard of reasonableness review that gives the proper deference to the district court without abdicating the appellate court's role. For example, in one case, a Ninth Circuit judge dissented from the denial of rehearing en banc, criticizing the panel opinion for "[e]mploying what amounts to a de novo standard of review" in reversing a within-guideline

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[97] *See, e.g., USSC 2010 National Training Seminar, New Orleans, LA* (June 17, 2010) (Remarks of Honorable Andre Davis, U.S Court of Appeals for the Fourth Circuit) [hereinafter *Davis 2010 National Training Remarks*] (stating that judges have "no idea what substantive reasonableness looks like"); *see also USSC Public Regional Hearing on the Twenty-Fifth Anniversary of the Passage of the Sentencing Reform Act of 1984 Chicago, IL* (Sept. 10, 2009) (Testimony of Danny Boggs, 6th Cir., transcript at 214) [hereinafter *Boggs 25th Anniversary Testimony*], (noting the lack of guidance from Congress, the Supreme Court or the Sentencing Commission regarding the "task of trying to sort the unwarranted disparities from the warranted disparities"), http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20090909-10/Public_Hearing_Transcript.pdf.

[98] *See, e.g., See, e.g., USSC Public Regional Hearing on the Twenty-Fifth Anniversary of the Passage of the Sentencing Reform Act of 1984 Austin, TX* (Nov. 20, 2009) (Testimony of Honorable Edith Jones, Chief Judge, U.S. Court of Appeals for the Fifth Circuit, transcript at 212, 219) [hereinafter *Jones 25th Anniversary Testimony*], (stating "the guidelines, as a practical matter, after *Booker*, are working well" but "it is very difficult to find a principle[d] basis. . . for saying that a sentence is unreasonable"). http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20091119-20/Austin_Transcript.pdf; *USSC Public Regional Hearing on the Twenty-Fifth Anniversary of the Passage of the Sentence Reform Act of 1984 at Chicago, IL* (Sept. 9, 2009) (Testimony of Jeffrey Sutton, U.S. Court of Appeals for the Sixth Circuit, transcript at 207) [hereinafter *Sutton 25th Anniversary Testimony*], http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20090909-10/Public_Hearing_Transcript.pdf; *USSC Public Regional Hearing on the Twenty-Fifth Anniversary of the Passage of the Sentencing Reform Act of 1984 Denver, CO* (Oct. 20, 2009), (Testimony of Honorable James Loken, Chief Judge, U.S. Court of Appeals for the Eighth Circuit, transcript at 57) [hereinafter *Loken 25th Anniversary Testimony*], http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20091020-21/Public_Hearing_Transcript.pdf.

[99] *See, e.g., Jones 25th Anniversary Testimony, supra* note 99, transcript at 219, 249 (describing "the sense of futility" in remanding cases for procedural unreasonableness); *USSC Public Regional Hearing on the Twenty-Fifth Anniversary of the Passage of the Sentencing Reform Act of 1984, Palo Alto, CA* (May 27, 2009) (Testimony of Honorable Alex Kozinski, Chief Judge 9th Cir., transcript at 43-49) [hereinafter *Kozinski 25th Anniversary Testimony*] (stating "there's nothing that I have figured out on appeal that we can really do to constrain the outlier judges"), http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20090527-28/Transcript_20090527-28.pdf.

[100] *Jones 25th Anniversary Testimony supra* note 99, transcript at 219; *see also Sutton 25th Anniversary Testimony, supra* note 99, transcript at 209 (describing reasoning on substantive reasonableness as "good for one train and one train only"). The individualized nature of the substantive reasonableness analysis has also been expressed in circuit opinions. *See, e.g.*, United States v. Dixon, 449 F.3d 194, 205 (1st Cir. 2006) ("sentencing determinations hinge primarily on case-specific and defendant-specific considerations").

sentence as unreasonable.[101] In another case from the same circuit, a judge dissented from the denial of rehearing en banc, noting that "the desirable principle of deference to the sentencing judge, if taken too far, is transformed into an undesirable principle of no review in effect for substantive reasonableness of a sentence," and concluded, "[t]he scope of our duty to review a district court's sentencing decision for substantive reasonableness under an abuse of discretion standard goes beyond what our court did here, and we would all benefit if we had a better standard for such circumstances."[102] In reaching that conclusion, the judge opined that the case "puts the Ninth Circuit in what I consider to be a conflict with several of our sister circuits who have adopted a more vigorous approach to reviewing sentences for reasonableness."[103] Similarly, a judge in the Eighth Circuit described the affirmance of a sentence as "establish[ing], effectively, a standard of no appellate review at all."[104] The judge went on to state that his circuit "adopt[ed] a posture today that is so deferential that, so long as the district court gives lip service and a bit of discussion to the relevant 18 U.S.C. § 3553(a) factors, a sentence will almost never be reversed, procedurally or otherwise."[105]

At the same time, circuit judges express frustration with remanding cases for resentencing based on procedural issues because on remand the sentencing judge is likely to provide a more detailed explanation for the same sentence, which will satisfy the standard for procedural reasonableness.[106] This frustration has led some appellate judges to describe the appellate role as "a waste of time"[107] or "make work."[108] Moreover, appellate judges describe a system in which procedural issues are fruitlessly over-litigated because those are the issues addressed by the appellate courts.[109] As one judge described it, courts of appeals will usually

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[101] United States v. Amezcua-Vasquez, 586 F.3d 1176, 1179-80 (9th Cir. 2009) (O'Scannlain, dissenting from denial of rehearing en banc).
[102] United States v. Whitehead, 559 F.3d 918 (9th Cir. 2009) (Gould, J., dissenting from denial of rehearing en banc).
[103] *Whitehead*, 559 F.3d at 920.
[104] United States v. Feemster, 572 F.3d 455, 471 (8th Cir. 2009) (Beam, J., dissenting from denial of rehearing en banc).
[105] *Feemster*, 572 F.3d at 571.
[106] *See, e.g.*, *Jones 25th Anniversary Testimony, supra* note 99, transcript at 249 (describing reversal on procedural grounds as futile); *USSC Public Regional Hearing on the Twenty-Fifth Anniversary of the Passage of the Sentencing Reform Act of 1984 Chicago, IL* (Sept. 10, 2009) (Testimony of Honorable Frank Easterbrook, Chief Judge U.S. Court of Appeals for the Seventh Circuit, transcript at 193) [hereinafter *Easterbrook 25th Anniversary Testimony*] (describing remand on procedural reasonableness as "an exercise that has a limited, if any, effect on the sentence" and "a make work prescription"), http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20090909-10/Public_Hearing_Transcript.pdf; *USSC Public Regional Hearing on the Twenty-Fifth Anniversary of the Passage of the Sentencing Reform Act of 1984 Denver, CO* (Oct. 20, 2009) (Testimony of Honorable Harris Hartz, 10th Cir., transcript at 45-46) [hereinafter Hartz 25th Anniversary Testimony], http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20091020-21/Public_Hearing_Transcript.pdf.
[107] *USSC 2010 National Training Seminar, New Orleans, LA* (June 17, 2010) (Remarks of Honorable William Riley, Chief Judge 8th Cir.) [hereinafter *Riley 2010 National Training Remarks*] (stating that the appellate role has been diminished to the point of being "a waste of time").
[108] *Easterbrook 25th Anniversary Testimony, supra* note 107, transcript at 193 (describing remand on procedural reasonableness as "a make-work prescription").
[109] *See, e.g.*, Loken 25th Anniversary Testimony transcript at 35, Sutton 25th Anniversary Testimony transcript at 205; *but see* Hartz 25th Anniversary Testimony transcript at 46-47 (describing practice of "try[ing] not to write more

look for any "procedural hook" to justify vacating a sentence that the court of appeals believes to be too high or too low rather than holding that the sentence is substantively unreasonable.[110] The same judge described this practice as "intellectually dishonest."[111]

An issue related to appellate review has arisen from the Court's *Booker* jurisprudence. Beginning with the *Kimbrough* opinion holding that the lower courts could vary from the federal sentencing guidelines because of a policy disagreement, the Court has increasingly encouraged the lower courts to examine federal sentencing guidelines developed as a result of "congressional directives"[112] and impose a sentence other than the otherwise applicable advisory guideline range sentence because of a policy disagreement with the underlying rationale for the guideline. The Court suggests this "policy disagreement" analysis is appropriate because guidelines that result from congressional directive, particularly specific directives[113] "do not exemplify the Commission's exercise of its characteristic institutional role."[114]

The argument has been made increasingly that a guideline is not an appropriate benchmark or starting point if the guideline is based on a congressional directive rather than on the Commission's review of empirical data and national experience.[115] Litigants have successfully argued that when Congress directs the amendment process for a particular guideline, the Commission is not playing its characteristic role in promulgating guidelines based on empirical data and national experience.[116] To support this argument, litigants rely on the Supreme Court's holding in *Kimbrough* in part on the assertion that in setting the crack cocaine guidelines, the Commission abandoned its characteristic institutional role.

Some courts have read *Kimbrough* and *Spears* to have established a "new paradigm" in which district courts are permitted "to disagree categorically with [congressional] directives in providing an individual sentence."[117] They read *Kimbrough* to instruct "sentencing courts to give *less* deference to guidelines that are not the product of the Commission acting in 'its characteristic institutional role,' in which it typically implements guidelines only after taking into

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than a paragraph" about substantive reasonableness as an attempt to "send a signal to counsel on both sides [not to] bring these appeals on substantive reasonableness").

[110] *Lynch 2010 National Training Remarks, supra* note 77.
[111] *Lynch 2010 National Training Remarks, supra* note 77.
[112] The SRA contained a number of congressional directives to the Commission about how it should formulate and structure the federal sentencing guidelines. Since 1984, Congress has directed the Commission to act in the areas of sentencing well over 100 times.
[113] The Commission considers a congressional directive to the Commission to be "specific" in nature if it "states the congressional will in terms of a designated, resulting guideline offense level that [] Commission amendments are to achieve." U.S. SENTENCING COMM'N., SPECIAL REPORT TO CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (as directed by section 1703 of Pub. L. 101–647) at 120 (1991).
[114] *Kimbrough*, 552 U.S. at 89.
[115] *See e.g.*, United States v. Mondragon-Santiago, 564 F.3d 357 (5th Cir. 2009) (rejecting argument a guideline not based on empirical data is entitled to less deference, and holding that any lack of empirical basis underlying the illegal reentry guideline renders the sentence substantively unreasonable).
[116] *See Kimbrough*, 552 U.S. at 109 (2007) (noting that the crack cocaine guidelines "do no exemplify the Commission's exercise of its characteristic institutional role" because "[i]n formulating Guidelines ranges for crack cocaine offenses, as we earlier noted, the Commission looked to the mandatory minimum sentences set in the 1986 Act, and did not take account of 'empirical data and national experience.'") (citation omitted).
[117] United States v. Reyes-Hernandez, 624 F.3d 405, 417-418 (7th Cir. 2010) ("Congressional 'directives' to the Sentencing Commission are unlike statutes in that they are not equally binding on sentencing courts").

account 'empirical data and national experience.'"[118] Other circuits disagree.[119] Thus the circuits are divided on the question whether guidelines promulgated in response to a congressional directive to the Commission are entitled to less deference than guidelines promulgated pursuant to the Commission's "characteristic institutional role." As a result, the Commission notes a growing body of case law disavowing the federal sentencing guidelines for child pornography, immigration, crack cocaine, and fraud offenses based on this rationale.[120]

Section III: Federal Sentencing Practices and Trends Across Time

For many years, the Commission has been collecting, analyzing, and reporting on sentencing practices and trends, and in near real-time since 2004. This section of the testimony provides an overview of key federal sentencing practices during fiscal year 2010, as well as detailed analyses of federal sentencing practices across time.

A. Federal Sentencing in Fiscal Year 2010

1. Caseload Composition and Plea Rate

The federal caseload[121] has more than doubled in the last 15 years.[122] In fiscal year 2010, the Commission received information for 83,946 individual felony or Class A misdemeanor cases,[123] compared to 42,436 cases in fiscal year 1996. In fiscal year 2010, 96.8 percent of offenders pleaded guilty.

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[118] *Reyes-Hernandez*, 624 F.3d at 418 (7th Cir. 2010). *See also* United States v. Rodriguez, 527 F.3d 221, 227 (1st Cir. 2008) ("[T]he fast-track departure scheme does not 'exemplify the [Sentencing] Commission's exercise of its characteristic institutional role.'[] In other words, the Commission has 'not take [n] account of empirical data and national experience' in formulating them. [] Thus, guidelines and policy statements embodying these judgments deserve less deference than the sentencing guidelines normally attract.") (citations omitted).

[119] United States v. Arrelucea-Zamudio, 581 F.3d 142, 149-150 (3d Cir. 2009) (collecting cases and rejecting the approach of the Fifth, Ninth, and Eleventh Circuits, which have concluded that district courts may not disagree with congressional policy, specifically with respect to varying due to perceived fast-track disparity, and stating that "the attempt to distinguish fast-track programs from the sentencing guidance provided in *Kimbrough*, and constrain a district court's sentencing discretion solely on the basis of a congressional policy argument, is unpersuasive.").

[120] The Federal Defender Service has a series of white papers available to practitioners that "deconstruct" the federal sentencing guidelines and provide arguments for why guidelines covering certain categories of offenses do not reflect the Commission's expertise.

[121] The Commission receives a report of the sentence imposed in all cases to which the sentencing guidelines apply, which are all felony offenses and all Class A misdemeanors in the United States courts. *See generally* 28 U.S.C. § 994(w); USSG §1B1.9.

[122] The Commission notes that as of September 1, 2011, there were 217,839 total federal inmates. *See* www.bop.gov/locations/weekly_report.jsp (last visited on September 5, 2011). Between fiscal years 2006 and 2010, the Bureau of Prisons estimates that the average net increase in the federal prison population was 4,500 offenders per year. *See* BOP, Buildings and Facilities (B&F) Appropriation for FY2012, available at http://www.bop.gov/news/budget.jsp (last visited September 5, 2011).

[123] In fiscal year 2010 the Commission also received documents in 149 cases in which an organization was sentenced. Additionally, the Commission received documents in 4,120 cases in which a resentencing or other modification of sentence occurred.

In fiscal year 2010, four offense types together accounted for more than 82 percent of the federal caseload: immigration[124] (34.4%), drugs[125] (28.9%), fraud[126] (9.7%), and firearms[127] (9.6%). In addition, non-fraud white collar offenses,[128] child pornography offenses,[129] and larceny offenses[130] accounted for 3.6 percent, 2.3 percent, and 2.0 percent of the caseload, respectively, in fiscal year 2010. Other offenses accounted for 9.5 percent of the caseload.

2. Demographics

Non-citizen offenders accounted for 47.5 percent of federal offenders in fiscal year 2010. The average age of federal offenders sentenced in fiscal year 2010 was 35.3 years with a median of 33.0 years. More than half (51.4%) of federal offenders sentenced did not graduate from high school, and 5.4 percent graduated from college. The overwhelming majority (86.8%) of offenders were men. In fiscal year 2010, 48.1 percent of all offenders were Hispanic, 27.6 percent were White, and 20.7 percent were Black.

3. Criminal History

More than half of all offenders sentenced in fiscal year 2010 had a prior criminal history serious enough to result in a more severe sentencing guideline range than would have been the case if the offender had no prior criminal history. In fiscal year 2010, 56.1 percent of all offenders had a prior criminal history that assigned them to Criminal History Category (CHC) II or higher under the guidelines. Just over three percent of offenders were found to be Career Criminals, and 0.8 percent were found to be Armed Career Criminals, designations that significantly increase the otherwise applicable guideline range.[131]

4. Type of Sentence Imposed

In fiscal year 2010, over 87 percent of federal offenders were sentenced to serve a term of incarceration with no type of alternative to incarceration imposed as part of the sentence.[132] The average sentence length was 44.3 months, and the median sentence was 21.0 months.

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[124] Immigration offenses includes trafficking in United States passports, trafficking in entry documents, failure to surrender naturalization certificate, fraudulently acquiring United States passports, smuggling of an unlawful alien, fraudulently acquiring entry documents, and unlawfully entering the United States.

[125] Drug offenses include drug trafficking, use of a communication facility, and simple possession.

[126] Fraud offenses include odometer laws and regulations, insider trading, and fraud and deceit.

[127] Firearms offenses include unlawful possession/transportation of firearms or ammunition; possession of guns/explosives on aircraft; unlawful trafficking in explosives, possession of guns or explosives in a federal facility or school, use of fire or explosives to commit a felony, and use of firearms or ammunition during a crime.

[128] Non-fraud white collar offenses include embezzlement, forgery/counterfeiting, bribery, money laundering, and tax offenses.

[129] Child pornography offenses include the sale, distribution, transportation, shipment, receipt, or possession of materials involving the sexual exploitation of minors.

[130] Larceny includes bank larceny, theft from benefit plans, theft of mail, receipt or possession of stolen property, and theft from a labor union.

[131] For information on criminal history, see U.S. Sentencing Comm'n Fiscal Year 2010 Sourcebook of Federal Sentencing Statistics, Table 20.

[132] The Commission notes an important aspect of the federal criminal caseload and the number represented here: "The federal sentencing caseload is composed of a substantial proportion of non-United States citizens." U.S. SENTENCING COMM'N, ALTERNATIVES TO INCARCERATION, at 4 (January 2009) [hereinafter ALTERNATIVES

Slightly more than seven percent receive a sentence of probation only. The remaining offenders are sentenced to a mix of probation and some form of confinement (e.g., home detention or other confinement) or to a mix of incarceration and community confinement. Among U.S. citizen offenders, 81.0 percent receive a sentence of imprisonment. Straight probation is imposed in 9.7 percent of cases involving a United States citizen.

In fiscal year 2010, Hispanics received a sentence of imprisonment in 94.6 percent of the cases in which they were the offender, followed by Blacks (86.4%), Whites (79.6%), and Other races (77.4%). The rate at which Hispanic offenders were imprisoned was affected, in part, by the fact that many Hispanic offenders are non-citizens and due to that status are often not eligible for pretrial release or alternatives to incarceration.

5. Sentencing Relative to the Guidelines Range

The rate at which courts impose sentences within the applicable guideline range has varied over time and by offense types. These trends will be discussed in detail in the next section, while this section will provide information relating to sentencing practices in fiscal year 2010.

In fiscal year 2010, the courts imposed sentences within the applicable advisory guideline range or below the range at the request of the government in 80.4 percent of all cases: 55.0 percent of all cases were sentenced within the applicable guideline range, 25.4 percent received a government sponsored below range sentence. In fiscal year 2010, the non-government sponsored below-range rate was 17.8 percent, and the rate of sentences imposed above the guidelines range was 1.8 percent.[133]

The position of the sentence relative to the guideline range varies significantly depending on the type of offense. In fiscal year 2010, sentences within the guideline range were most common in cases involving drug possession (94.9%), prison offenses (73.7%), larceny (71.2%), embezzlement (69.7%), and environmental offenses (66.3%).[134]

The rate at which the sentences imposed are within the applicable guideline range also varies among the circuits. In fiscal year 2010, district courts in the Fifth Circuit imposed a sentence within the guideline range most often (71.3%) while district court judges in the D.C. Circuit imposed within range sentences least often (33.4%).

Non-government sponsored below range rates also vary among the circuits. In fiscal year 2010, the circuit in which district courts imposed non-government sponsored below range sentences most often was the Second Circuit (37.3%), while district courts in the Tenth Circuit imposed such sentences least often (12.0%).

REPORT]. In fiscal year 2010, 47.5% of the federal offenders (n=38,619) for whom the Commission collects data were non-U.S. citizens. Because the majority of these offenders are illegal aliens, they are not eligible for alternatives to incarceration. *See* Alternatives Report at 4-5.

[133] U.S. SENTENCING COMM'N FISCAL YEAR 2010 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, Table N.

[134] U. S. SENTENCING COMM'N FISCAL YEAR 2010 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, Table 27.

An analysis of these data show that, for many circuits, the rate attributed to that circuit is often heavily influenced by the presence of one or two districts within that circuit that account for a majority of the circuit's criminal caseload. (*E.g.*, in the Fifth Circuit where the Southern District of Texas and the Western District of Texas account for 84.0% of all cases, and the Eleventh Circuit where the three Florida districts account for 61.1% of all cases). For that reason, the remainder of this testimony will present data at the district court level.

B. Sentencing Trends Across Time

This part of the Commission's testimony presents information on sentencing trends across time and broken down into four time periods:

- The post-*Koon* period (June 13, 1996 through April 30, 2003);
- The post-PROTECT Act period (May 1, 2003 through June 24, 2004);
- The post-*Booker* period (January 12, 2005 through December 10, 2007); and
- The post-*Gall* period (December 11, 2007 through September 30, 2010).

This part of the testimony, in addition to presenting information on broad, national sentencing trends, presents information on six different offense types:

- Illegal entry;
- Alien smuggling;
- Drug trafficking (broken down further by major drug type);[135]
- Firearms;
- Fraud; and
- Child pornography (production and possession).

For each type of offense, the following information is provided by time period:

- Percentage of the federal docket;
- Demographics of offenders;
- Average sentence length; and
- Imposition of sentences relative to the applicable guideline range.

For the analysis of the relationship between the sentence imposed and the sentencing guideline that applied in the cases, the Commission presents the average sentence imposed and the average minimum sentence under the applicable guidelines.[136] Data also are presented as to the rate at which the sentences imposed were outside the applicable guideline range and, for those cases that were below the range, the average extent to which the sentence imposed was below the bottom of the guideline range. The Commission also groups these cases into two categories, those where the government sought the reduced sentence (government sponsored

[135] The drug types are: powder cocaine; crack cocaine; marijuana; methamphetamine; and heroin.
[136] *See* Appendix A of this testimony. Appendix A provides the average sentence length and average guideline minimum for the six offense types listed above by fiscal year from 1996 through 2010.

below range) and those where it did not seek the reduced sentence (non-government sponsored below range).

1. National Sentencing Trends Across Time

Average sentences lengths have remained relatively stable over the past 15 years. Over the last three years, however, average sentence lengths have decreased. This can be attributed to a reduction in the overall severity of the aggregate offenses in the federal caseload (*i.e.*, due to the increasing portion of the federal caseload involving immigration cases, which carry lower sentences, on average, than other offenses) and to a decrease in the rate at which courts are imposing sentences within the applicable guideline range.[137] However, sentencing practices and trends among the districts vary depending on the offense type involved.[138]

The guidelines continue to have a significant impact on the sentences courts impose. As reflected on the figures at Appendix A, the sentences imposed for almost every offense parallel the minimum of the guideline ranges that apply to that offense. When the minimum of the applicable guideline range increases, either due to increases in offense seriousness or due to increases in the criminal history of the offenders committing that offense, or both, the average sentence imposed for the offense also increases, usually in like proportion. Although the minimum of the guideline ranges for individual offenses vary, and the nature of offending and the criminal history of offenders convicted of those offenses also change, the fluctuation in the minimum of the applicable guideline ranges are clearly reflected in the sentences imposed. The clear linkage of the sentencing guidelines and the sentences imposed demonstrates that the guidelines have guided and continue to work to guide the sentencing decisions of federal judges.

Although the guidelines influence the sentences judges impose, the rate at which the sentences imposed are within the applicable guidelines has decreased significantly over the last five years. In fiscal year 2010, the rate at which courts imposed sentences that were within the applicable guideline range was 55.0 percent, the lowest rate in the last 15 years.[139] This rate has decreased from 72.1 percent in fiscal year 2004, the year immediately preceding *Booker*. In fiscal year 1996, the within range rate was 69.6 percent.[140]

A sentence above the guideline range was imposed in 1.8 percent of all cases in fiscal year 2010. Historically, above range cases historically are infrequent. In fiscal year 2004, the above range rate was 0.7 percent. In fiscal year 1996, the above range rate was 0.9 percent.

Approximately one quarter (25.4%) of the sentences in fiscal year 2010 were imposed pursuant to a government sponsored below range sentence. In about 45 percent of these cases (11.5% of all cases) the government filed a motion seeking a reduction in sentence because the defendant provided substantial assistance to the government in the investigation or prosecution

[137] *See* Appendix B of this testimony. Appendix B presents the national average sentence length and average guideline minimum by quarter for fiscal years 1996 through 2010.
[138] *See* Appendix A.
[139] The position of the sentence relative to the guideline range varies significantly depending on the guideline involved. In fiscal year 2010, sentences within the guideline range were most common in cases involving drug possession, prison offenses, larceny, embezzlement, and environmental offenses.
[140] *See* Appendix C.

of another person who had committed an offense.[141] In 9.9 percent of all government sponsored cases, the government sought a below range sentence because the offender had entered an early guilty plea pursuant to an Early Disposition Program (also known as "fast track programs" in immigration cases).[142] Sentences below the applicable guideline range for this reason occur almost exclusively in immigration and drug trafficking cases.

The rate of government sponsored below range sentences has remained relatively stable. For example, in fiscal year 2004, the year immediately preceding *Booker*, the rate of government sponsored below range sentences was 22.2 percent. A direct comparison of government sponsored below range sentences in earlier years is difficult, due to changes in the way the Commission recorded sentencing information in earlier fiscal years and because Congress specifically authorized a new type of government departure (the Early Disposition Program departure) in the PROTECT Act, which passed in fiscal year 2003. However, a comparison on the most common type of government sponsored below range sentence, one based on an offender's substantial assistance to the government, can be made. In fiscal year 2010, the rate of government sponsored below range sentences for this reason was 11.5 percent of all cases. In fiscal year 2004 the rate was 15.2 percent and in fiscal year 1996 the rate was 19.2 percent.

The most notable change in federal sentencing over time involves the rate of non-government sponsored below range sentences. The courts imposed non-government sponsored below range sentences in 17.8 percent of all cases in fiscal year 2010.[143]

Non-government sponsored below range sentences accounted for approximately 12.5 percent of all cases in the year after *Booker*,[144] and about 5.5 percent during the post-PROTECT Act period.[145] A direct comparison of non-government sponsored below range sentences in earlier years cannot be made as the Commission did not distinguish between these sentences and government sponsored sentences (other than for substantial assistance) in those earlier years. After the Supreme Court decision in *Gall*, however, this rate has begun to increase further.

The extent[146] of non-government sponsored below range sentences is greatest in cases involving gambling/lottery offenses, burglary, larceny, and environmental offenses (where these sentences average more than an 80 percent reduction from the bottom of the applicable guideline range). The most common reason courts cite for departures[147] from the sentencing guideline

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[141] These sentences were most common in cases involving antitrust, bribery, national defense offenses, drug trafficking, and money laundering.
[142] Congress formally authorized departures for Early Disposition or "fast track" programs in 2003 as part of the PROTECT Act.
[143] These non-government sponsored below range sentences were most common in cases involving child pornography crimes other than the production of such materials (e.g., distribution, receipt, possession), tax offenses, use of a communication facility, and antitrust offenses.
[144] *See* BOOKER REPORT, *supra* note 17, at 47.
[145] *Id.*
[146] The extent of the reduction in below range sentences is the difference between the sentence imposed and the bottom of the applicable guideline range. This is also used to determine the percent the sentence imposed is below the applicable guideline range.
[147] Departures are cases in which the court imposed a sentence below the applicable guideline range and cited one or more provisions in the *Guidelines Manual* as a basis for imposing a sentence below the applicable guideline range.

involved criminal history issues, and most commonly that the offender's criminal history score overrepresented the seriousness of his or her criminal record. When the court classified the sentence as a variance from the guidelines,[148] courts most often cited the nature and circumstances of the offense as a reason for the sentence.

Half of all districts have a rate of non-government sponsored below range sentences between 13.6 percent and 25.0 percent. However, one-fourth (23 districts) have a rate above 26.0 percent.[149] As discussed below, however, the rate at which non-government sponsored below range sentences are imposed varies significantly with the type of offense involved.

2. Sentencing Trends Across Time by Offense Type

As discussed above, sentencing practices and trends among the districts vary greatly depending on the offense type involved. This section of the Commission's testimony presents sentencing information across the four time periods by offense type. The data presented in this section may not equal 100 percent due to rounding.

a. Illegal Entry[150]

Illegal entry offenses involve unlawfully entering or remaining in the United States.

Docket Composition

The portion of the federal caseload attributable to illegal entry offenses has increased since the Post-*Koon* Period. The percentages of the federal caseload comprised of illegal entry offenses across the four time periods are as follows:

- The Post-*Koon* Period – 10.9 percent;
- The Post-PROTECT Act Period – 15.2 percent;
- The Post-*Booker* Period – 16.5 percent; and
- The Post-*Gall* Period – 23.6 percent.

Demographics

Across the four time periods, the majority of offenders convicted of illegal entry offenses are Hispanic, and are non-United States citizens.

[148] Variances are cases in which the sentence imposed was below the applicable guideline range and where the court did not cite as a reason a provision listed in *Guidelines Manual* as a basis for imposing a sentence below the applicable guideline range.
[149] *See* Appendix D.
[150] "Illegal Entry" cases are those for which the court imposing sentence applied USSG §2L1.2 (Unlawfully Entering or Remaining in the United States) as the primary sentencing guideline in the case.

Race of Illegal Entry Offenders

	White	Black	Hispanic	Other
Post-*Koon* Period	1.9%	2.7%	95.3%	0.2%
Post-PROTECT Act Period	2.5%	2.2%	95.2%	0.1%
Post-*Booker* Period	2.7%	1.7%	95.5%	0.2%
Post-*Gall* Period	6.6%	1.1%	92.2%	0.1%

Citizenship of Illegal Entry Offenders

	United States Citizens	Non-United States Citizens
Post-*Koon* Period	2.0%	98.0%
Post-PROTECT Act Period	2.7%	97.3%
Post-*Booker* Period	0.6%	99.4%
Post-*Gall* Period	0.1%	99.9%

Average Sentence Length

The average length of sentence imposed for illegal entry offenses has decreased after the Post-*Koon* Period. The average sentence imposed in these cases in the Post-*Gall* Period was 21 months. This compares to an average sentence of 26 months in the Post-*Booker* Period, 29 months in the Post-PROTECT Act Period, and 32 months in the Post-*Koon* Period.

Imposition of Sentences Relative to the Applicable Guideline Range

The first table in this section presents the rate in which courts impose sentences for illegal entry offenses relative to the applicable guideline range across the four time periods. The second table in this section presents, for cases in which the court imposed below range sentences, the average extent of the reduction below the bottom of the applicable guideline range across the four time periods.

Rate of Illegal Entry Offenses Sentenced Relative to the Applicable Guideline Range

	Post-*Koon* Period	Post-PROTECT Act Period	Post-*Booker* Period	Post-*Gall* Period
Within Range	60.3%	69.6%	58.5%	58.3%
Above Range	0.4%	0.3%	1.3%	1.6%
Government Sponsored Below Range	5.1%	23.7%	30.9%	29.4%
Non-Government Sponsored Below Range	34.2%	6.5%	9.3%	10.7%

Average Extent of Reduction Below the Bottom of the Applicable Guideline Range For Illegal Entry Offenses (Percentage/Months)

	Post-*Koon* Period	Post-PROTECT Act Period	Post-*Booker* Period	Post-*Gall* Period
Governmeut Sponsored Below Range	28.7%--13 mos	24.1%--10 mos	26.4%--9 mos	29.7%--10 mos
Non-Government Sponsored Below Range	33.1%--16 mos	28.1%--12 mos	31.5%--12 mos	35.0%--12 mos

In the Post-*Gall* Period the rate at which courts imposed a non-government sponsored below range sentence varied from a high of 66.7 percent in the district with the highest rate of non-government sponsored below range sentences to a low of 1.1 percent in the district with the lowest rate, representing a range of 65.6 percentage points.

b. Alien Smuggling[151]

Alien smuggling offenses involve smuggling, transporting or harboring an unlawful alien.

[151] "Alien Smuggling" cases are those for which the court imposing sentence applied USSG §2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) as the primary sentencing guideline in the case.

Docket Composition

The portion of the federal caseload attributable to alien smuggling increased after the Post-*Koon* Period but then decreased during the Post-*Gall* Period. The percentages of the federal caseload comprised of alien smuggling offenses across the four time periods are as follows:

- The Post-*Koon* Period – 3.2 percent;
- The Post-PROTECT Act Period – 3.5 percent;
- The Post-*Booker* Period – 5.1 percent; and
- The Post-*Gall* Period – 4.2 percent.

Demographics

Across the four time periods, the majority of offenders convicted of alien smuggling offenses are Hispanic, and the majority are non-United States citizens.

Race of Alien Smuggling Offenders

	White	**Black**	**Hispanic**	**Other**
Post-*Koon* Period	12.0%	2.2%	79.9%	5.9%
Post-PROTECT Act Period	17.4%	4.0%	73.6%	4.9%
Post-*Booker* Period	15.3%	3.0%	78.5%	3.3%
Post-*Gall* Period	29.1%	3.0%	65.4%	2.5%

Citizenship of Alien Smuggling Offenders

	United States Citizens	**Non-United States Citizens**
Post-*Koon* Period	33.2%	66.8%
Post-PROTECT Act Period	48.1%	51.9%
Post-*Booker* Period	46.3%	53.8%
Post-*Gall* Period	47.0%	53.0%

Average Sentence Length

The average length of sentence imposed for alien smuggling offenses has increased since the Post-*Koon* Period. The average sentence imposed in these cases in the Post-*Gall* Period was 17 months. This compares to an average sentence of 16 months in the Post-*Booker* Period, 16 months in the Post-PROTECT Act Period, and 13 months in the Post-*Koon* Period.

Imposition of Sentences Relative to the Applicable Guideline Range

The first table in this section presents the rate in which courts impose sentences for alien smuggling offenses relative to the applicable guideline range across the four time periods. The second table in this section presents, for cases in which the court imposed below range sentences, the average extent of the reduction below the bottom of the applicable guideline range across the four time periods.

Rate of Alien Smuggling Offenses Sentenced Relative to the Applicable Guideline Range

	Post-*Koon* Period	**Post-PROTECT Act Period**	**Post-*Booker* Period**	**Post-*Gall* Period**
Within Range	56.1%	60.5%	55.4%	49.3%
Above Range	1.1%	0.7%	2.2%	1.7%
Government Sponsored Below Range	10.6%	32.2%	35.7%	40.8%
Non-Government Sponsored Below Range	32.3%	6.7%	6.7%	8.2%

Average Extent of Reduction Below the Bottom of the Applicable Guideline Range For Alien Smuggling Offenses (Percentage/Months)

	Post-*Koon* Period	**Post-PROTECT Act Period**	**Post-*Booker* Period**	**Post-*Gall* Period**
Government Sponsored Below Range	54.2%--9 mos	44.6%--8 mos	40.2%--7 mos	40.9%--7 mos
Non-Government Sponsored Below Range	47.6%--7 mos	43.6%--7 mos	52.2%--8 mos	52.8%--8 mos

In the Post-*Gall* Period the rate at which courts imposed a non-government sponsored below range sentence varied from a high of 100.0 percent in the district with the highest rate to a low of 2.6 percent in the district with the lowest rate, representing a range of 97.4 percentage points.

c. Drug Trafficking[152]

Drug trafficking offenses generally involve the unlawful manufacturing, importing, exporting, or trafficking of drugs, including possession of drugs with intent to commit these offenses.

Docket Composition

The portion of the federal caseload attributable to drug trafficking offenses has decreased after the Post-*Koon* Period. The percentages of the federal caseload comprised of drug trafficking offenses across the four time periods are as follows:

- The Post-*Koon* Period – 41.5 percent;
- The Post-PROTECT Act Period – 38.0 percent;
- The Post-*Booker* Period – 37.3 percent; and
- The Post-*Gall* Period – 33.4 percent.

Demographics

Across the four time periods, Hispanics are the largest group of offenders convicted of drug trafficking offenses, and the majority of drug trafficking offenders are United States citizens.

Race of Drug Trafficking Offenders

	White	Black	Hispanic	Other
Post-*Koon* Period	25.4%	30.4%	42.3%	2.0%
Post-PROTECT Act Period	27.4%	27.3%	42.3%	3.0%
Post-*Booker* Period	24.8%	30.0%	41.6%	3.6%
Post-*Gall* Period	25.3%	29.8%	41.7%	3.2%

[152] "Drug Trafficking" cases are those for which the court imposing sentence applied USSG §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) or USSG §2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy) as the primary sentencing guideline in the case.

Citizenship of Drug Trafficking Offenders

	United States Citizens	Non-United States Citizens
Post-*Koon* Period	70.1%	29.9%
Post-PROTECT Act Period	71.9%	28.1%
Post-*Booker* Period	71.7%	28.3%
Post-*Gall* Period	71.1%	28.9%

Average Sentence Length

The average length of sentence imposed for drug trafficking offenses increased after the Post-*Koon* Period but decreased in the Post-*Gall* Period. The average sentence imposed in these cases in the Post-*Gall* Period was 77 months. This compares to an average sentence of 83 months in the Post-*Booker* Period, 81 months in the Post-PROTECT Act Period, and 72 months in the Post-*Koon* Period.

Imposition of Sentences Relative to the Applicable Guideline Range

The first table in this section presents the rate in which courts impose sentences for drug trafficking offenses relative to the applicable guideline range across the four time periods. The second table in this section presents, for cases in which the court imposed below range sentences, the average extent of the reduction below the bottom of the applicable guideline range across the four time periods.

Rate of Drug Trafficking Offenses Sentenced Relative to the Applicable Guideline Range

	Post-*Koon* Period	Post-PROTECT Act Period	Post-*Booker* Period	Post-*Gall* Period
Within Range	55.8%	63.3%	53.7%	48.0%
Above Range	0.2%	0.2%	0.5%	0.8%
Government Sponsored Below Range	29.8%	31.7%	34.1%	34.0%
Non-Government Sponsored Below Range	14.2%	4.7%	11.7%	17.3%

Average Extent of Reduction Below the Bottom of the Applicable Guideline Range For Drug Trafficking Offenses (Percentage/Months)

	Post-*Koon* Period	Post-PROTECT Act Period	Post-*Booker* Period	Post-*Gall* Period
Government Sponsored Below Range	50.6%--51 mos	46.5%--47 mos	45.3%--46 mos	46.5%--46 mos
Non-Government Sponsored Below Range	42.3%--22 mos	38.2%--26 mos	32.8%--30 mos	35.8%--29 mos

In the Post-*Gall* Period the rate at which courts imposed a non-government sponsored below range sentence varied from a high of 49.6 percent in the district with the highest rate to a low of 4.8 percent in the district with the lowest rate, representing a range of 44.8 percentage points.

1. *Powder Cocaine Drug Trafficking*[153]

Docket Composition

The portion of the federal drug trafficking caseload attributable to powder cocaine drug trafficking offenses has remained relatively stable after the Post-*Koon* Period. The percentages of the federal caseload comprised of powder cocaine drug trafficking offenses across the four time periods are as follows:

- The Post-*Koon* Period – 23.5 percent;
- The Post-PROTECT Act Period – 22.8 percent;
- The Post-*Booker* Period – 23.5 percent; and
- The Post-*Gall* Period – 23.9 percent.

Demographics

Across the four time periods, Hispanics are the largest group of offenders convicted of powder cocaine drug trafficking offenses, and the majority of offenders are United States citizens.

[153] "Powder Cocaine Drug Trafficking" cases are those for which the court imposing sentence applied USSG §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) or USSG §2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy) as the primary sentencing guideline in the case with a primary drug type of powder cocaine.

Race of Powder Cocaine Drug Trafficking Offenders

	White	Black	Hispanic	Other
Post-*Koon* Period	18.7%	30.3%	49.8%	1.3%
Post-PROTECT Act Period	17.3%	25.3%	56.0%	1.4%
Post-*Booker* Period	15.1%	27.9%	55.7%	1.3%
Post-*Gall* Period	16.5%	28.0%	54.0%	1.5%

Citizenship of Powder Cocaine Drug Trafficking Offenders

	United States Citizens	Non-United States Citizens
Post-*Koon* Period	64.6%	35.5%
Post-PROTECT Act Period	62.7%	37.3%
Post-*Booker* Period	62.2%	37.9%
Post-*Gall* Period	63.2%	36.8%

Average Sentence Length

The average length of sentence imposed for powder cocaine drug trafficking offenses has increased after the Post-*Koon* Period. The average sentence imposed in these cases in the Post-*Gall* Period was 84 months. This compares to an average sentence of 84 months in the Post-*Booker* Period, 81 months in the Post-PROTECT Act Period, and 76 months in the Post-*Koon* Period.

Imposition of Sentences Relative to the Applicable Guideline Range

The first table in this section presents the rate in which courts impose sentences for powder cocaine drug trafficking offenses relative to the applicable guideline range across the four time periods. The second table in this section presents, for cases in which the court imposed below range sentences, the average extent of the reduction below the bottom of the applicable guideline range across the four time periods.

Rate of Powder Cocaine Drug Trafficking Offenses
Sentenced Relative to the Applicable Guideline Range

	Post-*Koon* Period	Post-PROTECT Act Period	Post-*Booker* Period	Post-*Gall* Period
Within Range	58.0%	63.8%	54.4%	47.5%
Above Range	0.2%	0.4%	0.5%	0.7%
Government Sponsored Below Range	32.1%	31.8%	34.6%	34.8%
Non-Government Sponsored Below Range	9.7%	4.1%	10.5%	17.0%

Average Extent of Reduction Below the Bottom of the Applicable Guideline Range
For Powder Cocaine Drug Trafficking Offenses
(Percentage/Months)

	Post-*Koon* Period	Post-PROTECT Act Period	Post-*Booker* Period	Post-*Gall* Period
Government Sponsored Below Range	50.6%--49 mos	47.1%--49 mos	43.3%--46 mos	45.3%--51 mos
Non-Government Sponsored Below Range	39.2%--31 mos	39.8%--26 mos	31.1%--27 mos	33.7%--27 mos

In the Post-*Gall* Period the rate at which courts imposed a non-government sponsored below range sentence varied from a high of 41.0 percent in the district with the highest rate to a low of 2.0 percent in the district with the lowest rate, representing a range of 39.0 percentage points.

2. *Crack Cocaine Drug Trafficking*[154]

Docket Composition

The portion of the federal drug trafficking caseload attributable to crack cocaine drug trafficking offenses has remained relatively stable after the Post-*Koon* Period. The percentages of the federal caseload comprised of crack cocaine drug trafficking offenses across the four time periods are as follows:

- The Post-*Koon* Period – 22.4 percent;
- The Post-PROTECT Act Period – 20.7 percent;
- The Post-*Booker* Period – 22.1 percent: and
- The Post-*Gall* Period – 22.3 percent.

Demographics

Across the four time periods, the majority of offenders convicted of crack cocaine drug trafficking offenses are Black, and the majority are United States citizens.

Race of Crack Cocaine Drug Trafficking Offenders

	White	Black	Hispanic	Other
Post-*Koon* Period	6.1%	83.8%	9.1%	0.9%
Post-PROTECT Act Period	7.5%	81.9%	9.6%	1.0%
Post-*Booker* Period	8.7%	82.4%	7.9%	1.0%
Post-*Gall* Period	9.1%	79.2%	10.7%	1.0%

Citizenship of Crack Cocaine Drug Trafficking Offenders

	United States Citizens	Non-United States Citizens
Post-*Koon* Period	93.3%	6.7%
Post-PROTECT Act Period	94.7%	5.3%
Post-*Booker* Period	96.4%	3.6%
Post-*Gall* Period	97.0%	3.0%

[154] "Crack Cocaine Drug Trafficking" cases are those for which the court imposing sentence applied USSG §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) or USSG §2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy) as the primary sentencing guideline in the case with a primary drug type of crack cocaine.

Average Sentence Length

The average length of sentence imposed for crack cocaine drug trafficking offenses increased after the Post-*Koon* Period and then decreased after the Post-PROTECT Act Period. The average sentence imposed in these cases in the Post-*Gall* Period was 112 months. This compares to an average sentence of 124 months in the Post-*Booker* Period, 126 months in the Post-PROTECT Period Act, and 119 months in the Post-*Koon* Period.

Imposition of Sentences Relative to the Applicable Guideline Range

The first table in this section presents the rate in which courts impose sentences for crack cocaine drug trafficking offenses relative to the applicable guideline range across the four time periods. The second table in this section presents, for cases in which the court imposed below range sentences, the average extent of the reduction below the bottom of the applicable guideline range across the four time periods.

Rate of Crack Cocaine Drug Trafficking Offenses Sentenced Relative to the Applicable Guideline Range

	Post-*Koon* Period	**Post-PROTECT Act Period**	**Post-*Booker* Period**	**Post-*Gall* Period**
Within Range	58.4%	63.3%	55.7%	48.4%
Above Range	0.2%	0.2%	0.5%	0.9%
Government-Sponsored Below Range	34.3%	32.1%	30.5%	29.5%
Non Government-Sponsored Below Range	7.2%	4.5%	13.3%	21.2%

Average Extent of Reduction Below the Bottom of the Applicable Gnideline Range For Crack Cocaine Drug Trafficking Offenses (Percentage/Months)

	Post-*Koon* Period	Post-PROTECT Act Period	Post-*Booker* Period	Post-*Gall* Period
Government Sponsored Below Range	46.4%--70 mos	44.3%--72 mos	44.2%--69 mos	45.3%--67 mos
Non-Government Sponsored Below Range	34.3%--44 mos	27.3%--39 mos	27.7%--41 mos	32.7%--39 mos

In the Post-*Gall* Period the rate at which courts imposed a non-government sponsored below range sentence varied from a high of 100.0 percent to a low of 3.8 percent, representing a range of 96.2 percentage points.

3. *Marijuana Drug Trafficking*[155]

Docket Composition

The portion of the federal caseload attributable to marijuana drug trafficking offenses has decreased after the Post-*Koon* Period and then remained relatively stable. The percentages of the federal caseload comprised of marijuana drug trafficking offenses across the four time periods are as follows:

- The Post-*Koon* Period – 29.2 percent;
- The Post-PROTECT Act Period – 25.8 percent;
- The Post-*Booker* Period – 24.2 percent; and
- The Post-*Gall* Period – 25.1 percent.

Demographics

Across the four major time periods, the majority of offenders convicted of marijuana drug trafficking offenses are Hispanic, and the slight majority are United States citizens.

[155] "Marijuana Drug Trafficking" cases are those for which the court imposing sentence applied USSG §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) or USSG §2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy) as the primary sentencing guideline in the case with a primary drug type of marijuana.

Race of Marijuana Drug Trafficking Offenders

	White	Black	Hispanic	Other
Post-*Koon* Period	27.6%	7.4%	63.5%	1.5%
Post-PROTECT Act Period	25.6%	8.4%	63.2%	2.8%
Post-*Booker* Period	24.3%	10.2%	61.8%	3.7%
Post-*Gall* Period	26.4%	8.0%	61.8%	3.8%

Citizenship of Marijuana Drug Trafficking Offenders

	United States Citizens	Non-United States Citizens
Post-*Koon* Period	58.6%	41.4%
Post-PROTECT Act Period	62.0%	38.0%
Post-*Booker* Period	59.0%	41.0%
Post-*Gall* Period	55.1%	44.9%

Average Sentence Length

The average length of sentence imposed for marijuana drug trafficking offenses increased after the Post- *Koon* Period and then decreased in the Post-*Gall* Period. The average sentence imposed in these cases in the Post-*Gall* Period was 35 months. This compares to an average sentence of 40 months in the Post-*Booker* Period, 39 months in the Post-PROTECT Act Period, and 34 months in the Post-*Koon* Period.

Imposition of Sentences Relative to the Applicable Guideline Range

The first table in this section presents the rate in which courts impose sentences for marijuana drug trafficking offenses relative to the applicable guideline range across the four time periods. The second table in this section presents, for cases in which the court imposed below range sentences, the average extent of the reduction below the bottom of the applicable guideline range across the four time periods.

Rate of Marijuana Drug Trafficking Offenses
Sentenced Relative to the Applicable Guideline Range

	Post-*Koon* Period	Post-PROTECT Act Period	Post-*Booker* Period	Post-*Gall* Period
Within Range	52.9%	65.4%	55.5%	54.9%
Above Range	0.2%	0.2%	0.6%	0.8%
Government-Sponsored Below Range	21.6%	30.3%	36.0%	32.7%
Non Government-Sponsored Below Range	25.3%	4.2%	7.9%	11.7%

Average Extent of Reduction Below the Bottom of the Applicable Guideline Range
For Marijuana Drug Trafficking Offenses
(Percentage/Months)

	Post-*Koon* Period	Post-PROTECT Act Period	Post-*Booker* Period	Post-*Gall* Period
Government Sponsored Below Range	54.9%--32 mos	46.5%--22 mos	47.5%--23mos	48.2%--21 mos
Non-Government Sponsored Below Range	46.5%--13 mos	46.6%--15 mos	43.6%--17 mos	45.9%--15 mos

In the Post-*Gall* Period the rate at which courts imposed a non-government sponsored below range sentence varied from a high of 42.9 percent to a low of 1.6 percent, representing a range of 41.3 percentage points.

4. *Methamphetamine Drug Trafficking*[156]

Docket Composition

The portion of the federal drug trafficking caseload attributable to methamphetamine drug trafficking offenses has increased after the Post-*Koon* Period and then decreased in the Post-*Gall* Period. The percentages of the federal caseload comprised of methamphetamine drug trafficking offenses across the four time periods are as follows:

- The Post-*Koon* Period – 13.6 percent;
- The Post-PROTECT Act Period – 19.1 percent;
- The Post-*Booker* Period – 20.3 percent; and
- The Post-*Gall* Period – 17.1 percent.

Demographics

The Across the four time periods, the majority of offenders convicted of methamphetamine drug trafficking offenses are White, and the majority are United States citizens.

Race of Methamphetamine Drug Trafficking Offenders

	White	Black	Hispanic	Other
Post-*Koon* Period	61.5%	1.4%	32.2%	5.0%
Post-PROTECT Act Period	60.4%	1.6%	31.8%	6.2%
Post-*Booker* Period	53.5%	2.1%	37.7%	6.8%
Post-*Gall* Period	52.3%	2.8%	39.8%	5.2%

Citizenship of Methamphetamine Drug Trafficking Offenders

	United States Citizens	Non-United States Citizens
Post-*Koon* Period	77.1%	22.9%
Post-PROTECT Act Period	77.5%	22.5%
Post-*Booker* Period	73.7%	26.3%
Post-*Gall* Period	70.6%	29.4%

[156] "Methamphetamine Drug Trafficking" cases are those for which the court imposing sentence applied USSG §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) or USSG §2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy) as the primary sentencing guideline in the case with a primary drug type of methamphetamine.

Average Sentence Length

The average length of sentence imposed for methamphetamine drug trafficking offenses increased after the Post-*Koon* Period and then decreased after the Post-PROTECT Period. The average sentence imposed in these cases in the Post-*Gall* Period was 96 months. This compares to an average sentence of 99 months in the Post-*Booker* Period, 100 months in the Post-PROTECT Period, and 89 months in the Post-*Koon* Period.

Imposition of Sentences Relative to the Applicable Guideline Range

The first table in this section presents the rate in which courts impose sentences for methamphetamine drug trafficking offenses relative to the applicable guideline range across the four time periods. The second table in this section presents, for cases in which the court imposed below range sentences, the average extent of the reduction below the bottom of the applicable guideline range across the four time periods.

Rate of Methamphetamine Drug Trafficking Offenses Sentenced Relative to the Applicable Guideline Range

	Post-*Koon* Period	**Post-PROTECT Act Period**	**Post-*Booker* Period**	**Post-*Gall* Period**
Within Range	51.6%	60.6%	51.0%	42.5%
Above Range	0.2%	0.1%	0.4%	0.6%
Government Sponsored Below Range	39.0%	34.8%	36.1%	39.9%
Non-Government Sponsored Below Range	9.3%	4.5%	12.5%	17.0%

Average Extent of Reduction Below the Bottom of the Applicable Guideline Range For Methamphetamine Drug Trafficking Offenses (Percentage/Months)

	Post-*Koon* Period	Post-PROTECT Act Period	Post-*Booker* Period	Post-*Gall* Period
Government Sponsored Below Range	48.2%--54 mos	44.7%--53 mos	42.6%--52 mos	42.6%--51 mos
Non-Government Sponsored Below Range	33.8%--35 mos	28.6%--27 mos	27.7%--32 mos	29.0%--30 mos

In the Post-*Gall* Period the rate at which courts imposed a non-government sponsored below range sentence varied from a high of 100.0 percent to a low of 2.1 percent, representing a range of 97.9 percentage points.

5. *Heroin Drug Trafficking*[157]

Docket Composition

The portion of the federal drug trafficking caseload attributable to heroin drug trafficking offenses has decreased after the Post-*Koon* Period. The percentages of the federal caseload comprised of heroin drug trafficking offenses across the four time periods are as follows:

- The Post-*Koon* Period – 8.1 percent;
- The Post-PROTECT Act Period – 7.1 percent;
- The Post-*Booker* Period – 6.1 percent; and
- The Post-*Gall* Period – 6.4 percent.

Demographics

Across the four time periods, the majority of offenders convicted of heroin drug trafficking offenses are Hispanic, and the majority are United States citizens.

[157] "Heroin Drug Trafficking" cases are those for which the court imposing sentence applied USSG §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) or USSG §2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy) as the primary sentencing guideline in the case with a primary drug type of heroin.

Race of Heroin Drug Trafficking Offenders

	White	Black	Hispanic	Other
Post-*Koon* Period	11.6%	22.7%	63.0%	2.8%
Post-PROTECT Act Period	13.3%	20.7%	64.6%	1.4%
Post-*Booker* Period	12.2%	26.4%	60.4%	1.0%
Post-*Gall* Period	16.1%	26.9%	56.0%	1.0%

Citizenship of Heroin Drug Trafficking Offenders

	United States Citizens	Non-United States Citizens
Post-*Koon* Period	46.8%	53.2%
Post-PROTECT Act Period	49.9%	50.1%
Post-*Booker* Period	57.6%	42.4%
Post-*Gall* Period	62.8%	37.2%

Average Sentence Length

The average length of sentence imposed in heroin drug trafficking offenses has increased after the Post-*Koon* Period. The average sentence imposed in these cases in the Post-*Gall* Period was 71 months. This compares to an average sentence of 67 months in the Post-*Booker* Period, 65 months in the Post-PROTECT Act Period, and 60 months in the Post-*Koon* Period.

Imposition of Sentences Relative to the Applicable Guideline Range

The first table in this section presents the rate in which courts impose sentences for heroin drug trafficking offenses relative to the applicable guideline range across the four time periods. The second table in this section presents, for cases in which the court imposed below range sentences, the average extent of the reduction below the bottom of the applicable guideline range across the four time periods.

Rate of Heroin Drug Trafficking Offenses
Sentenced Relative to the Applicable Guideline Range

	Post-*Koon* Period	Post-PROTECT Act Period	Post-*Booker* Period	Post-*Gall* Period
Within Range	60.4%	66.2%	51.5%	44.8%
Above Range	0.3%	0.4%	0.7%	1.4%
Government Sponsored Below Range	24.1%	23.9%	29.1%	31.0%
Non-Government Sponsored Below Range	15.2%	9.5%	18.8%	22.9%

Average Extent of Reduction Below the Bottom of the Applicable Guideline Range
For Heroin Drug Trafficking Offenses
(Percentage/Months)

	Post-*Koon* Period	Post-PROTECT Act Period	Post-*Booker* Period	Post-*Gall* Period
Government Sponsored Below Range	54.3%--50 mos	48.6%--47 mos	50.4%--51 mos	49.6%--52 mos
Non-Government Sponsored Below Range	37.7%--23 mos	46.7%--22 mos	36.9%--28 mos	37.2%--27 mos

In the Post-*Gall* Period the rate at which courts imposed a non-government sponsored below range sentence varied from a high of 100.0 percent to a low of 2.3 percent, representing a range of 97.7 percentage points.

d. Firearms[158]

Docket Composition

The portion of the federal caseload attributable to firearms offenses increased since the Post-*Koon* Period and then decreased after the Post-PROTECT Period. The percentages of the federal caseload comprised of firearms offenses across the four time periods are as follows:

- The Post-*Koon* Period – 6.1 percent;
- The Post-PROTECT Act Period – 10.1 percent;
- The Post-*Booker* Period – 9.9 percent; and
- The Post-*Gall* Period – 8.6 percent.

Demographics

Across the four time periods, Blacks are the largest group of offenders convicted of firearms offenses, and the overwhelming majority of firearms offenders are United States citizens.

Race of Firearms Offenders

	White	Black	Hispanic	Other
Post-*Koon* Period	39.5%	45.7%	12.0%	2.8%
Post-PROTECT Act Period	39.1%	45.4%	12.8%	2.7%
Post-*Booker* Period	35.6%	46.8%	14.7%	3.0%
Post-*Gall* Period	32.2%	48.8%	16.6%	2.4%

Citizenship of Firearms Offenders

	United States Citizens	Non-United States Citizens
Post-*Koon* Period	93.6%	6.4%
Post-PROTECT Act Period	94.4%	5.6%
Post-*Booker* Period	93.1%	6.9%
Post-*Gall* Period	92.5%	7.5%

[158] "Firearms" cases are those for which the court imposing sentence applied USSG §2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) as the primary sentencing guideline in the case.

Average Sentence Length

The average length of sentence imposed for firearms offenses increased after the Post-*Koon* Period. The average sentence imposed in these cases in the Post-*Gall* Period was 59 months. This compares to an average sentence of 58 months in the Post-*Booker* Period, 57 months in the Post-PROTECT Act Period, and 56 months in the Post-*Koon* Period.

Imposition of Sentences Relative to the Applicable Guideline Range

The first table in this section presents the rate in which courts impose sentences for firearms offenses relative to the applicable guideline range across the four time periods. The second table in this section presents, for cases in which the court imposed below range sentences, the average extent of the reduction below the bottom of the applicable guideline range across the four time periods.

Rate of Firearms Offenses Sentenced Relative to the Applicable Guideline Range

	Post-*Koon* Period	**Post-PROTECT Act Period**	**Post-*Booker* Period**	**Post-*Gall* Period**
Within Range	75.1%	79.7%	70.6%	63.6%
Above Range	1.1%	1.2%	2.4%	2.6%
Government-Sponsored Below Range	12.0%	12.6%	12.5%	13.0%
Non Government-Sponsored Below Range	11.9%	6.5%	14.6%	20.8%

Average Extent of Reduction Below the Bottom of the Applicable Guideline Range For Firearms Offenses (Percentage/Months)

	Post-*Koon* Period	**Post-PROTECT Act Period**	**Post-*Booker* Period**	**Post-*Gall* Period**
Government-Sponsored Below Range	56.3%--27 mos	55.9%--25 mos	51.5%--26 mos	48.3%--28 mos
Non Government-Sponsored Below Range	48.3%--19 mos	50.8%--18 mos	44.5%--17 mos	44.4%--17 mos

In the Post-*Gall* Period the rate at which courts imposed a non-government sponsored below range sentence varied from a high of 48.1 percent to a low of 3.0 percent, representing a range of 45.1 percentage points.

f. Fraud[159]

Fraud offenses involve larceny, embezzlement, and other forms of theft as well as offenses involving stolen property, property damage, fraud and deceit, forgery and offenses involving altered of counterfeit instruments other than counterfeit bearer obligations of the United States.

Docket Composition

The portion of the federal caseload attributable to fraud offenses has decreased since the Post-*Koon* Period. The percentages of the federal caseload comprised of fraud offenses across the four time periods are as follows:

- The Post-*Koon* Period – 11.7 percent;
- The Post-PROTECT Act Period – 9.6 percent;
- The Post-*Booker* Period – 8.4 percent; and
- The Post-*Gall* Period – 7.7 percent.

Demographics

Across the four time periods, Whites are the largest group of offenders convicted of fraud offenses, and the majority of fraud offenders are United States citizens.

Race of Fraud Offenders

	White	Black	Hispanic	Other
Post-*Koon* Period	53.3%	32.6%	8.9%	5.2%
Post-PROTECT Act Period	50.9%	32.4%	11.5%	5.2%
Post-*Booker* Period	49.7%	33.3%	12.2%	4.7%
Post-*Gall* Period	47.4%	32.4%	14.9%	5.4%

[159] "Fraud" cases are those for which the court imposing sentence applied USSG §2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) with a primary offense type of fraud (based on statute(s) of conviction) sentenced under a *Guidelines Manual* effective November 1, 2001 or later, or USSG §2F1.1 (Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) as the primary sentencing guideline in the case.

Citizenship of Fraud Offenders

	United States Citizens	Non-Uuited States Citizens
Post-*Koon* Period	88.4%	11.6%
Post-PROTECT Act Period	85.4%	14.6%
Post-*Booker* Period	87.8%	12.2%
Post-*Gall* Period	84.8%	15.2%

Average Sentence Length

The average length of sentence imposed for fraud offenses increased after the Post-*Koon* Period. The average sentence imposed in these cases in the Post-*Gall* Period was 24 months. This compares to an average sentence of 19 months in the Post-*Booker* Period, 16 months in the Post-PROTECT Act Period, and 13 months in the Post-*Koon* Period.

Imposition of Sentences Relative to the Applicable Guideline Range

The first table in this section presents the rate in which courts impose sentences for fraud offenses relative to the applicable guideline range across the four time periods. The second table in this section presents, for cases in which the court imposed below range sentences, the average extent of the reduction below the bottom of the applicable guideline range across the four time periods.

Rate of Fraud Offenses Sentenced Relative to the Applicable Guideline Range

	Post-*Koon* Period	Post-PROTECT Act Period	Post-*Booker* Period	Post-*Gall* Period
Within Range	71.1%	73.8%	62.9%	55.0%
Above Range	1.2%	1.2%	2.4%	2.4%
Government Sponsored Below Range	18.1%	18.8%	18.3%	20.3%
Non-Government Sponsored Below Range	9.6%	6.2%	16.4%	22.3%

Average Extent of Reduction Below the Bottom of the Applicable Guideline Range For Fraud Offenses (Percentage/Months)

	Post-*Koon* Period	Post-PROTECT Act Period	Post-*Booker* Period	Post-*Gall* Period
Government Sponsored Below Range	75.5%--13 mos	72.1%--14 mos	70.3%--18 mos	65.5%--21 mos
Non-Government Sponsored Below Range	74.5%--11 mos	74.4%--12 mos	67.2%--12 mos	59.7%--14 mos

In the Post-*Gall* Period the rate at which courts imposed a non-government sponsored below range sentence varied from a high of 46.8 percent in the district with the highest rate to a low of 1.4 percent in the district with the lowest rate, representing a range of 45.4 percentage points.

g. Child Pornography

There has been significant increase in sentence lengths for child pornography offenses due to the enactment of mandatory minimum penalties for many of these crimes in the PROTECT Act of 2003 and the Adam Walsh Act of 2006. The increases are very significant, with average sentences increasing by 69.7 percent since fiscal year 2004.

1. *Child Pornography Production*[160]

Child pornography production offenses involve sexually exploiting a minor by production of sexually explicit visual or printed material or a custodian permitting a minor to engage in sexually explicit conduct. This offense also includes the advertisement for minors to engage in production.

Docket Composition

The portion of the federal caseload attributable to child pornography production offenses has increased since the Post-*Koon* Period. The percentages of the federal caseload comprised of child pornography production offenses across the four time periods are as follows:

- The Post-*Koon* Period – 0.1 percent;
- The Post-PROTECT Act Period – 0.2 percent;

[160] "Child pornography production" cases are those for which the court imposing sentence applied USSG §2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production) as the primary sentencing guideline in the case.

- The Post-*Booker* Period – 0.2 percent; and
- The Post-*Gall* Period – 0.3 percent.

Demographics

The majority of offenders convicted of child pornography production offenses are White, and are United States citizens.

Race of Child Pornography Production Offenders

	White	Black	Hispanic	Other
Post-*Koon* Period	89.8%	3.8%	5.1%	1.3%
Post-PROTECT Act Period	89.9%	4.6%	3.7%	1.8%
Post-*Booker* Period	85.4%	5.7%	6.3%	2.6%
Post-*Gall* Period	85.7%	6.7%	6.3%	1.4%

Citizenship of Child Pornography Production Offenders

	United States Citizens	Non-United States Citizens
Post-*Koon* Period	99.0%	1.0%
Post-PROTECT Act Period	98.2%	1.8%
Post-*Booker* Period	96.9%	3.2%
Post-*Gall* Period	97.5%	2.5%

Average Sentence Length

The average length of sentence imposed in child pornography production offenses has increased significantly after the Post-*Koon* Period. The average sentence imposed in these cases in the Post-*Gall* Period was 271 months. This compares to an average sentence of 244 months in the Post-*Booker* Period, 164 months in the Post-PROTECT Act Period, and 133 months in the Post-*Koon* Period.

Imposition of Sentences Relative to the Applicable Guideline Range

The first table in this section presents the rate in which courts impose sentences for child pornography production offenses relative to the applicable guideline range across the four time periods. The second table in this section presents, for cases in which the court imposed below range sentences, the average extent of the reduction below the bottom of the applicable guideline range across the four time periods.

Rate of Child Pornography Production Offenses Sentenced Relative to the Applicable Gnideline Range

	Post-*Koon* Period	Post-PROTECT Act Period	Post-*Booker* Period	Post-*Gall* Period
Within Range	72.5%	84.0%	64.5%	61.3%
Above Range	10.2%	6.6%	11.2%	5.7%
Government Sponsored Below Range	7.4%	7.6%	13.2%	14.1%
Non-Government Sponsored Below Range	9.9%	1.9%	11.2%	19.0%

Average Extent of Reduction Below the Bottom of the Applicable Gnideline Range For Child Pornography Production Offenses (Percentage/Months)

	Post-*Koon* Period	Post-PROTECT Act Period	Post-*Booker* Period	Post-*Gall* Period
Government Sponsored Below Range	39.8%--42 mos	22.9%--30 mos	29.0%--70 mos	27.1%--72 mos
Non-Government Sponsored Below Range	38.9%--35 mos	40.9%--42 mos	27.2%--49 mos	29.4%--67 mos

In the Post-*Gall* Period the rate at which courts imposed a non-government sponsored below range sentence varied from a high of 100.0 percent in the district with the highest rate to a low of 7.1 percent in the district with the lowest rate, representing a range of 92.9 percentage points.

2. *Child Pornography Possession Cases*[161]

Child pornography possession offenses involve trafficking in material involving the sexual exploitation of a minor, receiving, transporting, shipping, soliciting, or advertising material involving the sexual exploitation of a minor as well as, possessing material involving the sexual exploitation of a minor with intent to traffic and possessing material involving the sexual exploitation of a minor. Also included is possession of materials depicting a minor engaged in sexually explicit conduct.

Docket Composition

The portion of the federal caseload attributable to child pornography possession offenses has increased since the Post-*Koon* Period. The percentages of the federal caseload comprised of child pornography possession offenses across the four time periods are as follows:

- The Post-*Koon* Period – 0.7 percent;
- The Post-PROTECT Act Period – 0.9 percent;
- The Post-*Booker* Period – 1.6 percent; and
- The Post-*Gall* Period – 2.2 percent.

Demographics

The majority of offenders convicted of child pornography possession offenses are White, and are United States citizens.

Race of Child Pornography Possession Offenders

	White	**Black**	**Hispanic**	**Other**
Post-*Koon* Period	92.3%	2.0%	3.6%	2.2%
Post-PROTECT Act Period	91.1%	1.7%	5.2%	2.0%
Post-*Booker* Period	91.2%	1.6%	5.3%	1.8%
Post-*Gall* Period	89.1%	2.9%	6.0%	2.0%

[161] "Child pornography possession" cases are those for which the court imposing sentence applied USSG §2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, Soliciting, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic; Possessing Material Involving the Sexual Exploitation of a Minor) or USSG §2G2.4 (Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct) as the primary sentencing guideline in the case.

Citizenship of Child Pornography Possession Offenders

	United States Citizens	Non-United States Citizens
Post-*Koon* Period	97.5%	2.5%
Post-PROTECT Act Period	98.1%	1.9%
Post-*Booker* Period	97.6%	2.4%
Post-*Gall* Period	97.5%	2.5%

Average Sentence Length

The average length of sentence imposed for child pornography possession offenses has increased significantly after the Post-*Koon* Period. The average sentence imposed in these cases in the Post-*Gall* Period was 92 months. This compares to an average sentence of 82 months in the Post-*Booker* Period, 47 months in the Post-PROTECT Act Period, and 34 months in the Post-*Koon* Period.

Imposition of Sentences Relative to the Applicable Guideline Range

The first table in this section presents the rate in which courts impose sentences for child pornography possession offenses relative to the applicable guideline range across the four time periods. The second table in this section presents, for cases in which the court imposed below range sentences, the average extent of the reduction below the bottom of the applicable guideline range across the four time periods.

Rate of Child Pornography Possession Offenses Sentenced Relative to the Applicable Guideline Range

	Post-*Koon* Period	Post-PROTECT Act Period	Post-*Booker* Period	Post-*Gall* Period
Within Range	67.5%	79.6%	64.3%	44.2%
Above Range	2.1%	3.9%	2.8%	2.0%
Government Sponsored Below Range	7.2%	3.8%	7.5%	11.4%
Non-Government Sponsored Below Range	23.3%	12.7%	25.4%	42.4%

Average Extent of Reduction Below the Bottom of the Applicable Gnideline Range For Child Pornography Possession Offenses (Percentage/Months)

	Post-*Koon* Period	Post-PROTECT Act Period	Post-*Booker* Period	Post-*Gall* Period
Government Sponsored Below Range	67.2%--18 mos	48.1%--22 mos	40.2%--36 mos	42.8%--47 mos
Non-Government Sponsored Below Range	67.8%--17 mos	55.9%--19 mos	41.8%--29 mos	40.7%--43 mos

In the Post-*Gall* Period the rate at which courts imposed a non-government sponsored below range sentence varied from a high of 82.1 percent to a low of 6.0 percent, representing a range of 76.1 percentage points.

C. Demographic Differences in Sentencing

The Commission's 2006 *Booker* Report presented findings based on a multivariate regression analysis, a tool commonly used by social scientists and in many other fields.[162] The principal benefit of this tool is that it accounts, or controls, for the effect of each factor in the analysis. Each factor is separately assessed and the extent to which each factor influences the outcome is measured. Using this tool, the Commission examined whether several demographic factors, including race, gender, citizenship, education, or age, were associated with the length of sentences imposed after *Booker*.

In March 2010, the Commission, using data through the end of fiscal year 2009, published a report that updated the analysis of the association between sentence length and demographic factors originally presented in the *Booker* Report.[163] The Commission has now updated this analysis with data through the end of fiscal year 2010, and also expanded it to include an earlier period of time not discussed in the prior two reports.[164]

The results of the Commission's updated and expanded analysis are set forth in Appendix E of this testimony. The Commission continues to find that sentence length is associated with

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[162] *See* U.S. SENTENCING COMM'N, DEMOGRAPHIC DIFFERENCES IN FEDERAL SENTENCING PRACTICES: AN UPDATE OF THE BOOKER REPORT'S MULTIVARIATE REGRESSION ANALYSIS 4-10 (2010).
[163] *Id.*
[164] The March 2010 report presented data for three time periods: the Post-PROTECT Act period (May 1, 2003 – June 24, 2004); the Post-*Booker* Period (January 12, 2005 – December 10, 2007); and the Post-*Gall* Period (December 11, 2007 – September 30, 2009). In this testimony, the Commission has expanded the Post-*Gall* Period through September 30, 2010, and has added a new time period, the Post-*Koon* Period (June 19, 1996 – April 2003). In this portion of the testimony, the Post-*Koon* Period encompasses cases in which sentences were imposed between October 1, 1999, and April 30, 2003.

some demographic factors. Based on this analysis, and after controlling for a wide variety of factors relevant to sentencing, the data reflect that:

- Black male offenders received longer sentences than White male offenders. The differences in sentence length have increased steadily since *Booker*.

- Female offenders of all races received shorter sentences than White male offenders. The differences in sentence length fluctuated at different rates in the time periods studied for white females, black females, Hispanic females, and "other" female offenders (such as those of Native American, Alaskan Native, and Asian or Pacific Islander origin.

- Non-citizen offenders received longer sentences than offenders who were U.S. citizens. These differences have increased steadily since *Booker*.

- Offenders with some college education received shorter sentences than offenders with no college education. These differences have remained relatively stable across the time periods studied.

- Offenders over the age of 25 received longer sentences than offenders who were 25 or younger (at the time of sentence).

The Commission's analysis found that the differences in sentence length for Black male offenders compared to White male offenders has increased over time. In the Post-*Koon* Period, Black male offenders received sentences that were 11.2 percent longer than those imposed on White male offenders. In the Post-PROTECT Act Period, this difference decreased to 5.5 percent longer sentences. The difference between these two groups increased to 15.2 percent in the Post-*Booker* Period, and was 20.0 percent in the Post-*Gall* Period.

Sentences for Hispanic male offenders were 3.6 percent lower than those imposed on White male offenders during the Post-*Koon* Period and 4.4 percent lower than sentences for White male offenders during the Post-PROTECT Act period. No statistically significant difference in sentence length between these two groups was found in either the Post-*Booker* Period or the Post-*Gall* Period.

Sentences for female offenders of all races were consistently shorter than those for White male offenders, and these differences were apparent in each of the time periods studied. In three of the time periods studied "Other" race female offenders received the shortest sentences when compared to White male offender's vis-à-vis other females. In all four time periods, Black female offenders received shorter sentences (between 17 and 34 percent) when compared to White male offenders than did White female (19 to 30 percent) or Hispanic female offenders (13 to 29 percent) when compared to White male offenders.

In the Post-*Koon* Period, non-citizen offenders received 7.4 percent longer sentences than those imposed on citizen offenders. However, there was no statistically significant difference in sentence between these two groups in the Post-PROTECT Act Period. In the Post-*Booker*

Period, non-citizens received sentences that were 8.5 percent longer than sentences for citizen offenders, and in the Post-*Gall* Period received sentences that were 11.2 percent longer sentences than those imposed on citizen offenders.

In the Post-*Koon* Period, offenders over the age of 25 had 3.6 percent longer sentences than offenders who were 25 or younger. However, there was no statistically significant difference in sentences between these two groups in the Post-PROTECT Act Period. In the Post-*Booker* Period offenders over 25 had sentences that were 3.1 percent longer than those for younger offenders, and in the Post-*Gall* Period had sentences that were 2.7 percent longer than those imposed on younger offenders.

Section IV: Recommendations

The Commission believes there are steps that Congress can take now to strengthen the guidelines system, provide more effective substantive appellate review, and generally ensure that the post-*Booker* federal sentencing system more effectively continues to reflect the purposes and goals of sentencing set forth in the SRA. As the Supreme Court anticipated when it decided *Booker*—

> Ours of course is not the last word: The ball now lies in Congress' court. The National Legislature is equipped to devise and install, long-term, the sentencing system compatible with the Constitution that Congress judges best for the federal system of justice.[165]

The Commission believes that the statutory changes outlined below would result in a system consistent with that originally envisioned by Congress and the Constitution.

A. Develop More Robust Substantive Appellate Review

The Commission believes that Congress should address the reasonableness standard of review and appellate process articulated in *Booker* and subsequent case law. Appellate review was a key component of sentencing reform in the SRA. Congress envisioned appellate review of sentences imposed to provide the Commission valuable information on federal sentencing and ensure fair, transparent, more uniform sentences. Since *Booker*, the role of appellate review is unclear.

The Commission recommends that Congress revitalize appellate review in three ways. First, *Rita* merely permits, but does not require, appellate courts to adopt a presumption of reasonableness for within range sentences and several circuits do not apply such a presumption.[166] Requiring a presumption of reasonableness at the appellate level would promote

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[165] *Booker*, 543 U.S. at 265.

[166] The First, Second, Third, Ninth, and Eleventh circuits have declined to adopt the presumption. *See* United States v. Jimenez-Beltre, 440 F.3d 514, 518 (1st Cir. 2006) (en banc); United States v. Fernandez, 443 F.3d 19, 27 (2d Cir. 2006); United States v. Cooper, 437 F.3d 324, 331-32 (3d Cir. 2006), *abrogated on other grounds as recognized in United States v. Wells*, 279 F. App'x 100 (3d Cir. 2008); United States v. Carty, 520 F.3d 984, 993 (9th Cir. 2008) (en banc); United States v. Hunt, 459 F.3d 1180, 1184-85 (11th Cir. 2006).

more consistent sentencing outcomes and practices throughout the system. It would also assist in ensuring that the federal sentencing guidelines be given substantial weight during sentencing.

Second, the Commission believes that Congress should direct sentencing courts to provide greater justification for sentences imposed the further the sentence is from the otherwise applicable advisory guidelines sentence.[167] Such explanation would ensure that the vision of a transparent system remains intact, and would continue to ensure that appellate review remains robust.[168] As the Court noted in *Rita*, "The sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decisionmaking authority."[169]

> The sentencing judge has access to, and greater familiarity with, the individual case and the individual defendant before him than the Commission or the appeals court. That being so, his reasoned sentencing judgment, resting upon an effort to filter the Guidelines' general advice through §3553(a)'s list of factors, can provide relevant information to both the court of appeals and ultimately the Sentencing Commission. The reasoned responses of these latter institutions to the sentencing judge's explanation should help the Guidelines constructively evolve over time, as both Congress and the Commission foresaw.[170]

Thus, the Commission recommends that any legislative proposal to address federal sentencing include strengthening the justification for non-guidelines (variance) sentences.

Third, Congress should create a heightened standard of review for sentences imposed as a result of a "policy disagreement" with the guidelines. In *Kimbrough*[171] and *Spears*,[172] the Supreme Court held that district courts are free to categorically disagree with the Commission's policy decisions, as expressed in the *Guidelines Manual*, and to adopt their own policies, although the guidelines are due "respectful consideration."[173]

The Commission believes that the current lack of rigorous appellate review of policy disagreements undermines the role of the guidelines system and risks increasing unwarranted sentencing disparity as individual judges substitute their own policy judgments for the collective policy judgments of Congress and the Commission. Furthermore, subjecting such policy disagreements to heightened appellate review would be consistent with previous Supreme Court decisions stating that "while the Guidelines are no longer binding, closer review may be in order when the sentencing judge varies from the Guidelines based solely on the judge's view that the Guidelines range 'fails properly to reflect § 3553(a) considerations' even in a mine-run case."[174]

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[167] *See Gall*, 552 U.S. at 50.
[168] *See Rita*, 551 U.S. at 357.
[169] *Id.* at 356.
[170] *Id.* at 358.
[171] *Kimbrough*, 552 U.S. at 102-111.
[172] *Spears*, 555 U.S. at 264-265.
[173] *Kimbrough*, 552 U.S. at 101 (internal citations omitted).
[174] *Id.* at 109 (citations omitted).

B. Resolve the Tension between 18 U.S.C. § 3553(a) and 28 U.S.C. §§ 991, et seq.

The Commission recommends that Congress address the tension between directives to the Commission set forth at 28 U.S.C. §§ 991, *et seq.*, and directives to the district courts at 18 U.S.C. § 3553(a), particularly as they relate to certain offender characteristics. In *Rita*, the Court noted that the SRA statutory directives to the courts and to the Commission work in tandem and that Congress charged both with carrying out the purposes of sentencing set forth in the SRA.[175] As the Court noted, "The upshot [of the SRA] is that the sentencing statutes envision both the sentencing judge and the Commission as carrying out the same basic § 3553(a) objectives, the one at retail, the other at wholesale."[176]

The Commission recommends that Congress clarify the relationship between these two statutory provisions, specifically as they relate to certain offender characteristics in 28 U.S.C. § 994 and the courts' consideration of those same factors under 18 U.S.C. § 3553(a). For example 28 U.S.C. § 994(e) directs the Commission to "assure" that the guidelines reflect the "general inappropriateness of considering the education, vocational skills, employment record, family ties and responsibilities, and community ties of the defendant" in determining the length of imprisonment.[177] Over the course of its history, the Commission has ensured that the departure provisions set forth in the *Guidelines Manual* are consistent with this directive. Yet under the current advisory regime, judges consider those very factors under § 3553(a) and often arrive at sentences below the guidelines range as a result of such consideration in almost 14 percent of all federal felony and Class A misdemeanor cases. Departures are followed in only about 3.4 percent of these cases because judges prefer to vary when they consider offender characteristics like family history, for example. In the Commission's view, Congress should resolve disconnect between the directives to the Commission (§ 994) and the directives to the courts (§ 3553).

C. Codify the "Three-step" Approach

The Commission recommends that Congress codify the sentencing process first articulated in *Booker*. Codification of this "three-step" process ensures that the federal sentencing guidelines are afforded the appropriate consideration, determination, and ultimately the proper weight to which they are due under *Booker* and consistent with the Court's remedial opinion.

The first step in the process requires district courts to properly calculate and consider the guidelines when sentencing.[178] The second step in the process directs the courts, after calculating the appropriate guidelines sentence, to consult the *Guidelines Manual* and consider

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[175] *Rita*, 551 U.S. at 347.
[176] *Id.* at 348.
[177] 18 U.S.C. § 994(e).
[178] *See* 18 U.S.C. § 3553(a)(4), (a)(5); *Booker*, 543 U.S. at 264 ("The district courts, while not bound to apply the Guidelines, must . . . take them into account when sentencing."); *Rita*, 551 U.S. at 351 (stating that a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range); *Gall*, 552 U.S. at 49 ("As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.").

whether the case warrants a departure.[179] As articulated in *Irizarry*, *see supra*, "'[d]eparture' is a term of art under the Guidelines and refers only to non-Guidelines sentences imposed under the framework set out in the Guidelines."[180] A "variance" – i.e., a sentence outside the guideline range other than as provided for in the *Guidelines Manual* – is considered by the court only after departures have been considered. That is the third step of the process. Most circuits agree on a three-step approach, including the consideration of departure provisions in the *Guidelines Manual*, in determining the sentence to be imposed.[181] In 2010, the Commission promulgated an amendment to USSG § 1B1.1 (Application Instructions) codifying the three-step approach in the guidelines and encourages Congress to consider statutory codification of this process as well.

D. Resolve the Uncertainty About the Weight to Be Given to the Federal Sentencing Guidelines

As the Commission testified in 2005 and 2006, *Booker* does not specify how much weight the guidelines should be afforded by the district courts. The Commission believes that Congress should clarify its statutory intent that courts should give the guidelines substantial weight.[182]

In *Rita*, the Supreme Court states that the SRA reflects Congress' expectation that both the sentencing judge and the Commission would carry out "the same basic § 3553(a) objectives, the one at retail, the other at wholesale."[183] The guidelines may be presumed reasonable because they "seek to embody the § 3553(a) considerations, both in principle and in practice" and they "reflect a rough approximation of sentences that might achieve § 3553(a)'s objectives."[184] During the process of developing the initial set of guidelines and refining them throughout the ensuing years, the Commission has considered the factors listed in section 3553(a) that were cited with approval in *Booker*.[185]

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[179] *See* 18 U.S.C. § 3553(a)(5).
[180] 553 U.S. at 714.
[181] *See* United States v. Dixon, 449 F.3d 194, 203-04 (1st Cir. 2006) (court must consider "any applicable departures"); United States v. Selioutsky, 409 F.3d 114, 118 (2d Cir. 2005) (court must consider "available departure authority"); United States v. Jackson, 467 F.3d 834, 838 (3d Cir. 2006) (same); United States v. Moreland, 437 F.3d 424, 433 (4th Cir. 2006) (departures "remain an important part of sentencing even after Booker"); United States v. Tzep-Mejia, 461 F.3d 522, 525 (5th Cir. 2006) ("Post-Booker case law recognizes three types of sentences under the new advisory sentencing regime: (1) a sentence within a properly calculated Guideline range; (2) a sentence that includes an upward or downward departure as allowed by the Guidelines, which sentence is also a Guideline sentence; or (3) a non-Guideline sentence which is either higher or lower than the relevant Guideline sentence." (internal footnote and citation omitted)); United States v. McBride, 434 F.3d 470, 476 (6thCir. 2006) ("Within this Guideline calculation is the determination of whether a . . . departure is appropriate"); United States v. Hawk Wing, 433 F.3d 622, 631 (8th Cir. 2006) ("the district court must decide if a traditional departure is appropriate", and after that must consider a variance (internal quotation omitted)); United States v. Robertson, 568 F.3d 1203, 1210 (10th Cir. 2009) (district courts must continue to apply departures); United States v. Jordi, 418 F.3d 1212, 1215 (11th Cir. 2005) (stating that "the application of the guidelines is not complete until the departures, if any, that are warranted are appropriately considered"). *But see* United States v. Johnson, 427 F.3d 423, 426 (7th Cir. 2006) (stating that departures are "obsolete").
[182] *See* United States v. Wilson, 350 F. Supp. 2d 910 (D. Utah 2005).
[183] *Rita*, 551 U.S. at 348.
[184] *Id.* at 350.
[185] *See, e.g.*, United States v. Shelton, 400 F.3d 1325 (11th Cir. 2005).

In addition, Congress through its actions has indicated its belief that the guidelines generally achieve the statutory purposes of sentencing. Pursuant to 28 U.S.C. § 994(p), the Commission is required to submit all guideline and guideline amendments for congressional review before they become effective. To date, the initial set of guidelines and over 750 amendments, many of which were promulgated in response to congressional directives, have withstood congressional scrutiny.

E. Review of Federal Incarceration and Sentence Length

As noted in Section III, the federal prison population continues to grow not just in size but also in overall cost. The SRA specifically directed the Commission to look at imprisonment rates in two ways as it implemented and refined federal sentencing guidelines across time. First, 28 U.S.C. § 994(j) directs the Commission to "insure that the guidelines reflect the general appropriateness" of alternatives to incarceration for first-time, non-violent offenders, and imposition of a term of imprisonment for an offender convicted of a crime of violence resulting in serious bodily injury. The Commission implements the full spectrum of this directive with each guideline promulgated. Section 994(q) directs the Commission, working with the Bureau of Prisons, to provide analysis and recommendations "concerning maximum utilization of resources to deal effectively with the federal prison population."[186] Congress further noted, "Some critics have expressed concern that sentences under the guidelines will be either too low to protect the public or so high that they will result in prison overcrowding."[187] The Commission intends to continue its work with the Bureau of Prisons and other key stakeholders on issues of federal incarceration as Congress directed in the SRA. For example, the Commission will continue to work with Congress on prison impact statements for proposed legislation pursuant to 18 U.S.C. § 4047. "By developing complete information on [sentencing] practices, the Sentencing Commission will be able, if necessary, to change those practices with a full awareness of their potential impact on the criminal justice system."[188]

Section 992(b)(2) of the SRA also directs the Commission to "develop means of measuring the degree to which sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing set forth in section 3553(a)(2). . . ."[189] The Commission meets this directive through the collection, analysis, and reporting of sentencing information to criminal justice stakeholders. The Commission also uses this information in the formulation of the federal sentencing guidelines and policy statements, including when and to what degree alternatives to incarceration are appropriate as well as when offenses require terms of imprisonment. The Commission will be addressing the impact of statutory mandatory minimum penalties on the federal prison system in its upcoming report.

The Commission notes that this Subcommittee and the full House Judiciary Committee regularly seek prison impact assessments from the Commission and the Congressional Budget Office. The Commission encourages Congress and the Attorney General to employ these assessments as part of legislative consideration. The Commission also encourages Congress to

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[186] 28 U.S.C. § 994(q).
[187] S. REP. NO. 98-225, at 3244 (1984).
[188] *Id.*
[189] 28 U.S.C. § 994(b)(2).

utilize section 4047(c) that requires the Attorney General to prepare and transmit to Congress by March 1 of each year "a prison impact assessment reflecting the cumulative effect of all relevant changes in the law taking effect during the preceding calendar year." Doing so would help the Bureau of Prisons, the Department of Justice, Congress, and others budget, manage, and plan for the federal prison population in an effective manner.

Part II: Statutory Mission of the Commission

The Commission welcomes congressional oversight of its activities and greatly appreciates congressional interest in its work.

The Commission is a bipartisan, independent agency located within the judicial branch of government. Section 992, title 28 of the United States Code, sets forth the terms of office and compensation for members of the Commission. The Commission comprises seven voting members, including a Chair and up to three Vice Chairs, who serve six-year terms.[190] At least three of the voting members must be federal judges.[191] The Chair and Vice Chairs of the Commission are appointed by the President and confirmed by the Senate to hold those positions.[192] The Chair and Vice Chairs hold full-time positions and are compensated during their terms of office at the annual rate at which judges of the United States courts of appeals are compensated.[193] The other voting members of the Commission hold part-time positions and are paid at the daily rate at which judges of the United States courts of appeals are compensated.[194] In accordance with 28 U.S.C. § 992(c), "[a] Federal judge may serve as a member of the Commission without resigning the judge's appointment as a Federal judge."

The Commission remains a critical and vital component of federal sentencing after *Booker*. As noted above, the Commission has four overarching statutory duties with several subcomponents. These duties include, but are not limited to: (1) promulgating sentencing guidelines to be determined, calculated, and considered in all federal criminal cases; (2) collecting, analyzing, and reporting sentencing data systematically to detect new criminal trends, to determine if federal crime policies are achieving their goals, and to serve as a clearinghouse for federal sentencing statistics; (3) conducting research on sentencing issues and serving as an information center for the collection, preparation, and dissemination of information on federal sentencing practices; and (4) providing specialized training to judges, probation officers, staff attorneys, law clerks, prosecutors, defense attorneys, and other members of the federal criminal justice community on federal sentencing issues, including application of the guidelines.[195] The Commission provides enormous returns including near real time data, rapid response to Congress and others both in terms of research and implementation of sentencing policy, and prison impact analyses.

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[190] 28 U.S.C. § 28 U.S.C. §§ 991(a), 992(a). A voting member of the Commission may not serve more than two full terms. 28 U.S.C. § 992(b)(1)(A).
[191] 28 U.S.C. § 991(a).
[192] *Id.*
[193] 28 U.S.C. § 992(c).
[194] *Id.*
[195] *See generally*, 28 U.S.C. §§ 991-998.

The work of the Commission has been significant since the *Booker* decision. For example, the federal docket has grown by more than 11,000 cases in the last five fiscal years. Each Supreme Court case has required the Commission to increase its efforts to provide meaningful guidance to the courts and the entire criminal justice system, and to ensure that the guidelines continue to reflect the purposes of sentencing. Moreover, since *Booker*, the Commission has promulgated 79 guideline amendments. Of those 79 amendments, 40 were in response to directives from Congress and other changes in the law. Those changes also have meant more analysis, more training, and more work for the Commission. A more detailed examination of the work of the Commission is set forth below.

Section I: Sentencing Policy Development

The Commission continues to evaluate and refine federal sentencing policy as set forth in the sentencing guidelines. Pursuant to statute, the Commission engages in a sophisticated analysis and review process during its promulgation of guidelines and policy statements. This process begins with the publishing of proposed priorities in the late spring or summer. A final list of priorities is published in the fall, subject to additions or changes that may result from new legislation or case law. Throughout the fall and winter, the Commission conducts empirical research, meets with stakeholders, holds hearings, conducts case law and literature reviews, and begins development of language for guideline amendments.[196] In the spring it holds additional hearings on the proposed amendments and finalizes the amendment package for congressional submission. By May 1, of each year, the Commission must submit its proposed amendments to Congress. Congress has 180 days to review the amendment package and if no action is taken to disapprove or otherwise modify it, the package becomes effective on November 1 of each year.

The Commission recently completed amendments (now pending before Congress) that implemented a number of congressional directives including the Fair Sentencing Act of 2010, Pub. L. 111–220; the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, the Patient Protection and Affordable Care Act, Pub. L. 111–148, and the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Pub. L. 111–195;[197] and the Secure and Responsible Drug Disposal Act of 2010, Pub. L. 111–273. In addition, the Commission increased the penalties for straw purchasers of firearms. The Commission also addressed supervised release terms for deportable aliens and issues associated with illegal entry offenses.

Section II: Collecting, Analyzing and Reporting Sentencing Data

In fulfillment of its statutory duties related to collecting, analyzing and reporting federal sentencing statistics and trends, the Commission collects data about criminal cases sentenced

[196] *See generally*, 28 U.S.C. §§ 994, 995. When promulgating guidelines and policy statements the Commission also must adhere to the congressional directives that the guidelines and policy statements are consistent with all federal statutes (28 U.S.C. § 994(a)) and that the maximum of the sentencing range may not exceed the minimum of the range by more than 25% or six months. 28 U.S.C. § 994(b)(2).

[197] In the coming weeks, the Commission will be releasing a report regarding the penalties associated with offenses identified in this Act.

during the year.[198] During the past year, the Commission received over 386,000 documents from more than 83,000 original sentencings.[199] To put this caseload into perspective, in fiscal year 1990, the Commission received documentation for 33,000 cases sentenced under the guidelines. The importance of the Commission's data collection, analysis, and reporting requirements is highlighted in Part I of this testimony. Without the Commission, the criminal justice system would not have an objective, expert body to which it could turn for information about sentencing trends and practices. If nothing else, the data collected by the Commission since *Booker* indicates the growing complexity of the federal caseload and growing lack of uniformity throughout the system.

The Commission collects and analyzes many pieces of information of interest and importance to the federal criminal justice community from the documents it receives from the courts. The Commission publishes these analyses in a variety of ways, including reporting them in its comprehensive Annual Report and Sourcebook of Federal Sentencing Statistics. It also disseminates key aspects of this data on a quarterly basis and provides trend analyses of the changes in federal sentencing practices over time. The Commission disseminates its information in a variety of ways, including through its modernized website.

At the request of Congress, the Commission also provides specific analyses using real-time data of sentencing trends related to proposed and pending legislation. These assessments often are complex and time-sensitive, and require highly specialized Commission resources. In addition, the Commission responds to a number of more general data requests from Congress and entities such as the Congressional Research Service, the Congressional Budget Office, and the Government Accountability Office, on issues such as healthcare fraud, drugs, immigration, gangs, child sex offenses, and offenses affecting Native Americans. These requests are expected to continue in response to congressional work on crime legislation in the 112th Congress.[200]

The Commission also responds to request for data analyses from federal judges. For example, the Commission provides to each chief district judge and each chief circuit judge a yearly analysis of the cases sentenced in the district or circuit with a comparison of the caseload and sentencing practices in that district or circuit to the nation as a whole. The Commission's ability to provide these analyses on demand and with real-time data provides a unique resource to judges. Collectively, the Commission responded to over 100 requests for specific analyses in fiscal year 2011.

The Commission's data collection, analysis and reporting requirements are impacted by the increasingly high volume of cases sentenced in the federal system annually; however, the Commission's modernization and refinement efforts have kept pace with demands placed on it. Over the past few years, the Commission has greatly automated and updated its business

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[198] *See* 28 U.S.C. § 994(w)(1), which requires the chief judge of each district court, within 30 days of entry of judgment to provide the Commission with: (1) the charging document; (2) the written plea agreement (if any); (3) the Presentence Report; (4) the judgment and commitment order; and (5) the statement of reasons form.

[199] Since March 2008, the Commission also has collected real-time data from the courts on over 24,000 motions filed for retroactive application of its 2007 crack cocaine amendment. The Commission continues to collect and regularly report real-time data on the retroactive application of its 2007 crack cocaine amendment.

[200] In fiscal year 2011, the Commission responded to 102 requests for information from the courts, Congress, and the Executive branch. In fiscal year 2010, the Commission responded to 103 requests.

processes for the receipt, collection and analysis of sentencing documentation from the courts. The resulting efficiencies have resulted in significant cost-savings for not only the Commission but for the courts as well. The Commission also re-launched its website in December 2010 that now provides improved and enhanced access to the Commission's work. Moreover, the Commission is in the process of automating data contained in its annual sourcebooks. Specifically, the Commission is developing an interactive website using information based on the tables from our Annual Sourcebook (for example, Table 13, Average Sentence Length in Each Primary Offense Category). These data could be further refined by the user to provide average sentence length but also by circuit, district, race, gender, citizenship, and age.

Section III: Conducting Research

Research is a critical part of the Commission's overall mission. The Commission's research staff regularly provides short- and long-term guideline and sentencing related research and analyses for the Commission and the criminal justice community. The Commission routinely uses this research when considering proposed changes to the guidelines, and Commission research is routinely provided to other policymakers and members of the criminal justice community as part of their decision-making processes.

In fiscal years 2010 and 2011, for example, the Commission published research reports on the use of supervised release in the federal criminal justice system, the calculation of certain criminal history points under the sentencing guidelines, demographic differences in federal sentencing practices and trends since the *Booker* decision, overviews of federal criminal cases in fiscal years 2008 and 2009, and additional information on data collection by the Commission. The Commission also conducted a comprehensive survey of federal district court judges about the state of federal sentencing. The Commission also completed a recidivism study of crack cocaine offenders for whom courts have granted motions for retroactive application of the Commission's 2007 crack cocaine amendment, and a detailed analysis of the number of crack cocaine offenders potentially impacted by the Commission's decision to give retroactive effect to its proposed permanent amendment implementing the Fair Sentencing Act of 2010.

As noted in the opening of this testimony, in the coming weeks, the Commission will be releasing a comprehensive review of statutory mandatory minimum penalties and their role in federal sentencing. The Commission also is drafting a significant report on child pornography offenses, and it is working on a comprehensive evaluation of the effect of *Booker* and its progeny on the federal sentencing system that will build upon the testimony presented today.

Section IV: Training & Outreach

Congress created the Commission as a body that would "devise and conduct, in various geographical locations, seminars and workshops providing continuing studies for persons engaged in the sentencing field,"[201] and "devise and conduct periodic training programs of instruction in sentencing techniques for judicial and probation personnel and other persons connected with the sentencing process."[202] Congress also tasked the Commission, among other

[201] 28 U.S.C. § 995(a)(17).
[202] 28 U.S.C. § 995(a)(18)

things, with issuing instructions to probation officers concerning the application of the Commission's guidelines and policy statements.[203]

The Commission fulfills this statutory duty to provide training and specialized technical assistance on federal sentencing issues, including application of the sentencing guidelines, to federal judges (including training of new judges), probation officers, staff attorneys, law clerks, prosecutors, and defense attorneys by providing educational programs around the country throughout the year. The Commission continues to expand its training and outreach efforts, in large part as a result of *Booker* and subsequent Supreme Court cases. In fiscal year 2010, for example, the Commission conducted training programs in all twelve circuits and most of the 94 judicial districts. In fiscal year 2010, the Commission trained approximately 6,000 individuals on the guidelines and other sentencing issues.[204]

Commissioners and Commission staff also participated in other numerous academic programs, symposia, and circuit conferences as part of the ongoing discussion of federal sentencing issues. In the coming months, the Commission plans to continue to provide training to the district and circuit courts on a number of federal sentencing issues, including recently promulgated guidelines and guideline amendments.

Conclusion

The Commission has monitored federal sentencing carefully since the Court issued its *Booker* decision. The guidelines continue to be the anchor for all federal sentences. However, disparities among district and appellate courts have grown. Based on these observations, the Commission believes that adjustments to the current advisory guideline system are ripe for consideration by Congress. The Commission offers these suggestions today to help ensure a strong and effective guidelines system that is consistent with the goals and purposes of sentencing set forth by Congress in the SRA. The Commission remains uniquely positioned to provide Congress and the criminal justice community with advice and information that will help further the goals of sentencing in an effective and thorough manner.

The Commission thanks you for holding this very important hearing and looks forward to answering your questions and working with you in the months ahead.

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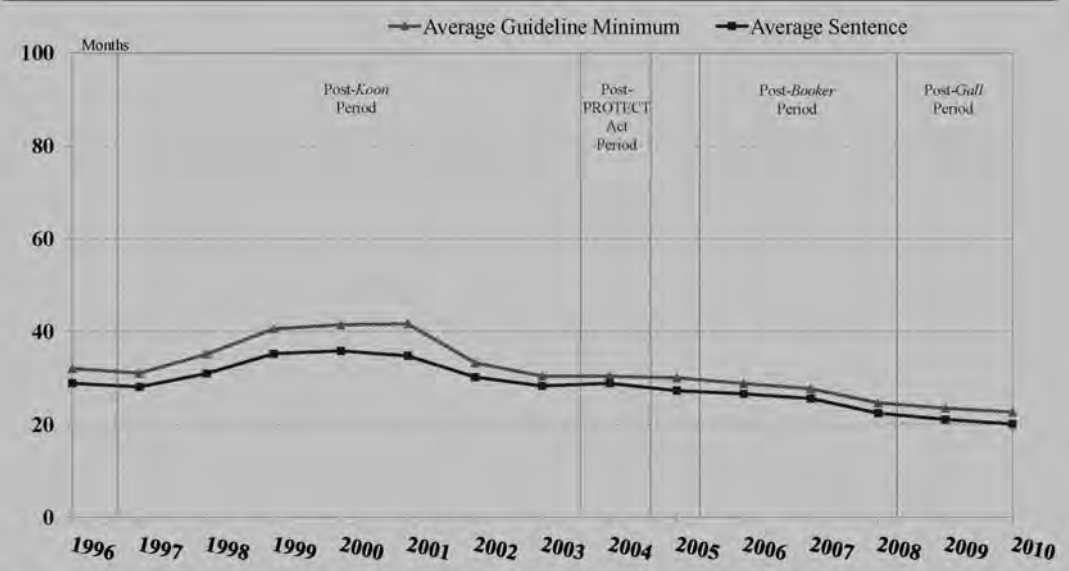
[203] 28 U.S.C. § 995(a)(10).
[204] In fiscal year 2011, the Commission trained approximately 7,000 people.

Appendix A

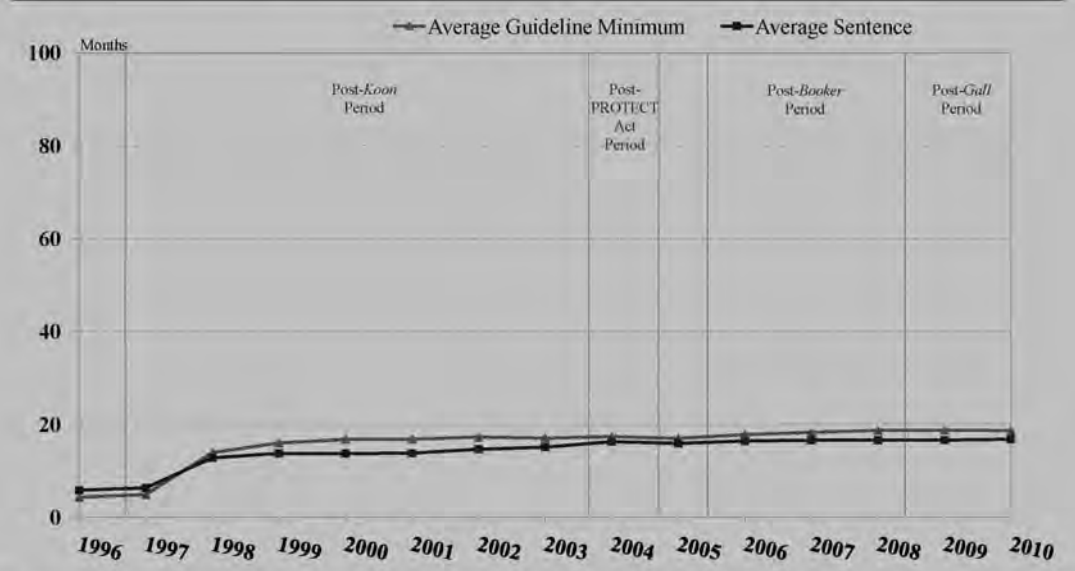
Average Sentence Length and Average Guideline Minimum Data for Illegal Entry (USSG §2L1.2) Offenders

Fiscal Years 1996-2010



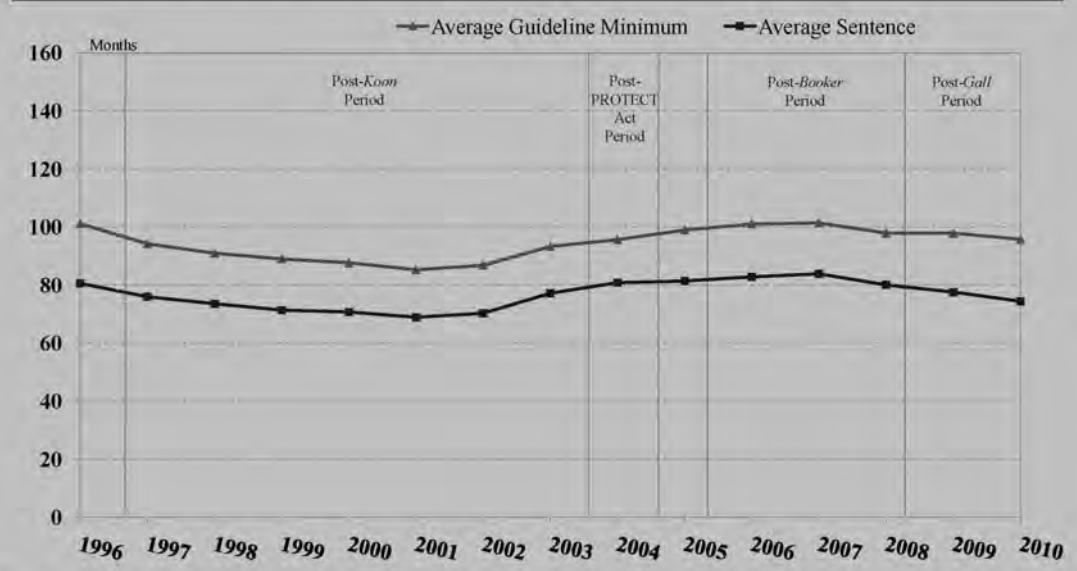
Only cases with complete guideline application information and a primary sentencing guideline of USSG §2L1.2 are included in this analysis. Cases with guideline minimums of life or probation were included in the guideline minimum average computations as 470 months and zero months, respectively. In turn, cases with sentences of 470 months or greater (including life) or probation were included in the sentence average computations as 470 months and zero months, respectively. In addition, the information presented in this figure includes time of confinement as described in USSG §5C1.1. Guideline minimums account for applicable statutory mandatory penalties.
SOURCE: U.S. Sentencing Commission, 1996-2010 Datafiles, USSCFY96 – USSCFY10.

Average Sentence Length and Average Guideline Minimum Data for Alien Smuggling (USSG §2L1.1) Offenders
Fiscal Years 1996-2010



Only cases with complete guideline application information and a primary sentencing guideline of USSG §2L1.1 are included in this analysis. Cases with guideline minimums of life or probation were included in the guideline minimum average computations as 470 months and zero months, respectively. In turn, cases with sentences of 470 months or greater (including life) or probation were included in the sentence average computations as 470 months and zero months, respectively. In addition, the information presented in this figure includes time of confinement as described in USSG §5C1.1. Guideline minimums account for applicable statutory mandatory penalties.
SOURCE: U.S. Sentencing Commission, 1996-2010 Datafiles, USSCFY96 – USSCFY10.

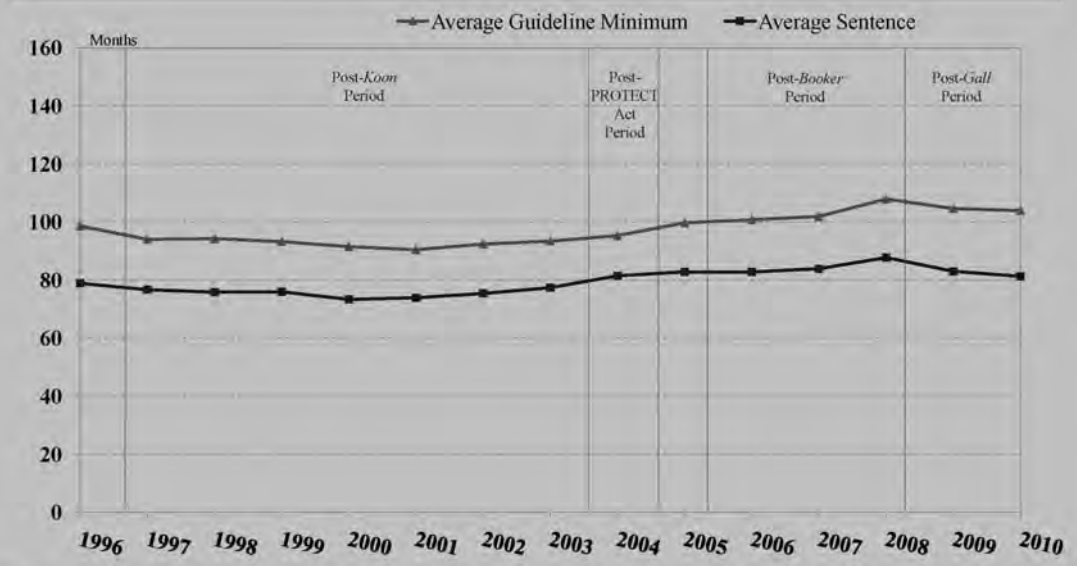
Average Sentence Length and Average Guideline Minimum Data for Drug Trafficking (USSG §§2D1.1 and 2D1.2) Offenders
Fiscal Years 1996-2010



Only cases with complete guideline application information with a primary sentencing guideline of USSG §2D1.1 or §2D1.2 were included in this analysis. Cases with guideline minimums of life or probation were included in the guideline minimum average computations as 470 months and zero months, respectively. In turn, cases with sentences of 470 months or greater (including life) or probation were included in the sentence average computations as 470 months and zero months, respectively. In addition, the information presented in this figure includes time of confinement as described in USSG §5C1.1. Guideline minimums account for applicable statutory mandatory penalties.
SOURCE: U.S. Sentencing Commission, 1996-2010 Datafiles, USSCFY96 – USSCFY10.

Average Sentence Length and Average Guideline Minimum Data for Drug Trafficking (USSG §§2D1.1 and 2D1.2) Offenders (Powder Cocaine Offenses)

Fiscal Years 1996-2010

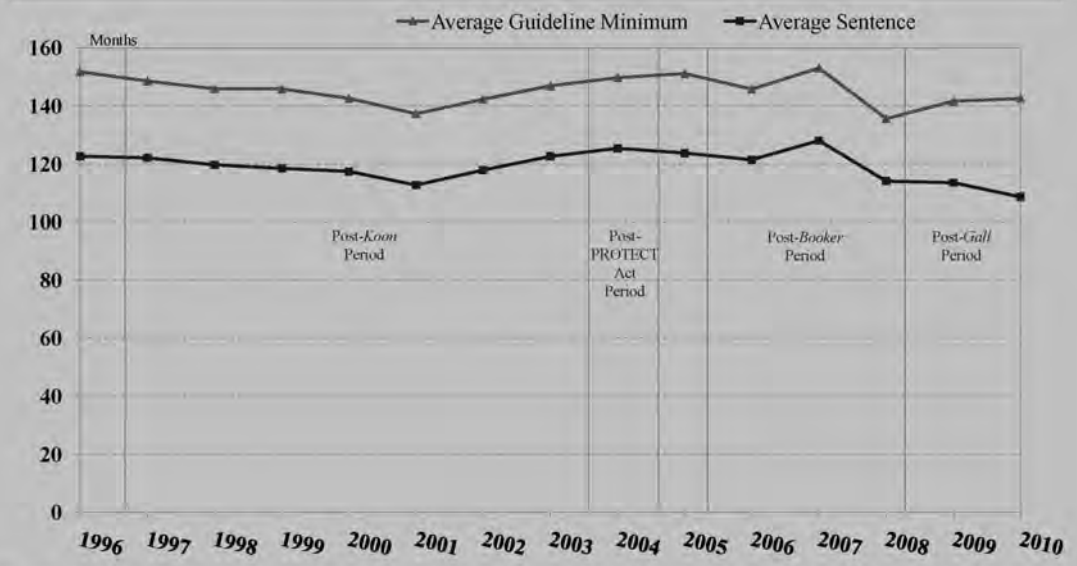


Only cases with complete guideline application information with a primary sentencing guideline of USSG §2D1.1 or §2D1.2 with a primary drug type of powder cocaine were included in this analysis. Cases with guideline minimums of life or probation were included in the guideline minimum average computations as 470 months and zero months, respectively. In turn, cases with sentences of 470 months or greater (including life) or probation were included in the sentence average computations as 470 months and zero months, respectively. In addition, the information presented in this figure includes time of confinement as described in USSG §5C1.1. Guideline minimums account for applicable statutory mandatory penalties.

SOURCE: U.S. Sentencing Commission, 1996-2010 Datafiles, USSCFY96 – USSCFY10.

Average Sentence Length and Average Guideline Minimum Data for Drug Trafficking (USSG §§2D1.1 and 2D1.2) Offenders (Crack Cocaine Offenses)

Fiscal Years 1996-2010

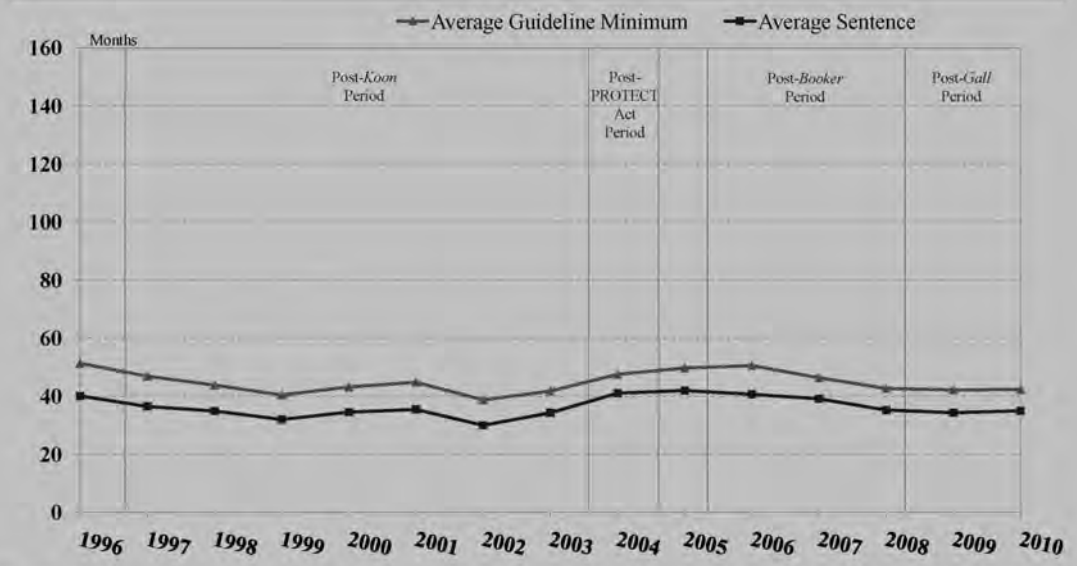


Only cases with complete guideline application information with a primary sentencing guideline of USSG §2D1.1 or §2D1.2 with a primary drug type of crack cocaine were included in this analysis. Cases with guideline minimums of life or probation were included in the guideline minimum average computations as 470 months and zero months, respectively. In turn, cases with sentences of 470 months or greater (including life) or probation were included in the sentence average computations as 470 months and zero months, respectively. In addition, the information presented in this figure includes time of confinement as described in USSG §5C1.1. Guideline minimums account for applicable statutory mandatory penalties.

SOURCE: U.S. Sentencing Commission, 1996-2010 Datafiles, USSCFY96 – USSCFY10.

Average Sentence Length and Average Guideline Minimum Data for Drug Trafficking (USSG §§2D1.1 and 2D1.2) Offenders (Marijuana Offenses)

Fiscal Years 1996-2010

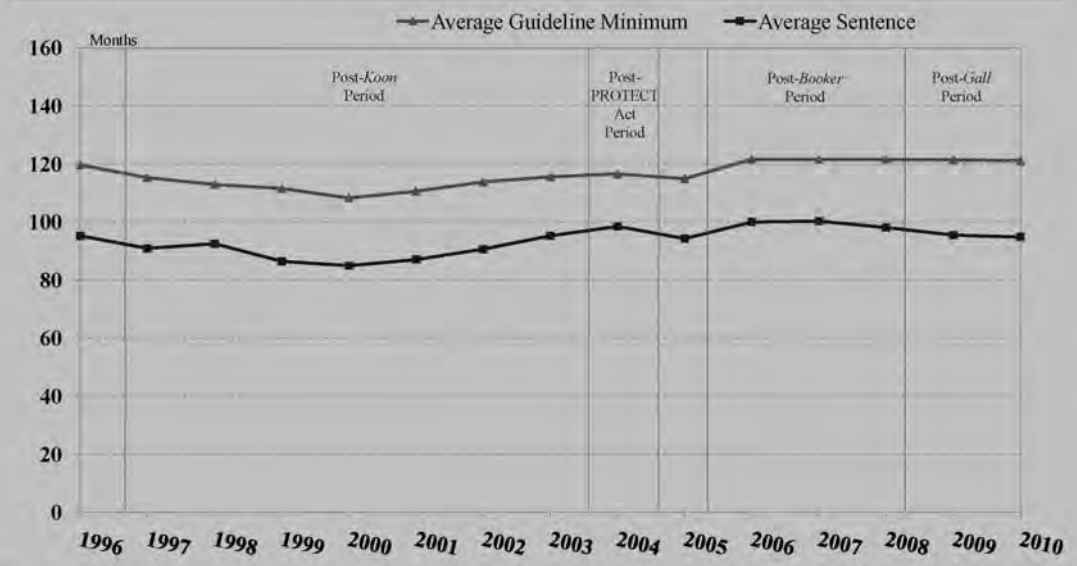


Only cases with complete guideline application information with a primary sentencing guideline of USSG §2D1.1 or §2D1.2 with a primary drug type of marijuana were included in this analysis. Cases with guideline minimums of life or probation were included in the guideline minimum average computations as 470 months and zero months, respectively. In turn, cases with sentences of 470 months or greater (including life) or probation were included in the sentence average computations as 470 months and zero months, respectively. In addition, the information presented in this figure includes time of confinement as described in USSG §5C1.1. Guideline minimums account for applicable statutory mandatory penalties.

SOURCE: U.S. Sentencing Commission, 1996-2010 Datafiles, USSCFY96 – USSCFY10.

Average Sentence Length and Average Guideline Minimum Data for Drug Trafficking (USSG §§2D1.1 and 2D1.2) Offenders (Methamphetamine Offenses)

Fiscal Years 1996-2010

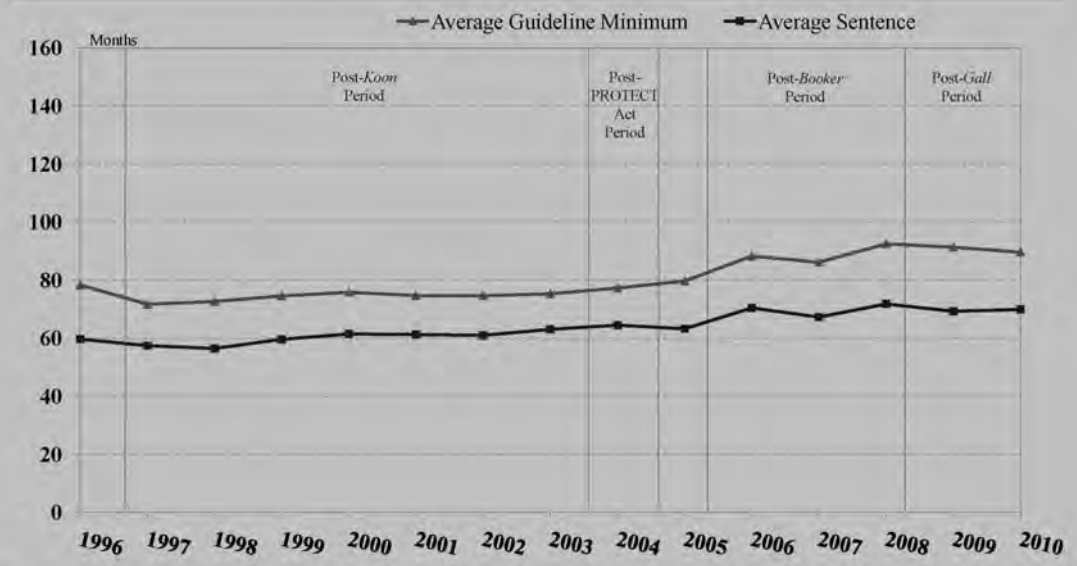


Only cases with complete guideline application information with a primary sentencing guideline of USSG §2D1.1 or §2D1.2 with a primary drug type of methamphetamine were included in this analysis. Cases with guideline minimums of life or probation were included in the guideline minimum average computations as 470 months and zero months, respectively. In turn, cases with sentences of 470 months or greater (including life) or probation were included in the sentence average computations as 470 months and zero months, respectively. In addition, the information presented in this figure includes time of confinement as described in USSG §5C1.1. Guideline minimums account for applicable statutory mandatory penalties.

SOURCE: U.S. Sentencing Commission, 1996-2010 Datafiles, USSCFY96 – USSCFY10.

Average Sentence Length and Average Guideline Minimum Data for Drug Trafficking (USSG §§2D1.1 and 2D1.2) Offenders (Heroin Offenses)

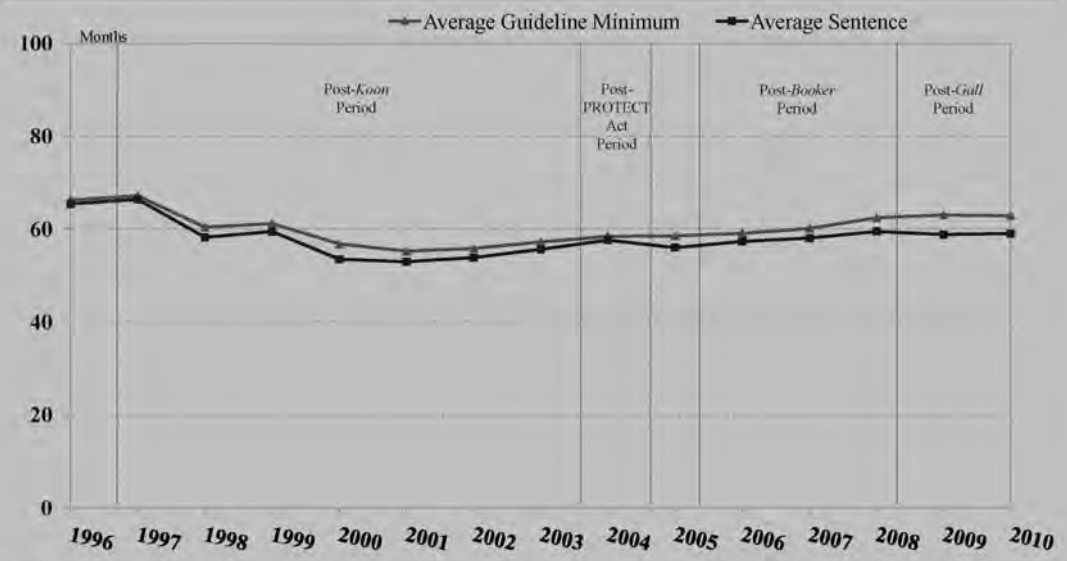
Fiscal Years 1996-2010



Only cases with complete guideline application information with a primary sentencing guideline of USSG §2D1.1 or §2D1.2 with a primary drug type of heroin were included in this analysis. Cases with guideline minimums of life or probation were included in the guideline minimum average computations as 470 months and zero months, respectively. In turn, cases with sentences of 470 months or greater (including life) or probation were included in the sentence average computations as 470 months and zero months, respectively. In addition, the information presented in this figure includes time of confinement as described in USSG §5C1.1. Guideline minimums account for applicable statutory mandatory penalties.

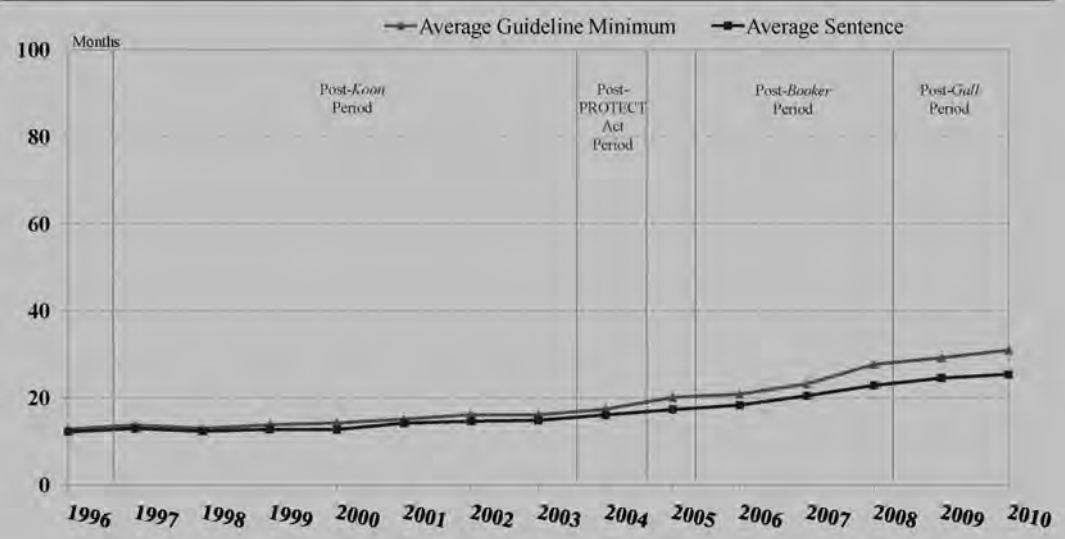
SOURCE: U.S. Sentencing Commission, 1996-2010 Datafiles, USSCFY96 – USSCFY10.

Average Sentence Length and Average Guideline Minimum Data for Firearms (USSG §2K2.1) Offenders
Fiscal Years 1996-2010



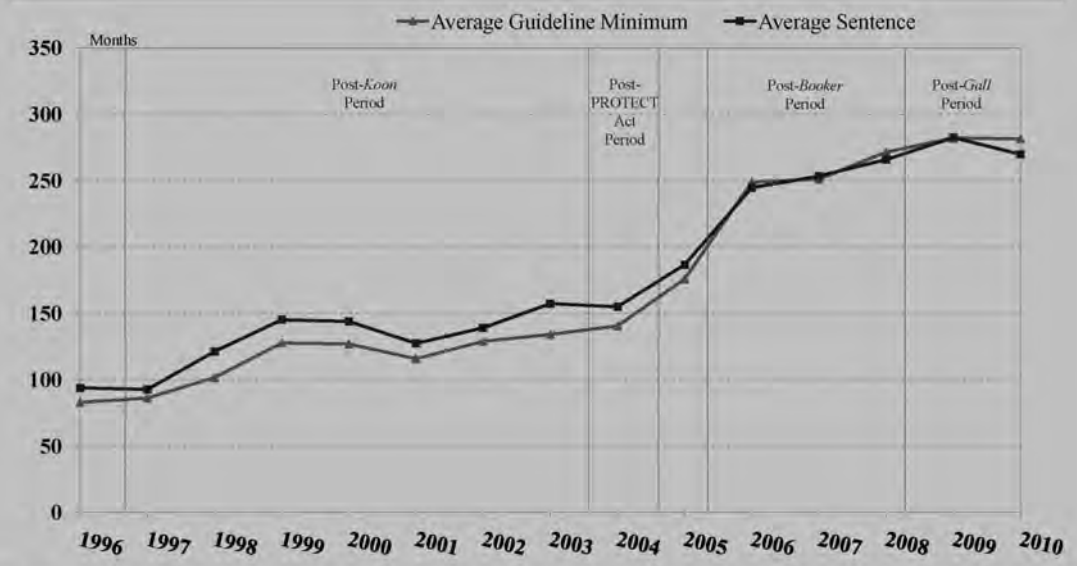
Only cases with complete guideline application information and a primary sentencing guideline of USSG §2K2.1 are included in this analysis. Cases with guideline minimums of life or probation were included in the guideline minimum average computations as 470 months and zero months, respectively. In turn, cases with sentences of 470 months or greater (including life) or probation were included in the sentence average computations as 470 months and zero months, respectively. In addition, the information presented in this figure includes time of confinement as described in USSG §5C1.1. Guideline minimums account for applicable statutory mandatory penalties.
SOURCE: U.S. Sentencing Commission, 1996-2010 Datafiles, USSCFY96 – USSCFY10.

Average Sentence Length and Average Guideline Minimum Data for Fraud (USSG §§2B1.1 and 2F1.1) Offenders
Fiscal Years 1996-2010



Only cases with complete guideline application information with a primary sentencing guideline of USSG §2B1.1 with a primary offense type of fraud sentenced under a Guidelines Manual effective November 1, 2001 or later or USSG §2F1.1 were included in this analysis. Cases with guideline minimums of life or probation were included in the guideline minimum average computations as 470 months and zero months, respectively. In turn, cases with sentences of 470 months or greater (including life) or probation were included in the sentence average computations as 470 months and zero months, respectively. In addition, the information presented in this figure includes time of confinement as described in USSG §5C1.1. Guideline minimums account for applicable statutory mandatory penalties.
SOURCE: U.S. Sentencing Commission, 1996-2010 Datafiles, USSCFY96 – USSCFY10.

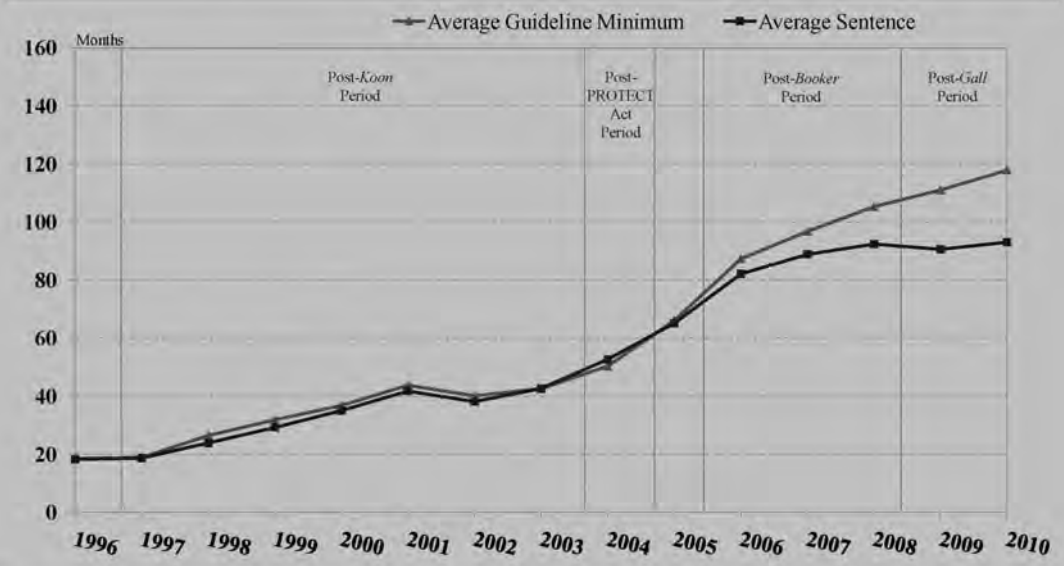
Average Sentence Length and Average Guideline Minimum Data for Child Pornography Production (USSG §2G2.1) Offenders
Fiscal Years 1996-2010



Only cases with complete guideline application information and a primary sentencing guideline of USSG §2G2.1 are included in this analysis. Cases with guideline minimums of life or probation were included in the guideline minimum average computations as 470 months and zero months, respectively. In turn, cases with sentences of 470 months or greater (including life) or probation were included in the sentence average computations as 470 months and zero months, respectively. In addition, the information presented in this figure includes time of confinement as described in USSG §5C1.1. Guideline minimums account for applicable statutory mandatory penalties.
SOURCE: U.S. Sentencing Commission, 1996-2010 Datafiles, USSCFY96 – USSCFY10.

Average Sentence Length and Average Guideline Minimum Data for Child Pornography Possession (USSG §§2G2.2 and 2G2.4) Offenders

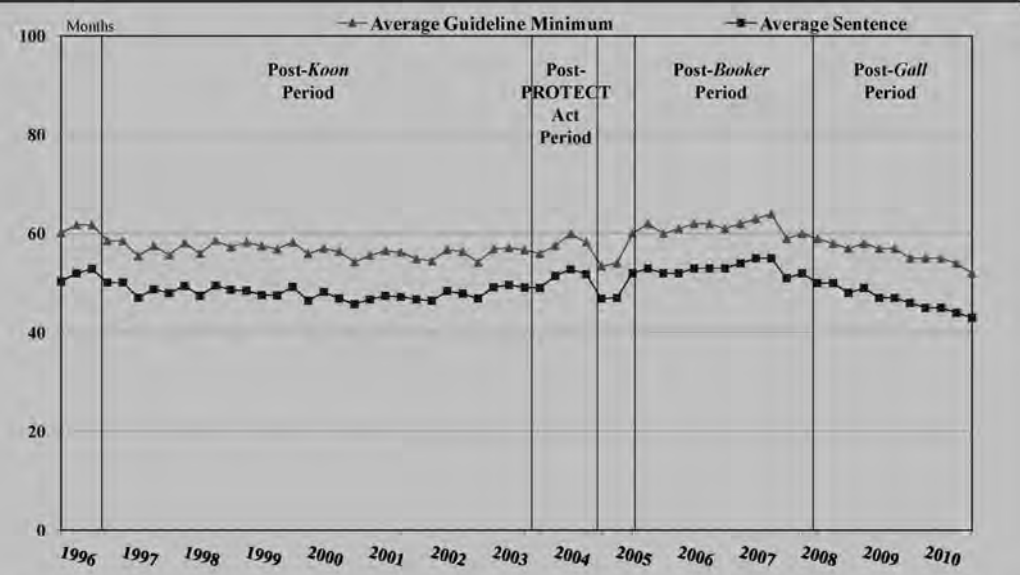
Fiscal Years 1996-2010



Only cases with complete guideline application information with a primary sentencing guideline of USSG §2G2.2 or §2G2.4 were included in this analysis. Cases with guideline minimums of life or probation were included in the guideline minimum average computations as 470 months and zero months, respectively. In turn, cases with sentences of 470 months or greater (including life) or probation were included in the sentence average computations as 470 months and zero months, respectively. In addition, the information presented in this figure includes time of confinement as described in USSG §5C1.1. Guideline minimums account for applicable statutory mandatory penalties.
SOURCE: U.S. Sentencing Commission, 1996-2010 Datafiles, USSCFY96 – USSCFY10.

Appendix B

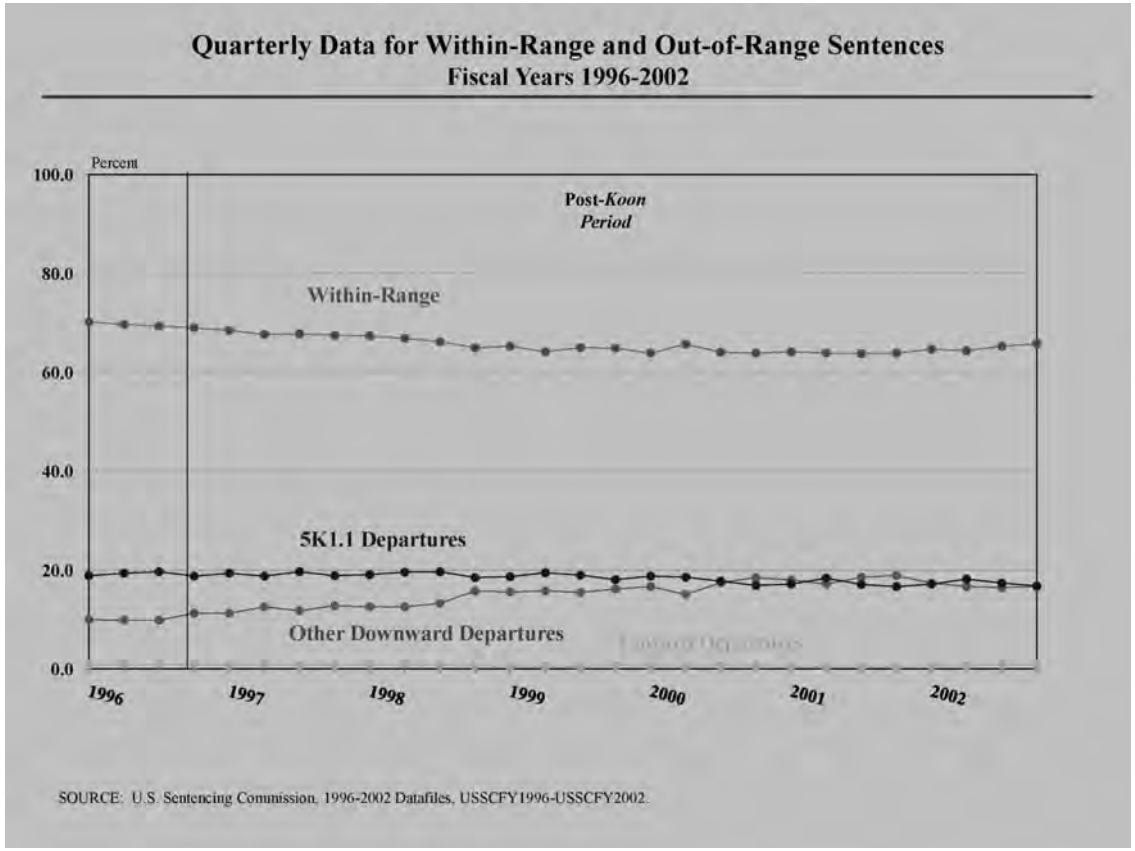
Average Sentence Length and Average Guideline Minimum
Quarterly Data for All Cases
Fiscal Years 1996-2010

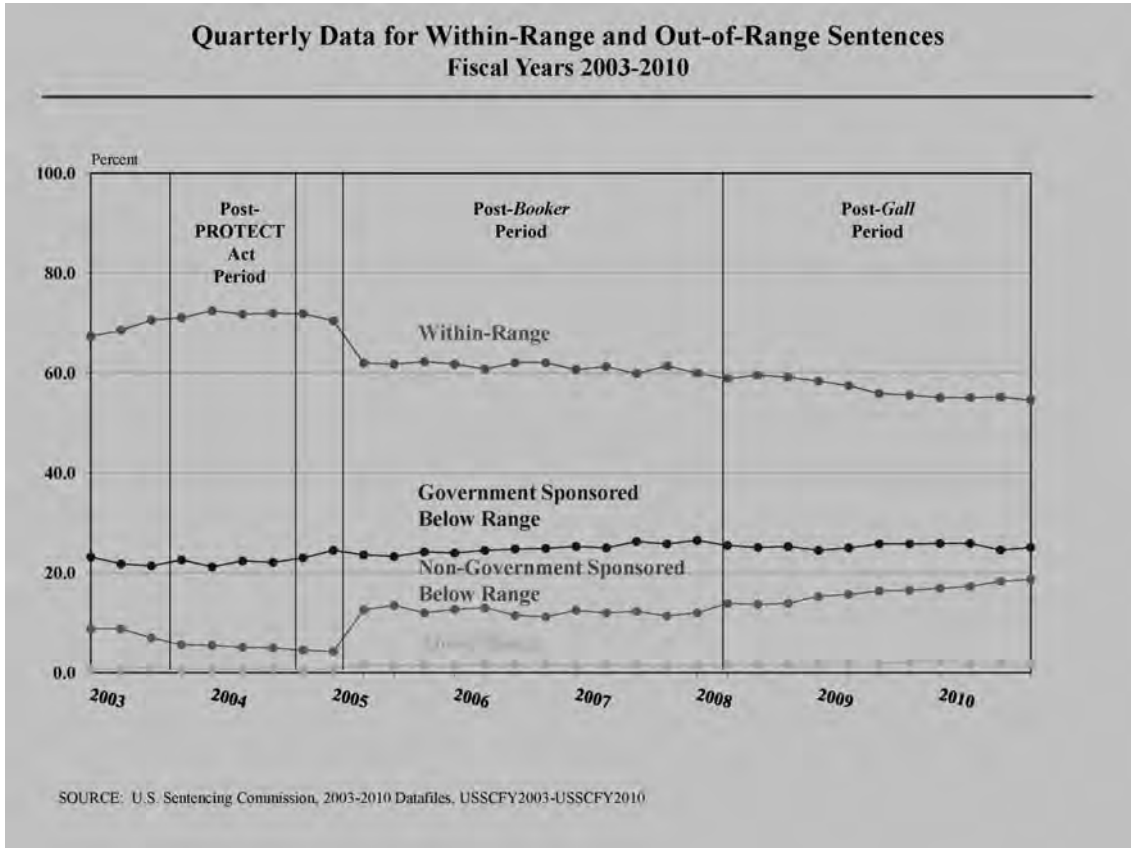


Cases with guideline minimums of life or probation were included in the guideline minimum average computations as 470 months and zero months, respectively. In turn, cases with sentences of 470 months or greater (including life) or probation were included in the sentence average computations as 470 months and zero months, respectively. In addition, the information presented in this table includes time of confinement as described in USSG §5C1.1. Guideline minimums account for applicable statutory mandatory penalties. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 1995-2010 Datafiles, USSCFY1996-USSCFY2010.

Appendix C


Quarterly Data for Within-Range and Out-of-Range Sentences
Fiscal Years 1996-2002
Percent
100.0
80.0
60.0
40.0
20.0
0.0
Post-Koon Period
Within-Range
5K1.1 Departures
Other Downward Departures
1996
1997
1998
1999
2000
2001
2002
SOURCE: U.S. Sentencing Commission, 1996-2002 Datafiles, USSCFY1996-USSCFY2002.


Quarterly Data for Within-Range and Out-of-Range Sentences
Fiscal Years 2003-2010
Percent
100.0
80.0
60.0
40.0
20.0
0.0
Post-PROTECT Act Period
Post-Booker Period
Post-Gall Period
Within-Range
Government Sponsored Below Range
Non-Government Sponsored Below Range
2003
2004
2005
2006
2007
2008
2009
2010
SOURCE: U.S. Sentencing Commission, 2003-2010 Datafiles, USSCFY2003-USSCFY2010

Appendix D

Rate of Non-Government Below Range Sentences
Fiscal Year 2010

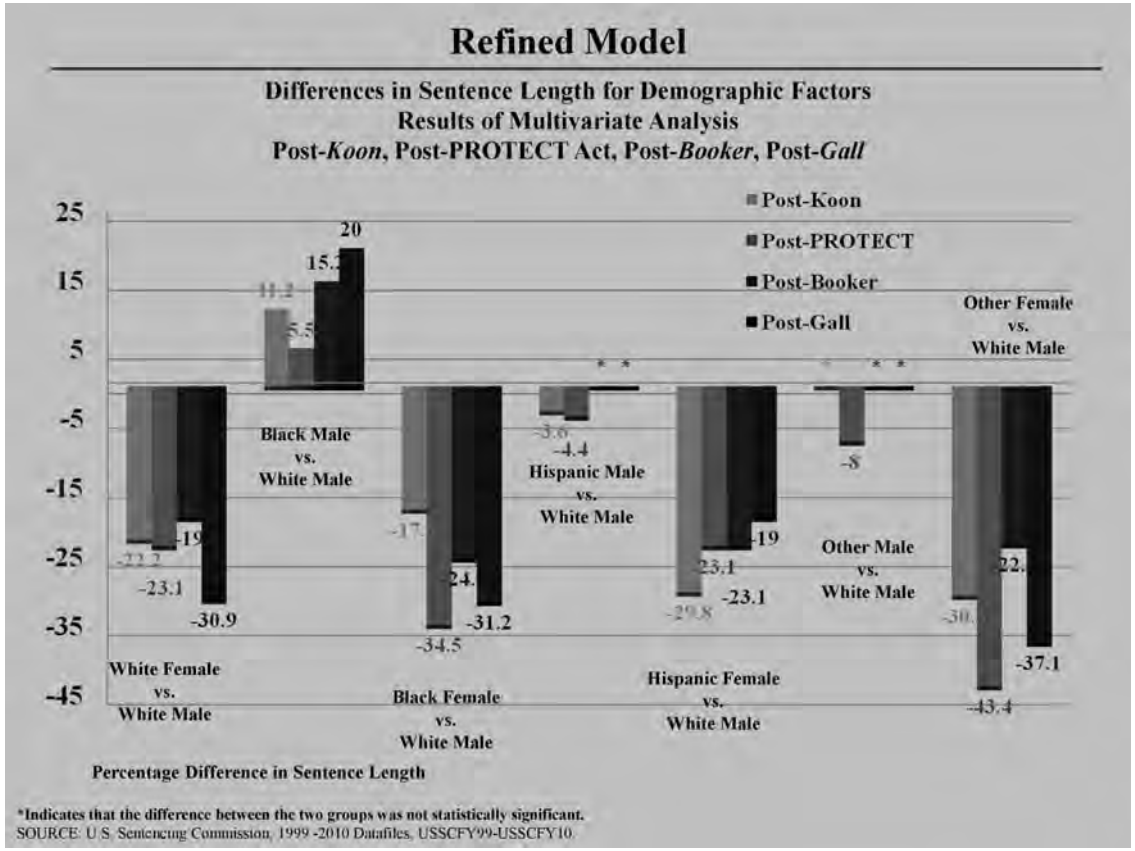
District	Rate of Non-Government Below Range Sentences
Southern District of New York	49.0
District of Delaware	44.3
District of Connecticut	43.1
District of Rhode Island	42.8
District of Minnesota	42.7
Eastern District of New York	42.0
Western District of Wisconsin	40.5
Northern District of Illinois	40.5
District of Vermont	38.4
District of Massachusetts	35.7
Eastern District of Wisconsin	35.7
Southern District of West Virginia	35.1
Northern District of Georgia	31.9
District of Hawaii	29.5
District of Alaska	29.5
Eastern District of Michigan	29.4
Western District of Pennsylvania	28.9
Middle District of Tennessee	28.2
Eastern District of Pennsylvania	27.5
Eastern District of Missouri	27.3
Middle District of Pennsylvania	27.1
Southern District of Iowa	26.3
Western District of Tennessee	26.0
District of Nebraska	25.0
Southern District of Florida	24.9
Middle District of Florida	24.7
Central District of California	24.4
Eastern District of Washington	23.6
Southern District of Ohio	23.4
Northern District of West Virginia	23.3
Northern District of Ohio	23.2
Western District of Virginia	22.9
Western District of Michigan	22.6
Central District of Illinois	22.4
District of Utah	22.1
Southern District of Indiana	21.9

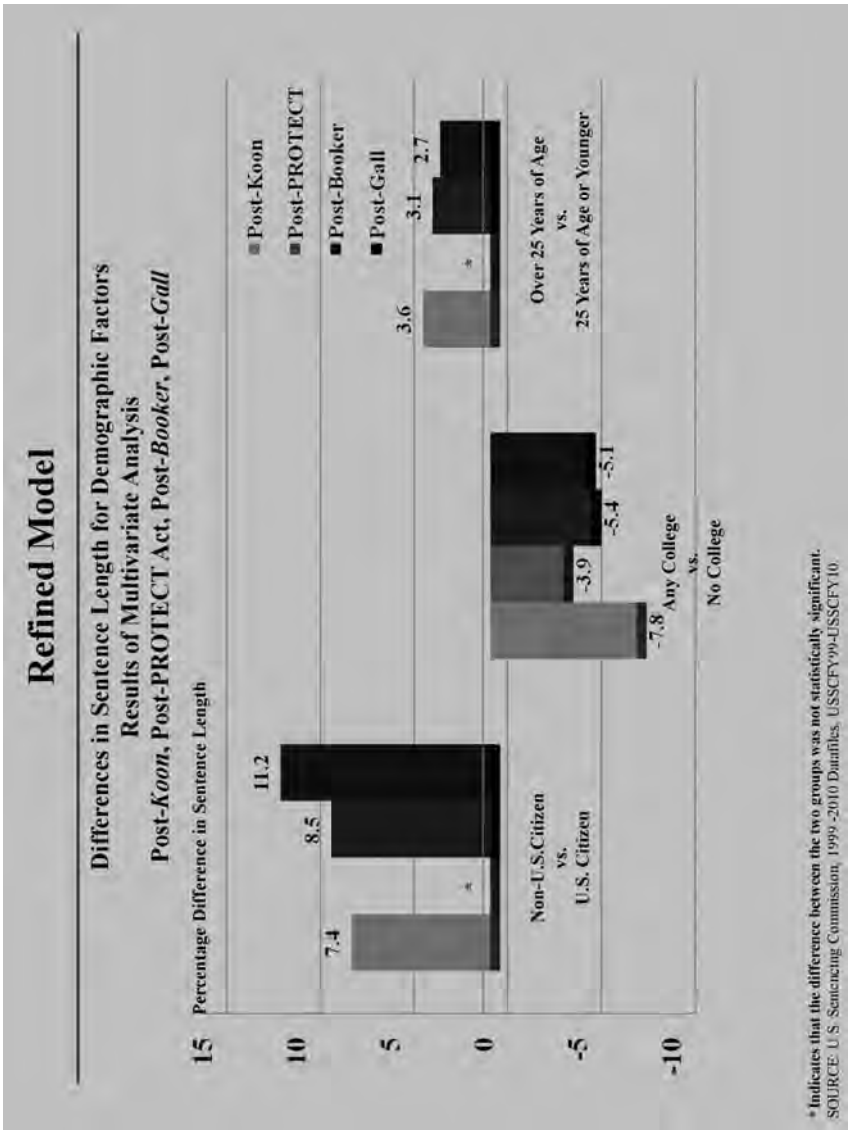
District	Rate of Non-Government Below Range Sentences
District of South Dakota	21.8
District of Columbia	21.6
District of Colorado	21.2
Western District of Missouri	20.9
District of New Jersey	20.9
District of Nevada	20.6
Eastern District of Arkansas	19.9
Middle District of Louisiana	19.8
District of Oregon	19.5
Northern District of California	19.4
District of Idaho	19.3
Southern District of Alabama	19.2
District of New Hampshire	19.0
District of South Carolina	18.8
District of Wyoming	18.7
Western District of Oklahoma	18.6
Eastern District of Virginia	18.3
Northern District of Oklahoma	18.1
District of Maryland	18.0
Southern District of Illinois	17.9
District of the Northern Mariana Islands	17.9
Northern District of Indiana	17.8
Eastern District of Louisiana	17.7
Western District of Washington	17.6
Northern District of New York	17.2
District of Maine	17.2
Eastern District of Tennessee	16.3
District of the Virgin Islands	15.1
Southern District of Texas	14.9
Western District of New York	14.8
Western District of Kentucky	14.7
Western District of Arkansas	14.3
Northern District of Alabama	13.9
Northern District of Florida	13.8
Southern District of Mississippi	13.6
Northern District of Texas	13.4
District of North Dakota	13.0
Middle District of North Carolina	12.9
Northern District of Iowa	12.8

District	Rate of Non-Government Below Range Sentences
Western District of North Carolina	12.5
Western District of Louisiana	12.5
District of Montana	12.5
Eastern District of Oklahoma	12.4
Middle District of Alabama	12.3
Eastern District of Kentucky	12.3
Eastern District of California	12.2
District of Puerto Rico	12.1
Western District of Texas	11.1
District of Kansas	10.9
District of Guam	9.1
Southern District of California	8.7
Eastern District of North Carolina	8.7
Southern District of Georgia	8.5
Northern District of Mississippi	8.3
Eastern District of Texas	8.0
District of Arizona	7.1
District of New Mexico	6.7
Middle District of Georgia	4.7

SOURCE: U.S. Sentencing Commission, 2010 Datafile, USSCFY10.

Appendix E


Refined Model
Differences in Sentence Length for Demographic Factors
Results of Multivariate Analysis
Post-Koon, Post-PROTECT Act, Post-Booker, Post-Gall
Post-Koon
Post-PROTECT
Post-Booker
Post-Gall
25
15
5
-5
-15
-25
-35
-45
White Female vs. White Male
-22.2
-23.1
-19
-30.9
Black Male vs. White Male
11.2
5.5
15.2
20
Black Female vs. White Male
-17.
-34.5
-24.
-31.2
Hispanic Male vs. White Male
-3.6
-4.4
* *
Hispanic Female vs. White Male
-29.8
-23.1
-23.1
-19
Other Male vs. White Male
-8
* *
Other Female vs. White Male
-30.
-43.4
22.
-37.1
Percentage Difference in Sentence Length
*Indicates that the difference between the two groups was not statistically significant.
SOURCE: U.S. Sentencing Commission, 1999 -2010 Datafiles, USSCFY99-USSCFY10.



Mr. SENSENBRENNER. Thank you, Judge.

Mr. Miner?

TESTIMONY OF MATTHEW S. MINER, PARTNER, WHITE & CASE, LLP

Mr. MINER. Chairman Sensenbrenner, Ranking Member Scott and Members of the Subcommittee, thank you for holding this important hearing and inviting me to testify.

By all objective measures, the Federal sentencing system is drifting from a guideline-based system to one determined increasingly by the judge a defendant draws. A review of the district-by-district data from the U.S. Sentencing Commission reveals just how far we have strayed from the goal of relative consistency among similar sentences for similar crimes.

To cite just one example from the most recent quarterly data from the Commission, a defendant is more than twice as likely to receive a below guideline sentence based solely on the judge's discretion if he is arrested in the Southern District of New York rather than the Northern District of New York.

These two districts are clearly not on opposite sides of the country or even on opposite sides of a state. You are talking about county lines here and you are talking about very different views among the Federal judges in terms of how they should sentence defendants. In terms of many crimes, you are talking about which side of a road you are arrested on and where you are lucky enough or unlucky enough to have been picked up. That is not what was intended by Congress in the Sentencing Reform Act, I don't suspect.

To sum up the current state of Federal sentencing, let me read a short quote from a congressional report.

"Every day, Federal judges mete out an unjustifiably wide range of sentences to offenders with similar histories, convicted of similar crimes committed under similar circumstances. One offender may receive a sentence of probation while another, convicted of the very same crime and possessing a similar or comparable criminal history, may be sentenced to a lengthy term of imprisonment. Even two such offenders who are sentenced to terms of imprisonment for similar offenses may receive wildly different prison release dates." End quote.

Although this description applies very well to current Federal sentencing practices under the advisory guideline system, it comes from the 1984 Conference Report on the Sentencing Reform Act and describes the dysfunctional system that existed at that time—a system that Congress, in a very bipartisan effort, sought to and did repair.

The fact that a 1984 description of the pre-guideline system could arguably be applied to current sentencing practice speaks volumes about just how far the Federal system has drifted from the goals of the SRA.

It also speaks to how another strong legislative and policy effort is needed to restore greater order and consistency to this generation of variable discretionary sentencing.

At the outset, let me state that I am in favor of the guidelines and determinant and semi-determinant sentencing as appropriate. I believe the Commission and Congress should work toward a system where the guidelines are once again presumptively applicable in all cases.

According to Supreme Court case law, one of the only ways that such presumptive effect can be achieved is through a greater reliance on when charging aggravating factors and having those factors put to a jury via a special verdict form or, in the case of a guilty plea, having facts admitted by the defendant.

Although some, naturally, question whether or how well such a system would work, including whether juries could make such complex determinations, I am not sure there is that much cause for doubt.

Taking, for example, fraud cases in determining the amount of loss, juries in civil cases do this across the country every single day in determining damage amounts and in filling out special verdict forms to calculate the loss.

In terms of aggravating factors, capital juries do this in questions dealing with whether life or death is appropriate in an individual case.

If we can trust juries to do this in such significant cases, we can surely trust juries to find aggravators in cases where we are talking about a guideline range being increased or decreased by two or three levels.

Although this is the reform I prefer, to be clear, such a reform would require more components than I just described.

I think Congress should consider and the Commission should recommend a more modest reform in the near term. Just as the SRA was not achieved within a decade of the first proposal of a guideline system, it could be a while before comprehensive reform could be studied, assessed, enacted and implemented.

Accordingly, there are some things that can and should be done now. In deciding *Booker*, the Supreme Court struck down two provisions in the Sentencing Reform Act that still stand as nullities in the statute books and the Federal judiciary must function without a statutory appellate standard or congressional guidance on how to apply the guidelines. This should be addressed immediately.

Given all that needs fixing, to use a football analogy, Congress may want to look for a first down rather than a touchdown here. If nothing else happen in this Congress other than the passing of an appellate standard with the presumption of reasonableness for within guideline sentences, as allowed by *United States v. Rita*, greater uniformity would follow.

If Congress could agree to go farther, consistent with *Gall v. United States*, and require a heightened showing for major departures from the guidelines with increased scrutiny on appeal, even greater uniformity would likely follow.

At this point, 6 years after *Booker* struck down those provisions of the Federal sentencing statutes, even these modest reforms could go a long way.

I submit the full statement that I or I request that my full statement be put in the record and I stand ready to answer the Committee's questions. Thank you.

[The prepared statement of Mr. Miner follows:]

Testimony of Matthew S. Miner, White & Case LLP
Before the Subcommittee on Crime, Terrorism, and Homeland Security
U.S. House of Representatives, Committee on the Judiciary
Hearing on "Uncertain Justice: The Status of Federal Sentencing and the U.S. Sentencing Commission Six Years after U.S. v. Booker"
October 12, 2011

Chairman Sensenbrenner, Ranking Member Scott, and Members of this Subcommittee, thank you for holding this important hearing and inviting me to testify on a matter I care deeply about. Criminal sentencing is, in my view, at the very core of our system of ordered liberty. The Framers who crafted our Constitution and Bill of Rights ensured that deprivations of liberty required due process of law – and clearly incarceration is among the greatest restraints on liberty. They also provided a guaranteed mechanism to challenge the basis for governmental detention through the writ of habeas corpus. These basic constitutional controls signal that deprivations of liberty were never meant to be arbitrary. The U.S. Sentencing Guidelines ("the Guidelines") and the Sentencing Reform Act of 1984 ("SRA"), as amended, provide – or at least provided prior to *United States v. Booker* – a check against arbitrariness, favoritism, racial bias, and other pernicious influences that could taint rulings within our federal sentencing system.

On January 1, 2004, then-Chairman of the House Judiciary Committee, Mr. Sensenbrenner, issued a statement on sentencing matters in response to a related statement by Chief Justice Rehnquist. In his statement, Mr. Sensenbrenner expressed a goal that I believe should be broadly – if not universally – supported by policymakers, judges, prosecutors, and defense counsel alike: "A criminal committing a federal crime should receive a similar punishment regardless of whether the crime was committed in Richmond, Virginia or Richmond, California."[1]

Sadly, the federal sentencing system has failed to achieve that goal. A review of the district-by-district data from the U.S. Sentencing Commission reveals just how far we've strayed from that goal. To cite just one example from the most recent quarterly

[1] Statement of F. James Sensenbrenner, Jr., on Chief Justice Rehnquist's Year-End Report on the Federal Judiciary, Jan. 1, 2004, available at http://judiciary.house.gov/legacy/news010104.htm

data from the Commission: A defendant is more than twice as likely to receive a below guideline sentence based solely on the judge's discretion if he is arrested in the Southern District of New York (41.9%) rather than the Northern District of New York (18.8%). These two Districts are clearly not on opposite sides of the country or even across state lines. All that separates these two Districts are county lines – and apparently the very different sentencing views of the federal judges who preside there.

By all objective measures, the federal sentencing system is drifting from a guideline-based system to one driven more by luck than by law. To sum up the current state of federal sentencing, let me read a short quote from a congressional report:

> [E]very day, Federal judges mete out an unjustifiably wide range of sentences to offenders with similar histories, convicted of similar crimes, committed under similar circumstances. One offender may receive a sentence of probation, while another – convicted of the very same crime and possessing a comparable criminal history – may be sentenced to a lengthy term of imprisonment. Even two such offenders who are sentenced to terms of imprisonment for similar offenses may receive wildly different prison release dates[.][2]

Although this description applies very well to current federal sentencing practices under the advisory guidelines system, it comes from the 1984 Conference Report on the SRA and describes the dysfunctional system that existed at that time – a system that Congress, in a very bipartisan effort, sought to and did repair.

The fact that a 1984 description of the pre-guideline system can be applied to current sentencing practice speaks volumes about just how much the federal system falls short of the goals of the SRA. It also speaks to how another strong legislative and policy effort is needed to restore greater order and consistency to this generation of variable discretionary sentencing.

I recognize that there is a wide range of views on the structure and form that our federal sentencing laws should take. I also realize that some who favor sentencing reform disagree that our current system is broken, but rather view it as merely in need of repair. I think disagreements about whether the system is broken or merely damaged are

[2] H. R. Rep. No. 98-1030 (1984), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3221.

not helpful. Much like an unreliable car, an unreliable sentencing system needs to be fixed – and that need for reform needs to be the focus.

After all, I do not believe the current system is capable of a serious defense. Who could defend a system that has had its statutory foundation stripped away from it for over the past half-decade? Who could defend a system without a statutory appellate standard? Who could defend a system with varying approaches to the Guidelines – and the gaps in the law created by *United States v. Booker* – depending on the federal circuit in which the case is heard? Or with wildly varying departure and variance rates depending on the individual district or judge involved? Under our federal system, a defendant's sentence should not be determined by the circuit, district, or corridor of the courthouse in which the defendant is sentenced. Finally, who could defend a system in which statistics prove that racial and educational disparities are on the rise as judges drift from guideline-based sentences to a discretionary system?

I do not believe there is or should be a question about whether reform is needed. It is needed. The question should, therefore be: What reforms should Congress consider to repair and revise the SRA? That will be the focus of my testimony.

At the outset, let me state that I am in favor of the Guidelines and determinate and semi-determinate sentencing. I believe the Commission and Congress should work toward a system wherein the Guidelines are once again presumptively applicable in all cases. In the aftermath of the line of case law following *Apprendi v. New Jersey*, wherein the U.S. Supreme Court found that a maximum term of imprisonment cannot be increased at sentencing through a judge's fact-finding – a line of cases that for better or worse culminated in *Booker* and its successors – the only way such presumptive effect can be achieved is through a greater reliance upon charging aggravating factors and having those factors put to a jury via a special verdict form or, in the case of a guilty plea, having the facts admitted by the defendant.

Although some naturally question whether or how well such a system would work, including whether juries could make such complex determinations, I am not sure there is much cause for doubt. As for a jury's capability to, for example, assess the size and

degree of fraud in a criminal case, it is worth noting that juries make such findings every day in civil fraud cases through both special verdict findings and general verdicts on damages. As for the finding of aggravating factors, juries in capital cases already do so. Accordingly, if we are willing to trust juries to find aggravators that can determine a life or death question, we can surely trust them to find aggravators that would ultimately increase a guideline range by two or three levels.

That is not to say that all aggravators and all offense characteristics would need to be built into a presumptive system with requirements for charging and submitting the factors to a jury. Some factors could very well remain advisory considerations subject to the court's discretion. Indeed, I think some factors, such as acceptance of responsibility, would need to remain advisory because it makes little sense to have such questions put to a jury. Similarly, there is no way a defendant could admit to a legal conclusion akin to acceptance of responsibility.

There is another good reason not to give presumptive effect to every current offense characteristic and aggravator in the Guidelines: simply put, there are a lot of them. For certain crimes where a range of offense characteristics and aggravators could apply, a special verdict form would resemble a lengthy flow chart. In addition to creating jury confusion and highly complicated jury instructions, such a lengthy set of interrogatories to the jury could result in partially hung juries and inconsistent verdicts.

To avoid this risk, the factors given presumptive effect and submitted to a jury should be streamlined, and Congress and the Commission should give careful study to how best to achieve a balance between streamlined presumptive factors and those to be left to advisory guidelines and judicial discretion at sentencing. If such a system were implemented, it would also make sense for the Commission to work with the Judicial Conference to craft pattern special verdict forms for key guideline sections and chapters.

If such a reform were implemented and juries were given a greater role in sentencing to protect the Sixth Amendment rights recognized by the Supreme Court in *Apprendi* and *Booker*, Congress could once again restore a heightened appellate standard akin to what was in effect when *Booker* was decided – that is *de novo* review of the

sentencing judge's findings. In fact, I think such an appellate standard would be required because the key facts at sentencing would have been either been found by a jury or admitted to by the defendant. The only questions left for the judge at sentencing would be more-or-less legal ones along with the exercise of discretion allowed by the Guidelines – for example, where within the prescribed range the sentence would fall or whether probation or an alternative to incarceration, if allowed, would be more appropriate.

Although this is the reform I prefer – and to be clear, such a reform would require more components than I just described – I think Congress should consider, and the Commission should recommend, a more modest reform in the near term. Just as the SRA was not achieved within a decade of Judge Marvin Frankel's proposal of a guideline system, it could be a while before comprehensive and meaningful sentencing reform could be studied, assessed, enacted, and implemented. Many thousands of defendants could be sentenced, imprisoned, and released in that period of time under the current flawed system.

Accordingly, there are some things that can and should be done now. When the Supreme Court decided *Booker* and struck down two provisions in the SRA, the Court made clear that the ball was in Congress's court. Those two provisions still stand as nullities on the statute books, and the federal judiciary must function without a statutory appellate standard or congressional guidance on how to apply the Guidelines. This is unacceptable and should be addressed immediately.

Given all that needs fixing, to use a football analogy, Congress may want to look for a first down, rather than a touchdown, here. If nothing else happened this Congress other than the passage of an appellate standard with a presumption of reasonableness for within Guidelines sentences, as allowed by *United States v. Rita*, greater uniformity would find its way into the federal system. If Congress could agree to go farther, consistent with *Gall v. United States*, and require a heightened showing for major departures from the Guidelines – with increased scrutiny on appeal – even greater uniformity would likely follow. At this point, six years after *Booker* struck down

portions of the federal sentencing statute, even modest reforms could go a long way toward restoring order to the system. Such modest reforms could then hold the tide to allow for more meaningful study and debate between the branches and the two houses of Congress. In fact, I would hope that, if only a modest reform could be accomplished, Congress would mandate a Sentencing Commission study of the larger, longer-term solutions that should be considered.

Indeed, I wonder why such a study has not been generated by the Commission to-date. Just three weeks ago, I wrote an op-ed[3] discussing how the Commission faces a threat to its own existence and noted that calls, like that of Professor Otis, had been made to defund the Commission. These calls are understandable. After all, it is difficult in these fiscally challenging times to justify $17 million to fund a Commission that promulgates optional guidelines that serve only as a rough measuring stick to guide a judge's discretion. Although the Commission performs other laudable tasks in terms of data collection and analysis and training, its chief mission is to promulgate the Guidelines. And the Commission's data collection and training tasks could easily be transitioned to other government agencies, such as the Administrative Office of the U.S. Courts.

It is no wonder then that, since *Booker*, the relevance and impact of the Guidelines and the Commission have naturally decreased as judges have increasingly sentenced defendants outside of the Guidelines. Accordingly, it is puzzling why the Commission has not engaged more meaningfully to propose or even study potential statutory responses to the *Booker* decision. If one looks at the priorities proposed for the Commission since 2008, the Commission has listed the study of *Booker* reforms as a priority each year. Yet nothing has been done, thus calling into question the priority status given to those reforms. It is my hope that the Commission will put forward a concrete proposal or set of proposals along with an analysis of the need and likely impact of each component of proposed reform. After all, if the Commission does not act to justify its role and existence, why should Congress engage to preserve the Commission?

[3] The op-ed entitled, "It's Time to Fix Our Sentencing Laws: Years after the Supreme Court Put the Ball in Congress' Court, Commission Can Finally Spur Action," appeared in the September 26, 2011 issue of the *National Law Journal*. A copy is attached to this written testimony.

With that said, I do not agree with those who favor elimination of the Commission and its role. I think its role, as originally conceived, remains valuable. Individual district court judges, who have full civil and criminal dockets, including appeals from bankruptcy courts, are far too busy to study sentencing law, policy, and data to the degree necessary to meaningfully evaluate many of the sentencing factors set forth in 18 U.S.C. § 3553. After all, how is an individual judge to work to "avoid unwarranted sentencing disparities among defendants with similar records" in the absence of a Commission that studies sentencing data and prescribes guidelines? In sum, the Guidelines matter, and they are needed to help inform judicial decision-making. They are also helpful to private sector decision-making, as demonstrated by the many corporations and compliance officers who spend millions of dollars to model their programs on the policy statement set forth in chapter 8 of the Guidelines.

But that is not to say that the Commission and the implementation of new guidelines could not be revised or improved. Senator Tom Coburn has proposed significant budget-based reforms to the Commission, including the reduction of the Commission from seven to three members. Given that the Securities and Exchange Commission, with a much broader portfolio and an adjudicatory role, functions with five members, it makes sense to consider reducing the Commission's size to achieve greater efficiency.

It also makes sense to create a mechanism for published written dissents to Commission rulemakings to inform congressional decision-making on whether to approve or disapprove new amendments. Whereas commissions subject to the Administrative Procedure Act frequently publish written dissents that inform public and congressional debate, the U.S. Sentencing Commission does not do so. Insofar as Congress is called upon to evaluate all Commission amendments before they become final, it makes sense to provide Congress with the opposing arguments to controversial amendments.

Finally, it is worth considering a ratification procedure akin to that proposed in the REINS Act for Commission amendments that significantly impact sentencing levels

or factors. Under such an approach, any amendment that would have a major impact on the sentencing level prescribed for an offense (e.g., by more than 15%) would require affirmative congressional approval, unless the Guidelines amendment was itself prompted by a congressional directive.

Conclusion

Something clearly needs to be done to repair the gaps left by the Supreme Court's remedial holding in *Booker* and to provide greater clarity and consistency to our federal sentencing system. The recent appellate decision and related news stories surrounding convicted terrorist Jose Padilla's sentencing illustrate the flaws and uncertainty in our federal sentencing system. The trial court sentenced Jose Padilla to 17 years in prison – little more than half of the minimum term prescribed by the Guidelines. That sentence would have stood had two of the three judges on appeal not found it to be substantively unreasonable and reversed the lower court's ruling. The third judge sharply dissented, arguing that the majority was intruding on the lower court's broad sentencing discretion post-*Booker*. Although some fault the district court for imposing an overly lenient sentence and others fault the appellate court for second-guessing the district judge's discretion, what happened in Padilla is merely a symptom of the current sentencing system that is only loosely moored to the federal sentencing Guidelines and divorced from any well-defined standard of appellate review. Given that this is how the federal government determines how and whether to incarcerate its citizens, it should be clear that we can and must create a better system. At a minimum, we need to repair the system that was rendered incomplete by the *Booker* decision.

Again, I thank the Chairman and Members of the Subcommittee and I look forward to answering any questions that Subcommittee may have.

ADDENDUM

WHITE & CASE

It's Time to Fix Our Sentencing Laws

September 2011

Years after the Supreme Court Put the Ball in Congress's Court, the Sentencing Commission Can Finally Spur Action

The US Sentencing Commission is confronting a challenge to its own existence. Critics of the Commission's budget and inaction on sentencing reform have begun to call for massive cutbacks and even full elimination of the Commission. Yet unlike other agencies that face similar crises, the Commission has the power to propose reforms to justify and strengthen its role.

For more than six years—since the US Supreme Court invalidated parts of the federal law governing sentencing policy in *Booker v. United States*—courts have increasingly disregarded the federal sentencing guidelines. At the same time, racial disparities have increased. The Supreme Court called for policymakers to respond, stating "The ball now lies in Congress's court." But over a half decade later, neither Congress nor the Commission has acted.

The time for action is now, and the Commission has the opportunity to urge changes to restore order to our system. Given the impact of the Commission's reports on crack cocaine sentencing—resulting in passage of the Fair Sentencing Act—a Commission-led *Booker*-fix proposal could be a game changer.

Why Legislation Is Needed

Following *Booker* in 2005, federal sentencing law went from a statutory mandate requiring guideline-based sentences to a guideline-optional system driven by piecemeal Supreme Court decisions. This shift occurred because *Booker* struck down key portions of the federal sentencing statute, including the appellate review standard. Congress has still not rewritten those provisions.

Since *Booker*, courts have drifted farther from guideline-based sentences, with many courts applying the guidelines less than half the time. Even more troubling, racial disparities in federal sentencing are on the rise. According to a recent Commission report on demographic disparities post-*Booker*, the difference in sentences given to black versus white defendants has "been increasing steadily since that decision." Sadly, racial and educational disparities have grown in a system that is increasingly determined by the judge a defendant draws. Making matters worse, federal appellate judges find themselves out of the sentencing business due to the lack of a meaningful appellate standard and the broad discretion retained by district courts.

One of Congress's purposes in creating the guidelines was to create uniformity and certainty in sentencing, so a defendant would not face the risk of a different sentence on the same facts within the same courthouse. The bizarre sentencing history of Richard Christman helps demonstrate how compromised Congress's goal has become. Christman, who pled guilty to child pornography possession, was sentenced to 57 months in prison in October 2005, but following a reversal on procedural grounds, was sentenced to a mere five days imprisonment—by the same judge. If a single federal judge cannot sentence the same defendant consistently in the same case, something is very wrong.

Matthew Miner
White & Case

This article was published in a slightly different form in the September 26, 2011 issue of the *National Law Journal*.

It's Time to Fix Our Sentencing Laws

What Reforms Should Be Considered

Immediately following the *Booker* decision, bold proposals were floated to return mandatory effect to the guidelines. One proposal, supported by the Department of Justice, suggested a "topless" guidelines system that would have reinstated mandatory guidelines based on the rationale of a narrowly decided Supreme Court ruling from years earlier. These proposals were tabled to allow for study of the impact of *Booker*.

The appetite for reform appears to have returned. Conservative law professor William Otis has called for a rewrite of the 1984 Sentencing Reform Act to once again make the guidelines mandatory, albeit with certain enhancements decided by a jury. And past Commission Chair William Sessions, a federal judge, has proposed a grand reform to broaden the discretion given judges under the guidelines, while also restoring certainty and consistency to the system by making the guidelines "presumptive" rather than merely "advisory."

Although such reforms may take time, the Commission should immediately recommend basic reforms like codifying an appellate standard to replace the language struck down by *Booker*. The Supreme Court made clear that the standard that existed before the 2003 Feeney amendment would withstand constitutional challenge, and that standard is a worthwhile place to start. More recent Supreme Court decisions, including *United States v. Rita*, provide further components that could be added to the old appellate review standard, including a presumption of reasonableness for properly calculated sentences within the guidelines.

Additionally, the Commission should demand reforms that require judges to provide a heightened justification for any major departure from the prescribed guideline sentence.

Hope for Meaningful Action

In the absence of congressional action, federal courts will continue to struggle to apply constitutional principles to fill gaps in the sentencing statute. In essence, courts will be left to legislate from the bench.

Although many saw the *Booker* decision as the Judicial Branch pushing back against a prescriptive legislative scheme, the Supreme Court clearly intended for Congress to reenter the arena. The Commission should urge reforms to close the long-open gaps in our federal sentencing law—and Congress needs to take up the ball left by the Supreme Court. Otherwise we'll have to be content with sentences determined more by luck than by law.

Mr. Miner is a partner in the Washington office of White & Case and the former Republican Staff Director for the Senate Judiciary Committee.

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Mr. SENSENBRENNER. Without objection.

Mr. Otis?

TESTIMONY OF WILLIAM G. OTIS, ADJUNCT PROFESSOR, GEORGETOWN LAW

Mr. OTIS. Thank you, Chairman Sensenbrenner and Ranking Member——

Mr. SENSENBRENNER. Could you turn the mike on?

Mr. OTIS. Thank you, Chairman Sensenbrenner, Ranking Member Scott and Members of the Subcommittee.

Let's say you were in court suing the fellow who rammed your car. He wants to introduce hearsay statements. You object, citing the rule against them.

But Judge Jones, who is hearing the case, says, "The Supreme Court has made the hearsay rule merely advisory and admonished that I, as a trial judge, can't even presume it is reasonable. I get to do what I think best. Objection overruled."

You respond, "But Judge Smith down the hall doesn't allow hearsay statements," to which the Court replies, "That is true, and he can do that. But you are not before Judge Smith. You are before me and I think differently."

The motto inscribed above the Supreme Court is "Equal Justice Under Law." Is that what anyone would think you had just received?

Not exactly. But that is the system we have today in Federal sentencing.

We pride ourselves on being a nation of law, not of men. The whole purpose of law is to—is to provide consistent and predictable rules to protect litigants from the idiosyncrasies of judges who, like all human beings, are subject to the temptations of ideology, temperament and taste.

But sentencing is now the opposite of law. It is a lottery. It wasn't always this way. In 1984, Congress adopted the Sentencing Reform Act. The principal aim of the act and the single purpose of the Sentencing Commission it created was to rein in irrational disparity and sentencing by establishing mandatory guidelines.

It did and they succeeded. In the early years, judges followed them more than 75 percent of the time. But when the Supreme Court decided *Booker* it declared that the guidelines were to be viewed as, quote, "advisory only."

The result has been predictable. Within guideline sentences are now given a bit more than half the time. In 3 years at the present rate of decay, the majority of sentences will be outside the guidelines' range and—and this is something the public should know—guideline departures are anything but evenhanded. Downward departures—those favoring the criminal—outnumber upward departures by more than 20 to 1.

Many such departures are sought by the government—true. But even discounting for that, departures remain almost exclusively the defendant's playground. It doesn't need to be like this.

The Supreme Court all but said in *Booker* that Congress could redesign the sentencing system to restore its mandatory character and Justice Souter recommended exactly that in his concurring opinion in *Gall*.

Congress could act this afternoon to restore mandatory guidelines and the rule of law in sentencing.

But it won't because the Sentencing Commission has given it no guidance. Instead, for more than 6 years, while sentencing has increasingly slouched back toward luck of the draw disparity, the Commission has ignored the principal purpose for which Congress created it.

But it has not been idle. It has, with all respect, compounded the problem by encouraging sentencing courts to consider dubious offender characteristics, like voluntary drug use, that, precisely to

avoid disparity, every previous commission had discouraged or forbidden. It has also used its time to urge Congress to lower crack cocaine sentences to equal those given for a less dangerous drug, powder cocaine—a proposal so radical that the most liberal Congress in decades overwhelmingly rejected it.

No one has argued or plausibly could argue that the Commission would have been created to begin with if it were going so steadfastly to ignore its central purpose—establishing mandatory guidelines—and so breezily to accept a system as random and watered down as it is now.

As the Supreme Court reminded us in Nelson, it has come to the point that trial judges no longer can presume a sentence suggested under the Commission's guidelines is even reasonable, much less correct.

It is incomprehensible that the taxpayer should continue to provide millions for the promulgation of mere sentencing suggestions—suggestions the high court itself views with skepticism. The Commission should either return to its main job—creating mandatory guidelines—or give the taxpayers a refund.

[The prepared statement of Mr. Otis follows:]

PREPARED TESTIMONY
of
William G. Otis
Adjunct Professor of Law
Georgetown University Law Center

Before the
Subcommittee on Crime, Terrorism, and Homeland Security
Committee on the Judiciary
United States House of Representatives
October 12, 2011

The Guidelines, as presently administered by the Sentencing Commission, are a lost cause. When they became "advisory only" after *Booker*, the Commission was left without the central purpose for which Congress established it. Yet each year it spends more money making what amount to suggestions that district courts are more-or-less free to ignore, and now follow only little more than half the time. It's time for the Commission to go, and for Congress to re-write the Sentencing Reform Act.

I. How the Guidelines Became Suggestions

The Sentencing Guidelines appeared on the scene a generation ago, in the mid-1980's. The name was misbegotten from the outset; they were not so much guidelines as rules. District courts were required to follow them unless, in a given case, a relevant sentencing factor existed "of a kind, or to a degree" that the Sentencing Commission had not adequately considered.[1] "Relevant factor" was also carefully defined; facts about the offender such as age, family ties and responsibilities, and physical and emotional condition were generally excluded, on the theory that in order to avoid unwarranted differences in treatment, sentencing should be pegged primarily to offense behavior rather than offender characteristics.[2] The central purpose of the Guidelines was to reduce irrational disparity in sentencing—a feature that Congress correctly found to be rampant.[3] The Sentencing Reform Act of 1984 (SRA), which in effect created the Guidelines, also provided for robust appellate enforcement.

In the early years, judges followed the Guidelines in the great majority of cases. On average during those years, roughly three quarters of sentences fell within the guideline range. Despite a slow slide, compliance was still above seventy percent as late as 1995. Still, it continued its decline until the Feeney Amendment[4] (signed into law April 30, 2003) took root; after that point, compliance, which had slipped to slightly less than two thirds, returned to more than seventy percent. That is where it stood at the end of 2004.

Along came *Booker*.[5] That case transformed the Guidelines into "advisory only" measures.[6] Sentencing courts were still to consult them, at least in theory, but were not bound by them. It would be an oversimplification, though not by much, to sum it up by saying that rules were out and discretion was back in. Not too surprisingly, Guideline compliance fell sharply. In the year before *Booker*, it stood at seventy-two percent. In the six and three-quarters years since, it has fallen to fifty-three percent, the lowest compliance rate ever.

The Sentencing Guidelines have become the Sentencing Suggestions. The evidence is, moreover, that they are not particularly welcome suggestions. The post-*Booker* pace for disregarding them has abated slightly in the last year, but, if viewed overall during the time since *Booker* was handed down, would mean that, in three years, the *majority* of sentences will be outside the advisory guideline range.

This outcome is the opposite of what Congress intended, as Justice Stevens explained in his blistering dissent to the remedial portion of *Booker*: "Congress has already considered and overwhelmingly rejected the [advisory] system [the Court] enacts today. In doing so, Congress revealed both an unmistakable preference for the certainty of a binding regime and a deep suspicion of judges' ability to reduce disparities in federal sentencing."[7] The *Booker* regimen is,

to boot, liable to a certain shell-game quality. As Justice Alito noted in his dissent in *Gall v. United States*:

> It is possible to read [*Booker*] to mean that district judges, after giving the Guidelines a polite nod, may then proceed essentially as if the Sentencing Reform Act had never been enacted. This is how two of the dissents interpreted the Court's opinion. Justice Stevens wrote that sentencing judges had "regain[ed] the unconstrained discretion Congress eliminated in 1984" when it enacted the Sentencing Reform Act. Justice Scalia stated that "logic compels the conclusion that the sentencing judge . . . has full discretion, as full as what he possessed before the Act was passed, to sentence anywhere within the statutory range."[8]

Justice Alito appears to have been prescient. The Court recently has been at pains to emphasize that *advisory* means just that. As Professor Douglas Berman of Ohio State noted in his explanation of two post-*Booker* cases from the high Court, *Spears* and *Nelson*:

> For the second week in a row, the Supreme Court has issued a . . . *per curiam* opinion to make sure, yet again, that lower courts really, truly understand that the *Booker* remedy means that the guidelines . . . are advisory. Today's opinion, in *Nelson v. US*, (S. Ct. Jan. 26, 2009) includes this key language (cites edited):
>
> > Our cases do not allow a sentencing court to presume that a sentence within the applicable Guidelines range is reasonable. In *Rita* we said as much, in fairly explicit terms: "We repeat that the presumption before us is an *appellate* court presumption. . . . [T]he sentencing court does not enjoy the benefit of a legal presumption that the Guidelines sentence should apply." 551 U.S., at 351. And in *Gall* we reiterated that district judges, in considering how the various statutory sentencing factors apply to an individual defendant, "may not presume that the Guidelines range is reasonable." *Id.*
> >
> > In this case, the Court of Appeals quoted the above language from *Rita* but affirmed the sentence anyway after finding that the District Judge did not treat the Guidelines as mandatory. That is true, but beside the point. The Guidelines are not only *not mandatory* on sentencing courts; they are also not to be *presumed* reasonable. We think it plain from the comments of the sentencing judge that he did apply a presumption of reasonableness to Nelson's Guidelines range. Under our recent precedents, that constitutes error.[9]

II. The Current Federal Sentencing System Is a Failure

The present state of federal sentencing is untenable, and not merely because it's a spliced-together, half-here-and-half-there compromise faithful neither to Congress's original goal of applying mandatory guidelines—in other words, law—to sentencing, nor to the competing goal—and ostensibly the new regime—of allowing largely unchecked discretion. It is also untenable for at least three other reasons.

First, it's just short of being a fraud. As I noted some time ago,[10] the current regimen is less honest than the pre-SRA regime of standardless sentencing. Currently in place is standardless sentencing pretending to have standards. The shrewdly opaque message to the public is that

> we still have sentencing guidelines, only that they are more "flexible" than before. Sentencing Commissioners continue to draw hefty salaries to write nominal guidelines (that can be ignored virtually at will). Probation officers continue to calculate ranges (that may count for something or may not). District judges go through the window dressing rehearsed for them in *Gall* and *Kimbrough* (assured by those decisions that if the litany is elaborate enough, it need not be given any weight). A person employing impolite language might call this a charade.[11]

Second, as Professor Jonathan Masur of the University of Chicago Law School has noted, "the Supreme Court's innovations in *Booker* and its progeny do not even alleviate the problem they were designed to address, namely the sentencing of offenders based on facts never proven to a jury beyond a reasonable doubt."[12] To the contrary, judges, whether they are following the Guidelines or ignoring them, sentence based on the same standard of proof they have always employed; *Apprendi* and *Blakely*—the doctrinal underpinnings of *Booker*—might just as well have never been decided.

Third, disparity has returned to an extent troubling even to those—generally on the defense side—who were willing to sacrifice determinate sentencing as what they viewed as the price necessary for a restoration of robust discretion (a discretion they correctly understood would be exercised almost exclusively to the defendant's benefit). Indeed, even the *New York Times* has noticed that, in some important areas, the U.S. criminal justice system has returned to the bad old days of luck-of the-draw sentencing. The *Times*, while continuing to oppose mandatory guidelines, noted in a July 28, 2010, editorial:

> Sentencing for white-collar crimes—and for child pornography offenses—"has largely lost its moorings," according to the Justice Department, which makes a strong case that the matter should be re-examined by the United States Sentencing Commission. . . . As a general principle, sentences for the same federal crimes should be consistent. As the Justice Department notes in its report, a sense of arbitrariness—sentences that depend on the luck of getting a certain judge—will

> "breed disrespect for the federal courts," damaging their reputation and the deterrent effect of punishment.[13]

Professor Masur has also taken note, explaining that the United States now has:

> a system that is likely to underperform the prior regime in several important respects. There will certainly be cases in which judges will be better able to tailor sentences to fit offenders and their crimes under the advisory Guidelines. This ability to consider penalties on a case-by-case basis is, of course, the principal advantage of charging judges with the task of sentencing. Yet the cost [exacted] is that racial and ideological disparities are likely to reappear, possibly in even more pernicious form. . . . In many cases the judges who diverge from the advisory Guidelines' ranges will do so for the wrong reasons. The most ideologically extreme judges will be the most likely to sentence outside of the advised range.[14]

III. What Can Be Done

Ideology and idiosyncrasy cannot possibly be acceptable bases for sentencing. That it is impossible to eliminate them altogether is hardly a reason to keep an incoherent system that encourages them. It's time to start over with a new push for determinate sentencing. Here are some things that can be done.

First, all the actors in the system should understand that determinate sentencing does not necessarily mean harsh sentencing. A rule-of-law *process* for sentencing does not ipso facto imply anything about the *content* or length of the sentences imposed. The guidelines system that preexisted *Booker* did in fact produce what many regarded as stiff sentences, but that was not a function of the process. It was largely a function of substantive criminal and sentencing statutes, and thus a matter for Congress. In principle, there is no barrier to a determinate system that produces lenient outcomes. (Whether such outcomes are desirable is, of course, a matter that spurs considerable debate).

Second, the public should be told the truth about what, under the present system, the seductive phrase *judicial discretion* actually means—namely, a one-way street to lower sentences. The most revealing measure of the exercise of so-called discretion is the incidence and direction of departures. As noted previously, a large minority of all sentencing is already outside the range, and the day is soon coming when it will be a majority. But by far the most notable fact about guideline departures—although understandably the one given the least publicity—is their direction. Virtually all of them favor the criminal. In a recent report, the Commission states that two percent of sentences were above the range, whereas 41.2 percent were below. The criminal is winning the departure game twenty to one.[15]

No normal person would recognize that state of affairs as simply the exercise of supposedly neutral "judicial discretion" -- a term that a priori implies evenly balanced judgment, with some departures in one direction and, presumably, a vaguely similar number in the other. Instead, it would be recognized for what it is -- a partisan result. When one side — the criminal — is

consistently wiping out the other, one might suspect that the umpire is playing favorites. It's true that the government is responsible for a significant share of these departures (in exchange for the defendant's assistance in other prosecutions), but even taking that into account, departures are, for any practical purpose, exclusively the defendant's playground. If the criminal justice system is to have one-sided "discretion" like that, at least the public should be told what's actually going on.

Third, if the Sentencing Commission is to remain in operation, it should forthwith require of itself a crime-and-cost impact statement setting forth a line-by-line estimate of the real-world consequences any new guideline or policy statement is likely to produce.

It's too obvious for argument that a government agency, *before* taking action, ought to understand, as well as disclose to the citizens, what effects its proposals are likely to have on them. For years the law has required environmental impact statements for proposed construction projects, and there is no reason the same principle should not be applied to proposed changes in sentencing. The human environment counts, too.

In particular, the Commission will have to refine and expand its present incarceration estimates. If the Commission proposes a change likely to result in higher sentences, it should study how many more years of imprisonment, in the aggregate, this change would produce and tell the public what it's going to cost. But for exactly the same reasons, if the Commission proposes a change likely to result in *lower* sentences (e.g., its recent crack/powder equalization proposal), it should produce a candid estimate of the impact of the resulting additional crime. The recidivism rate is not zero, as the Commission full well knows. It should state how many fewer years of imprisonment a downward adjustment would produce, how much additional crime the reduction would be likely to bring about, and what economic and human costs are likely to result from the crime increase.

Judges, the Justice Department, and the defense bar may have come to believe that the system exists to advance their varying agendas; certainly they are the font of the sorts of proposals that tend to get the Commission's attention. But the Commission needs to attend first to the public. The first step in doing so is for it to make a thoughtful and determined effort to assess *in real-world specifics* how the public will be affected by what it proposes to do, then publish that assessment far and wide.

Fourth, Congress should repeal the SRA and enact a new version. The heart of the statute has already been discarded for most day-to-day purposes. That happened when *Booker* ended mandatory guidelines and stripped the courts of appeals of the power of de novo sentencing review, severely degrading their ability to correct even gross outlier sentences. The appendages of the SRA still twitching in the land of the undead should be put out of their misery. Justice Souter summed it up in his concurrence in *Gall*:

> After *Booker*'s remedial holding, I continue to think that the best resolution of the tension between substantial consistency throughout the system and the right of jury trial would be a new Act of Congress: reestablishing a statutory system of mandatory sentencing guidelines (though not identical to the original in all

> points of detail), but providing for jury findings of all facts necessary to set the upper range of sentencing discretion.[16]

Fifth, pending repeal and replacement of the SRA, Congress should abolish the Sentencing Commission. By far the most important purpose for which it was created no longer exists—to write binding rules for district courts to use in sentencing. It does have some secondary functions—for example, to study possible statutory improvements, as well as gather and publish statistics about sentencing practices—but when its core function has been demoted to making increasingly ignored non-rules, it's time to turn the page.

The Commission has done an admirable job in its less important missions (indeed, it's among the most professional agencies I had the pleasure of working with in about twenty years of government service), but otherwise it has failed. The afternoon *Booker* was handed down, it should have been working to resuscitate determinate sentencing. Specifically, it should have been drafting a proposal to Congress for a remodeled SRA, restoring mandatory guidelines and providing that the government prove such objective sentencing facts as *Booker* required beyond a reasonable doubt and (if the defendant so wished) to a jury. But it has done no such thing. For six and three-quarters long years and counting, it has acquiesced, to all appearances happily, in a system that cuts the heart out of its raison d'etre. The Commission's lassitude is all the more surprising in view of the *Booker* Court's explicit invitation for action: "Ours, of course, is not the last word: The ball now lies in Congress' court. The National Legislature is equipped to devise and install, long-term, the sentencing system, compatible with the Constitution, that Congress judges best for the federal system of justice."[17]

That the Commission remains in hibernation in the face of the Court's invitation is beyond distressing. An agency that snores through the destruction of its central task—and, of course, no longer performs it—and to boot takes a pass on the opportunity to point Congress toward a new course, is not an agency the taxpayers should keep funding.

This conclusion would hold true even if the Commission had not been occupying itself with other projects, such as expensive cross-country fact finding journeys and, most prominently, its push to give crack cocaine dealers the benefit of lowering their (suggested) sentences to equal those given individuals dealing in a less dangerous drug, powder cocaine. The crack-powder equalization proposal was so radical that the most liberal Congress in decades overwhelmingly rejected it in favor of a Reagan-era proposal to reduce the crack-powder ratio from 100:1 to 18:1.[18] Even the liberal *Washington Post* understood that the Commission's equalization plan blinked reality about the greater dangers of crack:

> Some critics of the crack sentences have pushed for complete elimination of the disparities. But this ignores . . . data that crack has a slightly more powerful and immediate addictive effect and more quickly devastates the user physically than does powder cocaine. It also fails to acknowledge the higher levels of violent crime associated with crack.[19]

But the Commission has not stopped there. As explained below, in its proposed amendments last year, it took a significant step to *affirmatively undermine*, if not nearly eliminate, what little remains of determinate sentencing.

In order to shift the focus away from potentially (and often in fact) discriminatory and subjective factors that had been part of sentencing in the old regime, the original Sentencing Commission declared that such offender characteristics as age, "mental and emotional condition," and physical status (including drug and alcohol abuse) are "not ordinarily relevant" or simply "not relevant" in determining whether to grant a departure.[20]

The present Commission has reversed field on all of them, saying now that they may be relevant. (In the case of drug or alcohol abuse, it has not gone quite that far—at least not in so many words.[21] The existing policy statement declares that drug or alcohol abuse "is not a reason for a downward departure"; the proposed version is that drug or alcohol abuse "*ordinarily* is not a reason for a downward departure."[22] The change would seem minor to a layman, but those versed in actual sentencing practice will recognize it as a loophole big enough for the proverbial truck. Few and far between are defendants who have not, according to their hired-gun experts, been handicapped by their own chronic drinking and/or recreational drug use.)

The probable long-term desultory impact of the Commission's proposals is difficult to overstate. It is not a coincidence that *no* prior Commission, with either a Democratic or Republican majority, has taken this disastrous step. The factors green-lighted for departure are a virtual litany of the grievance-mongering, "I'm-a-victim" theme so often heard in the defense allocution. To affirmatively invite them in as a basis for district courts to depart is certain to hasten the end of anything now remaining that provides even a feeble nudge toward consistency. One district judge will see youth as a reason for leniency; the next will see it as the best chance for firmness to cut short a budding criminal career. One judge will see old age as the twilight of a defendant's life and a time for compassion; the next will see it as the time he was jolly well old enough to know better. One judge will see the defendant's belligerence as an emotional condition or syndrome needing therapy instead of punishment; the next will see it as old-fashioned thuggishness needing a good stint in the slammer. One judge will see drug abuse as a factor dimming the defendant's will power and thus culpability; the next will see it as a harbinger of recidivism and public danger. And so forth.

Figure 1

It was one thing, and bad enough, for the Commission to sit in silence while determinate sentencing was dealt a mighty, though reversible, blow. It is quite another for it to strive to add to the damage by giving a breathtaking boost to luck-of-the-draw outcomes.

Finally, the Commission should be abolished because even at its best, it has become a luxury in the age of parsimony. Fifteen years ago, the Commission was the 900-pound gorilla of sentencing law. It wrote binding rules, which courts followed more than seventy percent of the time, at an annual cost of roughly $8.8 million. Today, the Commission is an overfed lemur. It writes sentencing suggestions, which courts follow fifty-three percent of the time, at roughly twice the annual cost ($16.2 million) (see Figure 1). If, in private enterprise, a business created a diluted product with a shrinking consumer base and continuously rising production costs, how long would that business survive? How long *should* it survive?

Ronald Reagan once observed, "A government bureau is the nearest thing to eternal life we'll ever see on this earth."[23] He was correct, but there is no compelling reason to maintain an eternal, tax-funded life for a watered-down Sentencing Commission. The era of government belt-tightening is already upon us. The U.S. Immigration and Customs Enforcement has had to scale back enforcement and deportation drastically because the money isn't there. States are releasing prisoners early because funding has dried up. Recently, the Supreme Court ordered California to release over 30,000 prisoners because deficient funding created what the Court regarded as constitutionally unacceptable conditions of confinement. Indeed, Professor Berman's skepticism

about what he and others call "incarceration nation" has never had so much traction—not because the electorate is outraged about the number of prisoners or the length of sentences (it isn't), but because, at least for low-level and nonviolent offenders, more and more people have come to believe that prison, though often useful, costs more than it's worth. The criminal justice system cannot continue to spend as if operating in the relatively plush days of yesteryear. It's time to cut back, and the Sentencing Commission is not immune.

The Commission's data-gathering and publication functions are worthwhile, but can be absorbed by other agencies. The various participants in the sentencing business—judges, prosecutors, defense counsel, and crime victims—all have organizations that speak effectively to Congress. The Commission can be a useful voice (and also, as seen, a perverse one) but is scarcely essential in either event. Most of all, what was by far its preeminent duty—the promulgation of substantive, mandatory sentencing rules—has essentially disappeared. No one has argued, or plausibly could argue, that the Commission would have been created to begin with if its task had been as thoroughly watered down as *Booker* has made it. With apologies to Justice Scalia's *Booker* dissent,[24] the Commission has assumed all the value of a cookbook listing advisory-only ingredients, but telling the chef to remember that, in the end, he can use pretty much whatever pops into his head. As the Supreme Court reminded us in *Nelson*, we are now so far down *Booker*'s path that district judges cannot so much as presume a Guidelines sentence is *reasonable*, much less correct, and still less binding.

By its incomprehensibly nonchalant attitude toward restoring the determinate sentencing system it was created to produce, the Commission has turned itself into an expensive anachronism. In the era of desperately needed government frugality, taxpayers shouldn't have to continue to shell out millions for its sentencing suggestions.

Endnotes

1 18 U.S.C. § 3553(b)(1).

2 U.S. Sentencing Guidelines Manual ch. 5, pt. H, introductory cmt. (2009); *see also id.* §§ 5H1.1–5H1.12.

3 *See* S. Rep. 98-225 (1983) at 33.

4 Title IV of S. 151, Pub. L. No. 108-21.

5 United States v. Booker, 543 U.S. 220 (2005).

6 Kimbrough v. United States, 552 U.S. 85 (2007).

7 *Booker*, 543 U.S. at 292 (Stevens, J., dissenting from remedial portion of majority opinion).

8 Gall v. United States, 552 U.S. 38, 62 (2007) (Alito, J., dissenting) (internal citations omitted).

9 Sentencing Law and Policy, http://sentencing.typepad.com (Jan 26, 2009) (emphasis added).

10 William Otis, *Priority for a New Administration: Restore the Rule of Law in Federal Sentencing*, 20 Fed. Sent. Rep. 345 (2008).

11 *Id.*

12 Jonathan Masur, Booker *Reconsidered*, U. Chi. L. Rev. (forthcoming 2010).

13 Editorial, *Rethinking Criminal Sentences*, N.Y. Times, July 28, 2010, at A22.

14 *See supra* note 11.

15 United States Sentencing Commission, *Sourcebook of Federal Sentencing Statistics* (FY 2009), tbl. N, http://www.ussc.gov/ANNRPT/2009/TableN.pdf.

16 Gall v. United States, 552 U.S. 38, 61 (2007) (Souter J., concurring).

17 *Booker*, 542 U.S. at 265.

18 The Fair Sentencing Act, S.1789, was introduced in the Senate on October 15, 2009, and amended by the Senate Judiciary Committee on March 15, 2010, to prevent the equalization of penalties for crack cocaine and powder cocaine possession.

19 Editorial, *Crack Breakthrough: The Federal Sentencing Act Corrects a Long-Time Wrong in Cocaine Cases*, Wash. Post, August 3, 2010, at A14

20 *See* United States Sentencing Commission, *Amendments to Sentencing Guidelines* (May 3, 2010), http://www.ussc.gov/2010guid/20100503_Reader_Friendly_Proposed_Amendments.pdf.

21 *Id.*

22 *Id.*

23 Ronald Reagan, A Time for Choosing (October 27, 1964) (transcript of video *available at* http://www.reaganlibrary.com/pdf/ATimeForChoosing.pdf; last visited Aug. 11, 2010).

24 United States v. Booker, 543 U.S. 220, 307 (2005) (Scalia, J., dissenting).

Mr. SENSENBRENNER. Mr. Felman?

TESTIMONY OF JAMES E. FELMAN,
KYNES, MARKMAN & FELMAN, P.A.

Mr. FELMAN. Mr. Chairman, Ranking Member Scott, Ranking Member Conyers, distinguished Members of the Subcommittee, it

is my pleasure and honor to appear before the Subcommittee today on behalf of the American Bar Association for which I serve as the liaison to the United States Sentencing Commission and as a co-chair of its committee on sentencing.

The advisory guideline system best achieves the goals of the Sentencing Reform Act. With continued commitment by the Sentencing Commission to the promulgation and revision of guidelines based on empirical data and research, advisory guidelines can best advance the purposes of sentencing and reduce both unwarranted disparity and its equally problematic inverse—unwarranted uniformity.

There is no need for a complete overhaul of the advisory system in favor of binding guidelines driven by jury findings. I, personally, was the first to advocate such an approach after Blakely but before *Booker*.

I think I have spent as much time studying that option than anyone. I do not endorse the use of that alternative. I instead believe that the continued use of the advisory guideline system driven by research and experience is the best option.

The notion that somehow defendants are getting a break under the advisory guideline system is false. We still lead the world in incarceration and average sentence lengths have not dropped at all under the advisory guideline system.

The average sentence before *Booker* was 46 months, and although nearly 7 years later the average is 43.3 months, the reason for that drop is directly attributable to two things—the increased number of less serious immigration offenses charged and the reduction in the crack cocaine guideline.

Average sentences for all other major categories of offenses are either unchanged or higher today than they were when *Booker* was decided except for two things. In white-collar offenses, the average sentence for serious fraud offenses has skyrocketed from 89 months before *Booker* to 123 months today.

Mr. Chairman, this is not a good time to be convicted of a fraud offense. In child pornography offenses, although they consist of only 2 percent of Federal cases, the average sentence length just since *Booker* has increased from 75 months to 119 months.

Since its inception, the penalties for child pornography have increased by 1,500 percent—an increase in penalties unprecedented in human existence. Child pornographers are not in luck to be sentenced today.

But in any event, the advisory guideline regime is a continuation of the status quo in terms of average sentence length. What has changed is that we can be smarter about who goes to jail for how long because the judges now have the opportunity to meaningfully consider individual differences and individual aggregating and mitigating aspects of offenses and offenders.

As should be expected, under any system that embraces such meaningful consideration of individualized considerations, there has been a slight increase in the percentage of nongovernment-sponsored downward departures. But what is missed by this Committee and every member of this panel is that that percentage is dropping.

It was 12.7 percent before *Booker* or a year after *Booker*. It is true that it went up to 18.7 percent at the end of last year but so far this year it has dropped 2 percentage points, down to 16.9 percent.

Mr. Otis is simply incorrect when he says at its present trajectory—at its present trajectory more judges will be sentencing within the guideline range, and that range has stabilized.

The reason is that the Commission is now promulgating amendments that are responsive to empirical data and judicial feedback. As the guidelines make more sense, judges follow them more frequently.

Also, focusing only on the percentage of variances ignores the fact that the extent of them is quite modest and unchanged since *Booker*. This is why average sentence lengths have not dropped. The average variance before *Booker* was about a year. It is now somewhere between 12 months and 13 months. So focusing on percentages is really quite misleading.

Even if there were a modest increase in interjudge or interdistrict disparity, that would not outweigh the enormous benefits of an advisory system nor is there an obviously superior alternative.

The jury-driven system that Mr. Miner has described and that I have previously described would require ranges that are much wider than the present one such that all existing variances would actually be within-range sentences.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Felman follows:]

AMERICAN BAR ASSOCIATION

GOVERNMENTAL AFFAIRS OFFICE • 740 FIFTEENTH STREET, NW • WASHINGTON, DC 20005-1022 • (202) 662-1760

Testimony of

JAMES E. FELMAN

on behalf of the

AMERICAN BAR ASSOCIATION

before the

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY

of the

UNITED STATES HOUSE OF REPRESENTATIVES

for the hearing on

"The Status of Federal Sentencing and the U.S. Sentencing Commission Six Years after U.S. v. Booker"

Washington, D.C.
October 12, 2011

Mr. Chairman and Distinguished Members of the Subcommittee:

I am honored to have this opportunity to appear before you to express the views of the American Bar Association regarding the state of federal sentencing law. Since 1988, I have been engaged in the private practice of federal criminal defense law with a small firm in Tampa, Florida. Throughout my career I have taken a keen interest in federal sentencing law and in the Federal Sentencing Guidelines in particular. I am a former Co-Chair of the Practitioners' Advisory Group to the Sentencing Commission, and for 14 years I helped to organize and moderate the Annual National Seminar on the Federal Sentencing Guidelines. I am appearing today on behalf of the ABA, for which I serve as the Liaison to the Sentencing Commission and as Co-Chair of the Criminal Justice Section Committee on Sentencing.

The ABA is the world's largest voluntary professional organization, with a membership of almost 400,000 lawyers (including a broad cross-section of prosecuting attorneys and criminal defense counsel), judges, and law students worldwide. The ABA continuously works to improve the American system of justice and to advance the rule of law in the world. I appear today at the request of ABA President Wm. T. (Bill) Robinson III to present to the Subcommittee the ABA's position on the state of federal sentencing.

My testimony will cover three areas. First, I will discuss the advisory guidelines system and the reasons it best achieves the goals of the Sentencing Reform Act ("SRA"). With continued commitment by the Sentencing Commission to the promulgation and revision of guidelines based on empirical data and research, I believe advisory guidelines can best advance the purposes of sentencing and reduce both unwarranted disparity and its equally problematic inverse, unwarranted uniformity. Second, I will explain the ABA's longstanding opposition to the use of mandatory

minimum sentencing statutes, an approach I have previously described as the antithesis of rational sentencing policy. Third, I will offer some thoughts regarding an alternative overhaul of the advisory guidelines regime in favor of binding guidelines driven by jury findings. Although I previously advocated this approach, I did so before the advisory guidelines system was put in place. I do not support such an overhaul now, and instead endorse the continued use of the advisory guidelines system driven by research and experience.

I. The Status of the Advisory Guidelines System

1. The Goals of the Sentencing Reform Act

The primary goal of the SRA was the elimination of unwarranted disparity by bringing consistency and rationality to a system that had long operated without statutory guidance as to the purposes sentences should serve, the kinds of sentences available to serve those purposes, or the factors to be considered in sentencing.[1] To provide that guidance, Congress set forth the purposes of sentencing and factors to be considered in sentencing[2] and created the Commission to promulgate guidelines based on empirical data and national experience.[3] Congress expected that defendants would be treated more consistently because the guidelines would "recommend to the sentencing judge an appropriate kind and range of sentence for a given category of offense committed by a given category of offender."[4] Congress also expected that judges would sentence "outside the guidelines" when presented with a circumstance "not adequately considered in the formulation of the guidelines."[5]

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[1]S. Rep. No. 98-225, at 38-40, 49-59, 74-75 (1983).
[2]18 U.S.C. § 3553(a).
[3]*See* 28 U.S.C. § 991(b)(1)(A), (b)(1)(C), (b)(2); § 994(o); § 995(a)(13)-(16).
[4]S. Rep. No. 98-225, at 51-52.
[5]*Id.* Congress expected that 18 U.S.C. § 3553(a) would guide the judge in determining whether to depart:

The goal of reducing unwarranted disparity is frequently phrased as treating similar offenders and offenses similarly. An equally important objective was to treat dissimilar offenders and offenses differently, thereby avoiding unwarranted uniformity. The Senate Report stated: "The key word in discussing unwarranted disparities is 'unwarranted.' The Committee does not mean to suggest that sentencing policies and practices should eliminate justifiable differences between the sentences of persons convicted of similar offenses who have similar records."[6]

Some have asserted that the SRA was intended to eliminate consideration of offender characteristics at sentencing. This is plainly incorrect. The SRA set forth in one location a comprehensive list of the factors to be considered at sentencing. The first item on the list is the "history and characteristics of the defendant."[7] The SRA further directed the Commission to consider a non-exhaustive list of eleven factors in establishing "categories of offenders . . . for use in the guidelines and policy statements governing . . . the nature, extent, place of service, or other incidents of an appropriate sentence:" age, education, vocational skills, mental and emotional condition, physical condition, drug dependence, employment record, family ties and responsibilities, community ties, role in the offense, criminal history, and degree of dependence on criminal activity for a livelihood.[8] The importance of offender characteristics was further amplified by the SRA's

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The bill requires the judge, before imposing sentence, to consider the history and characteristics of the offender, the nature and circumstances of the offense, and the purposes of sentencing. He is then to determine which guidelines and policy statements apply. Either he may decide that the guideline recommendation appropriately reflects the offense and offender characteristics or he may conclude that the guidelines fail to reflect adequately a pertinent aggravating or mitigating circumstance.

Id. at 52.

[6]S. Rep. No. 98-225, at 161.

[7]18 U.S.C. § 3553(a)(1).

[8]28 U.S.C. § 994(d). The SRA further clarified that five of these factors – education, vocational skills, employment record, family ties and responsibilities, and community ties, could be used only to mitigate but not to aggravate a sentence. 28 U.S.C. § 994(e). *See also* S. Rep. No. 98-225, at 175 (1983) ("The purpose of [subsection 994(e)] is, of course, to guard against the inappropriate use of incarceration for those defendants who lack education,

direction to the Commission to provide "sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices."[9] Simply stated, Congress intended that the characteristics of the defendant would be considered by the judge at sentencing.

A subsidiary goal of the SRA was what is often phrased as "truth in sentencing" – certainty that the sentence imposed would be the sentence actually served – implemented by the elimination of parole.[10] A third goal of the SRA was to "assure the availability of a full range of sentencing options," including probation, fines, community service, and intermittent confinement. Alternative options were intended to reduce "reliance on terms of imprisonment when other types of sentences would serve the purposes of sentencing equally well without the degree of restriction on liberty that results from imprisonment."[11]

The goals of the SRA remain as legitimate and important as they have ever been. For the reasons set forth below, I believe the advisory guidelines system is the best available means of achieving these goals.

2. Average Sentence Lengths

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employment, and stabilizing ties.").

[9] 28 U.S.C. § 991(b)(1)(B).

[10] S. Rep. No. 98-225, at 39, 56.

[11] *Id.* at 39, 50, 59.

It is important to recognize at the outset that advisory guidelines have not resulted in decreased sentence lengths.[12] The average sentence before *Booker* was roughly 46 months,[13] and nearly 7 years later is nearly the same at 43.3 months.[14] The small drop is attributable to two types of cases – unlawfully entering or remaining in the United States and crack cocaine.[15] Average sentences for all other major categories of offenses are either unchanged or slightly higher today under advisory guidelines than before *Booker*,[16] with two exceptions. First, sentences imposed for "white collar offenses" are significantly higher today than before *Booker*.[17] Indeed, average sentences for the most serious fraud offenders have skyrocketed from 89 months pre-*Booker* to 123

[12]Of course the ABA has strong concerns regarding punishment severity for many federal crimes and has advocated for the increased availability and use of alternatives to incarceration, particularly in regard to non-violent offenses and first-time offenders. *See* Testimony of James E. Felman on behalf of the ABA before the United States Sentencing Commission regarding Alternatives to Incarceration, March 17, 2010, http://ftp.ussc.gov/AGENDAS/20100317/Felman_ABA_testimony.pdf. We are all familiar with the recent statistic that for the first time in our nation's history, more than one in one hundred of us are imprisoned. The United States now imprisons its citizens at a rate roughly five to eight times higher than the countries of Western Europe and twelve times higher than Japan. Roughly one quarter of all persons imprisoned in the entire world are imprisoned here in the United States. The Federal Sentencing scheme has contributed to these statistics. In the last 25 years since the advent of the mandatory minimum sentences for drug offenses and the Sentencing Guidelines, the average federal sentence has more than doubled in length. The Bureau of Prisons is 37% overcapacity, and costs taxpayers well over $6 billion a year.

[13]USSC 2001-2005Sourcebook of Federal Sentencing Statistics, Table13 (average sentence was 46.8 months in 2001, 46.9 months in 2002, 47.9 months in 2003, 50.1 months in 2004 (pre-*Blakely*), 45 months in 2004 (post-*Blakely*), 46.3 months in 2005 (pre-*Booker*)).

[14]USSC Preliminary Quarterly Data Report, 3rd Quarter Release (FY 2011) ("Quarterly Data Report") at 31, Table 19. After increasing to 51.8 months by 2007, USSC 2005-2007 Sourcebook of Federal Sentencing Statistics, Table 13 (51.1 months (2005 post-*Booker*), 51.8 months in 2006, 51.8 months in 2007)), due to increased guideline ranges for economic and drug crimes, USSC 2007 Final Quarterly Data Report, Figures C-I, average sentence length decreased to its present level.

[15]Average sentences for unlawful entry or remaining have fallen from 29 months before *Booker* to about 18 months due to the government's policy of prosecuting an increasing number of less serious offenses and offenders. Quarterly Data Report at 36, Figure G; *compare* USSC FY 2005, Use of Guidelines and Specific Offense Characteristics, at 45-46 (of 10,229 illegal re-entry cases, 20.9% received no prior conviction enhancement), http://www.ussc.gov/Data_and_Statistics/Federal_Sentencing_Statistics/Guideline_Application_Frequencies/2005/05_glinexgline.pdf, *with* USSC FY 2010, Use of Guidelines and Specific Offense Characteristics, at 47 (of 19,767 illegal re-entry cases, 29% received no prior conviction enhancement). Average sentences for crack offenses have dropped from 130 months before *Booker* to 100 months, Quarterly Data Report at 38, Figure I, reflecting a deliberate policy choice by Congress and the Commission to lower penalties in light of the undue harshness of the crack cocaine guideline.

[16]These categories include firearms offenses, Quarterly Data Report at 34, Figure E, alien smuggling, *id.* at 35, Figure F, and drug offenses other than cocaine, *id.* at 38, Figure I.

[17]*Id.* at 33, Figure D.

months today.[18] Second, while child pornography cases constitute only 2% of all federal cases, average sentence length has continued to escalate, from 75 months before *Booker* to 119.5 months in the first three quarters of 2011.[19] With these few small exceptions, the advisory guidelines regime is a continuation of the status quo from the perspective of the bottom line result in the courtroom – average sentence lengths.

3. The Justice Brought by the Advisory Guideline System

While average sentence lengths have not materially decreased as a result of the guidelines' advisory nature, what has changed is that courts have been able to be smarter about who goes to jail for how long because of their ability to more meaningfully consider the aggravating and mitigating aspects of the offense and the individual history and characteristics of the defendant. When mandatory, the guidelines were widely and justifiably criticized for their rigidity and failure to distinguish among or take into consideration important individual circumstances.[20] This led to unwarranted uniformity – treating alike those offenders and offenses that are not alike.[21]

My own experience matches the consensus viewpoint. In my practice I am continually reminded that the mix of information presented by offenses and offenders is so rich that it simply cannot all be predicted, written down, and appropriately weighed in advance with unfailing success.

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[18]USSC 2006-2010 Datafiles, USSC FY06 - USSC FY10, Figure 5 to *Sentencing Trends* distributed by USSC Vice Chair William B. Carr at ABA WCC Conference, San Diego, Cal. Mar. 3, 2011 (on file with the author).

[19]USSC, 2005 Sourcebook of Federal Sentencing Statistics, Table 13; Quarterly Data Report at 31, Table 19. Indeed, the penalty increases for these offenses are even greater than suggested by these figures because the Commission's pre-Booker data lumped child exploitation offenses in together with simple possession, receipt, and distribution offenses. See USSC, 2009 & 2010 Sourcebook of Federal Sentencing Statistics, Appendix A.

[20]*See, e.g.*, ABA Justice Kennedy Commission, Reports with Recommendations to the ABA House of Delegates (August 2004), http://www.abanet.org/crimjust/kennedy/JusticeKennedyCommissionReportsFinal.pdf); The Constitution Project, *Principles for the Design and Reform of Sentencing Systems*, http://www.constitutionproject.org/pdf/sentencing_principles2.pdf; Kate Stith & Jose Cabranes, FEAR OF JUDGING: SENTENCING GUIDELINES IN THE FEDERAL COURTS (Chicago 1998).

[21]*See* Stephen J. Schulhofer, *Assessing the Federal Sentencing Process: The Problem Is Uniformity, Not Disparity*, 29 AM. CRIM. L. REV. 833, 870 (1992).

This reality has long been acknowledged by the Commission,[22] and was anticipated by Congress in enacting the SRA. The Senate Report stated:

> [E]ach offender stands before the court as an individual, different in some ways from other offenders. The offense, too, may have been committed under highly individual circumstances. Even the fullest consideration and the most subtle appreciation of the pertinent factors . . . and the appropriate purposes of the sentence to be imposed in the case – cannot invariably result in a predictable sentence being imposed. Some variation is not only inevitable but desirable.[23]

Even the wisest guidelines, if mandatory, will yield instances of undue uniformity.

Making guidelines advisory, coupled with appellate review for reasonableness,[24] cured the undue rigidity of the mandatory guidelines.[25] At the same time, the advisory guidelines bear no resemblance to the "unbridled discretion" of the pre-guidelines era. Advisory guidelines strike the right balance between the two. Moreover, the Supreme Court has made the guidelines more prominent than the statute compels by requiring judges to treat them as "the starting point and the

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[22]"[I]t is difficult to prescribe a single set of guidelines that encompasses the vast range of human conduct potentially relevant to a sentencing decision." *See* U.S.S.G. § 1A1.1, editorial note, Part A(4)(b).

[23]S. Rep. No. 98-225, at 150.

[24]Although some have suggested more vigorous appellate review of below-range sentences, it is difficult to see how this could constitutionally be accomplished. The previous review standard was excised in *Booker* and replaced with reasonableness review of all sentences, whether inside or outside the guideline range. *United States v. Booker*, 543 U.S. 220, 259-62 (2005); *Gall v. United States*, 552 U.S. 38, 41, 51 (2007). Moreover, the government has a high success rate when it appeals. *See* USSC 2010 Sourcebook of Federal Sentencing Statistics, Table 58 (government raised 30 issues on appeal relating to § 3553(a) factors, and prevailed 60% of the time). Vigorous appellate review of below-range sentences was most recently illustrated by the Eleventh Circuit's reversal of the sentence imposed on Jose Padilla. *United States v. Jayousi*, ___ F.3d ___, 2011 WL 4346322 (11th Cir. Sept. 19, 2011).

[25]Thus, for example, a court may now consider the circumstances that the defendant was an unemployed drug addict estranged from his family at the time of the offense but by the date of sentencing had attended college, achieved high grades, was a top employee at his job slated for promotion, re-established a relationship with his father, got married, and supported his wife's daughter. *Pepper v. United States*, 131 S.Ct. 1229, 1242-43 (2011).

initial benchmark."[26] Although district judges may not presume the guidelines to be appropriate, most begin with the assumption that they will impose a guidelines sentence unless there is good reason not to do so.[27]

As should be expected under a system embracing meaningful consideration of the purposes of sentencing and individualized circumstances, the percentage of below-range sentences for reasons not directly sponsored by the government has modestly increased from 12.7 one year after *Booker,* when the guidelines were being enforced more strictly than was permissible, to 16.9 during the third quarter of 2011.[28] The third quarter statistic for 2011 demonstrates a significant decrease since the last quarter of 2010, when the rate was 18.7%.[29] The rate of below-range sentences sponsored by the government is substantially higher, now at 27.7%,[30] and has remained fairly constant. The "conformance rate" – defined by the Commission as within-range sentences and government sponsored below-range sentences – was 81.3% during the third quarter of 2011.[31] Another 1.7% were upward departures.[32]

Moreover, in evaluating the effectiveness of advisory guidelines, it is critical to avoid undue focus on the percentage of cases sentenced outside the guideline range because this obscures the need to look equally carefully at the extent of such variances. Sentences 10% and 100% below the guidelines range look the same when viewed only from the perspective of whether they are variances. As foreshadowed by the bottom line statistic of static overall sentence lengths, the extent

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[26] *Gall*, 552 U.S. at 49.

[27] The reason for this is twofold. The first is habit – federal judges have been sentencing under the guidelines for more than two decades. They are comfortable and familiar with them. The second is practical. The guidelines have a specific number attached, whereas the other Section 3553(a) factors do not.

[28] Quarterly Data Report at 12, Table 4.

[29] *Id.* This decrease is likely due to the reduction in the crack guidelines and other smaller changes as the Commission reviews and revises the guidelines.

[30] *Id.*

[31] *Id.*

of variances during the pre- and post-*Booker* periods is virtually identical. The median downward departure not sponsored by the government before *Booker* was 12 months.[33] As shown in the Appendix, the median decrease is less than 13 months, and has remained stable since *Booker*. Thus, the data suggest that the advisory guidelines permit greater individualization of sentences while still producing rough similarity of results across all offense type categories.

While some claim that inter-district and inter-judge disparity has increased under the advisory system, there is no compelling evidence of the nature or extent of this.[34] Indeed, there is strong evidence that "[i]f anything, there is slightly less variation between districts in sentencing lengths compared to the pre-PROTECT Act period."[35] Moreover, the SRA did not seek to compel nationwide uniformity, but instead recognized the relevance of regional differences in "the community view of the gravity of the offense," "the public concern generated by the offense," and "the current incidence of the offense in the community."[36] There have always been regional and inter-judge differences in sentencing practice, and many variations are reflections of differing case loads and prosecutorial practices rather than judicial philosophies.[37] In any event, even a modest increase in regional or inter-judge disparity would not outweigh the enormous benefits of the

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[32] *Id.*

[33] USSC 2003-2004 Sourcebook of Federal Sentencing Statistics, Table 31A (12 months in 2003 and 2004). It is not possible to make accurate comparisons before 2003 because until then the Commission reported government-sponsored "fast track" departures in the same category as non-government-sponsored departures.

[34] Unfortunately, some making this claim have exaggerated it by including government sponsored sentences based on substantial assistance and "fast track" programs in the percentage of below-range sentences cited. This is plainly misleading.

[35] Jeffrey T. Ulmer, Michael T. Light, & John Kramer, *The "Liberation" of Federal Judges' Discretion in the Wake of the Booker/Fanfan Decision: Is There Increased Disparity and Divergence Between Courts?*, Justice Quarterly (forthcoming 2011), at 18, http://www.tandfonline.com/doi/abs/10.1080/07418825.2011.553726. Inter-district variation in sentence length fell from 6.6% before the PROTECT Act, to 5.8% after the PROTECT Act, to 5.2% after *Booker*, to 6.3% after *Gall*. *Id.*

[36] 28 U.S.C. § 994(c)(4), (5), (7).

[37] *See* Samuel A. Alito, *Reviewing the Sentencing Commission's 1991 Annual Report*, 5 FED. SENT'G REP. 166 (1992).

advisory guidelines system. Moreover, for the reasons discussed below in Part III, such disparities cannot be reduced by any superior alternative to advisory guidelines driven by empirical feedback.

Some have suggested, citing a preliminary study by the Commission,[38] that racial disparities have increased under the advisory guidelines, As the Commission has acknowledged, however, no such conclusion is possible because its analysis did not account for many legally relevant factors that legitimately affect sentencing decisions.[39] Other research using the Commission's datasets but an improved methodology has reached the opposite conclusion.[40] Moreover, unproven allegations of racial bias under advisory guidelines divert attention from proven sources of unwarranted racial disparity that cannot be corrected in a mandatory system. All defendants, regardless of race, are treated more fairly when their individual characteristics are taken into account as permitted under an advisory system.

4. The Promise of the Advisory Guidelines System

Although the big picture data show an advisory system that has improved on the mandatory regime, there is more work to be done to improve the advisory guidelines. This work falls into two rough categories – first, gathering and publishing additional data, and second, acting on the data received. The guidelines must be revised over time in light of empirical research and sentencing data, as Congress originally intended and as the Supreme Court has re-emphasized. The decreasing

[38]USSC, *Demographic Differences in Federal Sentencing Practices: An Update of the Booker Report's Multivariate Regression Analysis*, 22-23 (2010).

[39]The Commission's report itself states that it "should be interpreted with caution," because it does not control for "many legal and other legitimate considerations that are not and cannot be measured" because they are "unavailable in the Commission's datasets." *Id.* at 4. These include factors such as violence in a defendant's past, violence in the instant offense not reflected in the offense level, crimes not reflected in the criminal history score, and employment record. *Id.* at 4, 9-10 & nn.37-39.

[40]Jeffery T. Ulmer, Michael T. Light, & John Kramer, *The "Liberation" of Federal Judges' Discretion in the Wake of the Booker/Fanfan Decision: Is There Increased Disparity and Divergence Between Courts?*, Justice Quarterly (forthcoming 2011), at22, http://www.tandfoline.com/doi/abs/10.1080/074'8825.2011.55326; T. Ulmer, Michael T. Light, & John Kramer, *Racial Disparity In the Wake of the Booker/FanFan Decision: An Alternative*

percentages of non-government-sponsored below-range sentences noted above give reason to believe this process is well underway, but it is far from complete.

1. Collecting and Publishing More Data

While the Commission has done a tremendous job compiling a vast array of important post-*Booker* data, there is still a great deal we do not know. For example, we do not yet have any data by offense type on why district courts are sentencing within or below guideline ranges. I have yet to encounter a federal district judge who does not approach his or her job in general and sentencing in particular with anything other than the utmost solemnity. Frivolous people do not get appointed to the federal bench in this country. Any serious study of sentencing practices under advisory guidelines remains incomplete in the absence of data that shed light on *why* these conscientious men and women are sentencing as they are. We need to know the bases for variances by offense category and their relative rates of frequency. And we also need these data cross-referenced by extent of the variance.

The newly invigorated array of sentencing considerations in Section 3553(a) presents a valuable learning opportunity that should not be squandered. While the initial guidelines were always intended to evolve based on further knowledge,[41] they suffered from structural aspects that made this difficult to accomplish. I recently heard a Vice Chair of the Commission explain it this way – under the mandatory guidelines the Commission knew that judges were sometimes

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Analysis to the USSC's 2010 Report, 10 Criminology & Pub. Pol'y ____(forthcoming November 2011), at 31-32.

[41] *See* S. Rep. No. 98-225, at 178 (Commission should not "second-guess individual judicial sentencing actions either at the trial or appellate level," but should learn "whether the guidelines are being effectively implemented and revise them if for some reason they fail to achieve their purposes."); *Kimbrough v. United States*, 552 U.S. 85, 107 (2007)("ongoing revision of the Guidelines in response to sentencing practices will help to 'avoid excessive sentencing disparities.'"); *Rita v. United States*, 551 U.S. 338, 350 (2007)("The statutes and the Guidelines themselves foresee continuous evolution helped by the sentencing courts and courts of appeals in that process." The Commission will "collect and examine" sentencing data and reasons and "can revise the Guidelines accordingly.").

dissatisfied with the result dictated by the guidelines, but there was no effective way for judges either to express their disagreements or to demonstrate how they would have resolved them via a specific sentencing outcome. Now, under advisory guidelines, we can learn not only what judges think about the considerations captured by the guidelines, but also why in some cases their evaluation of the purposes of sentencing leads to a non-guidelines sentence. The Commission has a unique and historic opportunity to gather and study data on real sentencing considerations by real judges in real cases, and to thereafter measure the effectiveness of these sentences.[42] I strongly suspect that nearly every variance is granted for reasons that more effectively serve the purposes of sentencing. If so, this underscores both the effectiveness of advisory guidelines in achieving fairness and the need to address these considerations in the guidelines.

2. The Benefits of Acting on More Data

This leads to my second point regarding the opportunities for refinement of the advisory guidelines based on judicial feedback and other empirical efforts. There is room for disagreement regarding precise outcomes in specific cases. But no one can disagree with the proposition that sentencing should be driven by the most thoughtful consideration of all relevant factors in each case that can be accomplished. Having a laboratory in each courtroom affords us a new wealth of thought to be harnessed and put to use. The dynamic between the judiciary and the Commission is thus best viewed as a dialectic – a process of improvement through a synthesis of views based on actual practice. Where judges are consistently differing with a guideline for the same or similar reasons, this almost certainly suggests a need to improve the guideline. When this process of refinement

[42] *See* James Felman, *The State of the Sentencing Union: A call for Fundamental Reexamination*, 20 FED. SENT'G. REP. 337 (2008). Most judges announce their reasons for sentencing on the court record rather than in published opinions, and the "statement of reasons" forms completed as part of the sentencing judgment are inadequate to capture these reasons in detail. It is thus critical for the Commission to fill the role of this data

improves the rationality of the guidelines, it should also lead to greater conformity with them.[43] In the simplest terms, if the guidelines make more sense, there will be more within-guideline sentences.[44]

The Commission has begun to act on this important source of information. In 2010, the Commission took a first modest step toward smarter use of alternatives to incarceration.[45] The Commission adjusted the 16- and 12-level enhancements in the illegal re-entry guideline to differentiate prior convictions too stale to count in the criminal history score, in response to court decisions finding that inclusion of stale convictions creates unwarranted uniformity.[46] The Commission made a small change to the criminal history rules in response to variances, departures, and empirical research regarding recidivism.[47] Prompted by a high rate of variances and numerous carefully written decisions, the Commission is studying the child pornography guideline with a view to possible recommendations to Congress.[48] Recognizing a growing number of below-range sentences in cases sentenced under § 2B1.1 that involve relatively large economic loss amounts, the Commission is considering a comprehensive review of that and related guidelines.

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collection and dissemination.

[43]*See* Douglas A. Berman, *A Common Law for this Age of Federal Sentencing: The Opportunity and Need for Judicial Lawmaking*, 11 STAN. L. POL'Y REV. 93, 104 (1999); Kate Stith & José Cabranes, FEAR OF JUDGING: SENTENCING GUIDELINES IN THE FEDERAL COURTS 172 (1998); Nancy Gertner, *Thoughts on Reasonableness*, 19 FED. SENT'G. REP. 165, 166 (2007).

[44]*See Rita*, 551 U.S. at 382-83 (Scalia, J., concurring) (as the Commission "perform[s] its function of revising the Guidelines to reflect the desirable sentencing practices of the district courts, . . . , district courts will have less reason to depart from the Commission's recommendations, leading to more sentencing uniformity.").

[45]The Commission expanded Zones B and C by one level each, and invited a departure from Zone C to Zone B to "to accomplish a specific treatment purpose," if the defendant is a substance abuser or suffers from a significant mental illness, and if the defendant's "criminality is related to the treatment problem to be addressed." U.S.S.G. App. C, amend.738 (Nov.1, 2010).

[46]*See* 76 Fed. Reg. 24960-01, 24969 (May 3, 2011).

[47]*See* USSG App. C, amend. 742 (Nov. 1, 2010) (Reason for Amendment) (eliminating recency points in response to variances and recidivism research).

[48]USSC *The History of the Child Pornography Guidelines*, at 1 n.4, 8 (October 2009); USSC *Notice of Proposed Priorities*, 76 Fed. Reg. 45,007 (July 22, 2011).

This process of guideline refinement through judicial feedback and empirical study also has implications for congressional policy. Congress wisely created the Commission as a neutral expert body, to act on the basis of research, not fleeting "political passions."[49] With infrequent exceptions, the Congress should defer to the Commission's institutionally superior position to conduct empirically driven research that maximizes the rationality of the guidelines as a whole. We are pleased that the number of specific directives to the Commission has declined under advisory guidelines and believe that Congress should use general directives that appropriately defer to the Commission's expertise and structural advantages.

In sum, the advisory system is generating consistent average sentence lengths and sentences within a fairly tight cluster around the guidelines range. With greater and more targeted data collection, further use of judicial feedback and continuing empirical research, the advisory system can generate unprecedented compliance with the purposes of sentencing.

II. The Congress Should Repeal Mandatory Minimum Sentencing Statutes

In light of the overall success of the advisory system and its promise for the future, the ABA does not see a need for sentencing reform legislation focused on the advisory guidelines at present.

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[49] *See* Brief of *Amici Curiae* Senators Edward M. Kennedy, Orrin G. Hatch, and Dianne Feinstein in Support of Affirmance at 20-21, *Claiborne v. United States*, No. 06-5618 (Jan. 22, 2007) ("Congress created the Commission to encourage reality-based sentencing policies: i.e., policies based on objective data - not, for example, political debates 'centering around the harsher versus more lenient punishment.' . . . Indeed, Congress intended that the work of the Commission . . . would enable the sentencing system to evolve over time, so that its rules and policies would reflect, 'to the extent practicable, advancement in human knowledge of human behavior as it relates to the criminal justice process.'"); Kenneth R. Feinberg, *Federal Criminal Sentencing Reform: Congress and the United States Sentencing Commission*, 28 WAKE FOREST L. REV. 291, 297 (1993) (Special Counsel to the Senate Judiciary Committee from 1975 through 1980, stating that Congress delegated promulgation of guidelines to Commission because it had "neither the necessary time nor expertise," and would be "unable or unwilling to avoid the temptation to increase criminal sentences substantially" when faced with "politically volatile issues."); Richard P. Conaboy, *The United States Sentencing Commission: A New Component in the Federal Criminal Justice System*, 61 FED. PROBATION 58, 62 (1997) ("The creation of the Sentencing Commission and its placement within the judicial branch of government was intended to insulate sentencing policy . . . from the political passions of the day. As an independent, expert agency, the Commission's role is to develop sentencing policy on the basis of research and reason.").

We believe, however, there is a need for the more fundamental federal sentencing reform to repeal mandatory minimum sentencing laws.

Sentencing by mandatory minimums is the antithesis of rational sentencing policy. Advisory guidelines driven by judicial analysis and scrutiny permit rational and dispassionate sentencing based on a wide array of relevant considerations, including the nature and circumstances of the offense, the history and characteristics of the defendant, the defendant's role in the offense, whether the defendant has accepted responsibility for his or her criminal conduct, and the likelihood that a given sentence will further the various purposes of sentencing, such as just desserts, deterrence, protection of the public, and rehabilitation. But where advisory guidelines exalt reason and rationality, sentencing by mandatory minimums is the logical equivalent of a temper tantrum. Mandatory minimums reflect a deliberate election to jettison the entire array of undisputedly relevant considerations in favor of a single solitary fact – usually a quantity of something that may bear no relationship to the defendant's particular degree of culpability. Mandatory minimum sentencing declares that we do not care even a little about a defendant's personal circumstances. These statutes announce as a policy that we are utterly uninterested in the full nature or circumstances of the defendant's crime. Mandatory minimums blind the courts to the defendant's role in the offense and his or her acceptance of responsibility. Sentencing by mandatory minimum is uniformly indifferent to whether the result furthers all or even any of the purposes of punishment.

The critical flaws of mandatory minimums are not newly discovered and were well documented by the Commission's 1991 Report, which found that:

- The "lack of uniform application [of mandatory minimums] creates unwarranted disparity in sentencing;"

- "honesty and truth in sentencing ... is compromised [because] the charging and plea negotiation processes are neither open to public view nor generally reviewable by the courts;"
- the "disparate application of mandatory minimum sentences ... appears to be related to the race of the defendant;"
- "offenders seemingly not similar nonetheless receive similar sentences," thus creating "unwarranted sentencing uniformity;" and
- "[s]ince the power to determine the charge of conviction rests exclusively with the prosecution for the 85 percent of the cases that do not proceed to trial [now 96%], mandatory minimums transfer sentencing power from the court to the prosecution."[50]

It is of no importance whether some of the goals sought to be achieved by mandatory minimums are themselves unobjectionable or whether the statutes were well intentioned when enacted. History now reveals that the assumptions underlying these statutes have not been borne out, and experimentation with "one size fits all" sentencing has demonstrated that there are better, smarter, more balanced, and ultimately more sensible approaches to sentencing policy.[51] The ABA has opposed mandatory minimums for more than 40 years.[52] As a matter of policy, mandatory minimums raise a myriad of troubling concerns. They frequently lead to arbitrary sentences because

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[50]United States Sentencing Commission, Special Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System at ii-iv (1991)("USSC Special Report").

[51]The lesson is one that has been learned in the past, as illustrated by the repeal in 1970 of the mandatory minimum drug penalties passed in 1956. Pub. L. No. 91-513, 84 Stat. 1236 (1970); Pub. L. No. 84-728, 70 Stat. 651 (1956).

[52]The ABA's most recent *Standards for Criminal Justice: Sentencing* (3d ed. 1994) state clearly that "[a] legislature should not prescribe a minimum term of total confinement for any offense." Standard 18-3.21(b). The current standards are consistent with the 1968 ABA *Standards Relating to Sentencing Alternatives and Procedures* § 2.1(c), as well as a further resolution of the ABA House of Delegates in 1974. Proceedings of the 1974 Mid-Year Meeting of the ABA House of Delegates, Report No. 1 of the Section of Criminal Justice, at 443-44. Additional policy on the point was generated in response to an address by Justice Kennedy at the 2003 ABA annual meeting. The ABA established a Commission to investigate the state of sentencing and corrections in the United States and to make recommendations on how to address the problems Justice Kennedy identified. One year later the ABA adopted a series of recommendations submitted by the Commission, including a resolution that urged all jurisdictions, including the federal government, to "[r]epeal mandatory minimum sentence statutes." Recommendation 121A, Annual 2004, http://www.abanet.org/crimjust/kennedy/JusticeKennedyCommissionReportsFinal.pdf, at 9.

the considerations in sentencing shift from the traditional wide focus on both the crime itself and offender characteristics to an exclusive focus on a single fact – typically a quantity of something. As a result, persons with legitimate mitigating factors based on degree of culpability, role in the offense, personal circumstances, and background frequently receive the same punishment as kingpins and hardened criminals.[53] The only similarity these offenders share is the single fact that triggers the mandatory minimum sentence. Treating unlike offenders identically is as much a blow to rational sentencing policy as is treating similar offenders differently. Indeed, given the perversity that more culpable offenders are more frequently better situated to assist in the investigation and prosecution of others, mandatory minimum statutes often result in symmetrically inverse justice. The masterminds bargain out from under the mandatory minimum, leaving only the lower level defendants in the net cast by the mandatory minimum statutes.[54] In addition, women offenders – typically minor players in drug dealing and disproportionately the caretaker parents of minor children – frequently bear the brunt of mandatory minimums.

Mandatory minimum statutes also produce the very sentencing disparities that determinate sentencing was intended to eliminate. Because mandatory minimums are driven by charging decisions made by prosecutors, judges no longer have the ability to individualize sentences or impose a sentence no greater than necessary to reflect the gravity of the actual offense conduct. This is particularly the case with statutes such as 18 U.S.C. § 924(c) and 21 U.S.C. § 851, which

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[53] *See* Statement of the Honorable Paul G. Cassell (on behalf of the Judicial Conference) before the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, June 26, 2007, http://judiciary.house.gov/hearings/June2007/Cassell070626.pdf ("Mandatory minimum sentences produce sentences that can only be described as bizarre.").

[54] *See United States v. Brigham*, 977 F.2d 317, 318 (7th Cir. 1992)(Easterbrook, J.)("Mandatory minimum penalties, combined with a power to grant exceptions, create a prospect of inverted sentencing. The more serious a defendant's crimes, the lower the sentence – because the greater his wrongs, the more information and assistance he has to offer to a prosecutor.").

effectively apply only at the discretion of the prosecutor. Such statutes are not only poorly suited to accomplish the purposes of sentencing,[55] they actually frustrate those purposes by lending themselves as plea bargaining "chips" to be deployed by prosecutors in obtaining guilty pleas on more favorable terms.[56] These statutes are both uncertain and inconsistent in their application[57] and can easily be manipulated through prosecutorial choices that are neither visible nor subject to review. Mandatory minimums also cause sentencing "cliffs" – dramatic differences in results for those whose conduct just barely brings them within the terms of the statute. And sentencing that is driven by a single factor such as quantity is also highly susceptible to error, given the potential unreliability of informants in "historical prosecutions" and the potential for manipulation in investigations of ongoing offenses.[58] Mandatory minimums also appear to disproportionately impact Blacks and Hispanics.[59]

Prosecutors sometimes claim that mandatory minimums are necessary to induce defendants to cooperate in the investigation and prosecution of others. There is no empirical basis for this claim, however, given that defendants cooperate in roughly equal or greater numbers in many types of cases, including economic crimes, where there are no mandatory minimum sentences.[60]

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[55]*See* Statement of Paul G. Cassell, *supra* note 53.

[56]*See* Stephen J. Shulhofer, *Rethinking Mandatory Minimums*, 28 WAKE FOREST L. REV. 199, 202-03 (1993); Ilene H. Nagel & Stephen J. Shulhofer, *A Tale of Three Cities: An Empirical Study of Charging and Bargaining Practices Under the Federal Sentencing Guidelines*, 66 S CAL. L. REV. 501 (1992).

[57]*See* USSC Special Report, *supra* note 49; United States Sentencing Commission, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System Is Achieving the Goals of Sentencing Reform* at 89-90 (Nov. 2004)("USSC Fifteen Year Review"); *see also* General Accounting Office, GAO-04-105, *Federal Drug Offenses: Departures from Federal Sentencing Guidelines and Mandatory Minimum Sentences, Fiscal Years 1999-2001*, at 14-16, 79 (Oct. 2003).

[58]*See* Jeffrey L. Fisher, *When Discretion Leads to Distortion: Recognizing Pre-Arrest Sentence-Manipulation Claims under the Federal Sentencing Guidelines*, 94 MICH. L. REV. 2385 (1996).

[59]*See* USSC Special Report, *supra* note 49; USSC Fifteen Year Review, *supra* note 57, at 91, 135.

[60]Quarterly Data Report at 13-16, Table 5.

Moreover, the ABA rejects the premise that inducement of cooperation is a legitimate aim of sentencing policy.

In addition to the organized bar's objections to mandatory minimum sentencing regimes, mandatory minimum sentencing is opposed by an unusually wide ideological array of thoughtful individuals, including the late Chief Justice William Rehnquist,[61] Justice Anthony M. Kennedy,[62] Justice Stephen Breyer,[63] Judge William W. Wilkins, Jr.,[64] Senator Orrin Hatch,[65] Grover Norquist of Americans for Tax Reform,[66] American Civil Rights Institute President Ward Connerly,[67]

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[61]William H. Rehnquist, *Luncheon Address* (June 18, 1993), published in United States Sentencing Commission, *Proceedings of the Inaugural Symposium on Crime and Punishment in the United States* 286 (1993).

[62]Justice Kennedy has been clear in the point, stating: "I can neither accept the necessity nor the wisdom of federal mandatory minimum sentences. ... In many cases, mandatory minimum sentences are unwise or unjust." Speech of Justice Anthony Kennedy, Address to the ABA (Aug. 9, 2003), http://www.supremecourtus.gov/publicinfo/speeches/sp_08-09-03.html.

[63]Justice Breyer specifically noted the fundamental inconsistency of mandatory minimums with sentencing guidelines:

[S]tatutory mandatory sentences prevent the Commission from carrying out its basic, congressionally mandated task: the development, in part through research, of a rational, coherent set of punishments.... Every system, after all, needs some kind of escape valve for unusual cases.... For this reason, the Guideline system is a stronger, more effective sentencing system in practice. ... In sum, Congress, in simultaneously requiring Guideline sentencing and mandatory minimum sentencing, is riding two different horses. And those horses, in terms of coherence, fairness, and effectiveness, are traveling in opposite directions. [In my view, Congress should] abolish mandatory minimums altogether.

Speech of Justice Stephen Breyer, *Federal Sentencing Guidelines Revisited* (Nov. 18, 1998), *reprinted at* 11 FED. SENT'G. REP. 180, 184-85 (1999); *see also Harris v. United States*, 536 U.S. 545, 570-71 (2002)(Breyer, J., concurring in part and concurring in the judgment). In defense of horses, I also wish to suggest a refinement of Justice Breyer's analogy. Horses are, without doubt, potentially dangerous and unpredictable. But a horse will typically go where told and respond to changes in course. I suggest the better analogy is that with mandatory minimum statutes Congress is riding a rhinoceros.

[64]See Paul J. Hofer, *The Possibilities for Limited Legislative Reform of Mandatory Minimum Penalties*, 6 FED. SENT'G. REP. 2, at 63 (September 1993). This proposal was endorsed by the Judicial Conference. JCUS-SEP 93, p. 46.

[65]Orrin G. Hatch, *The Role of Congress in Sentencing: The United States Sentencing Commission, Mandatory Minimum Sentences, and the Search for a Certain and Effective Sentencing System*, 28 WAKE FOREST L. REV. 185 (1993).

[66]Statement of Grover G. Norquist, President, Americans for Tax Reform, Before the Subcommittee on Crime, Terrorism, and Homeland Security of the Committee on the Judiciary, House of Representatives, 111th Cong. 34 (July 14, 2009), http://judiciary.house.gov/hearings/pdf/Norquist090714.pdf.

[67]*State's Sentencing Laws Flood Jails and Prisons*, Sacramento Bee, Mar 7, 2010

National Rifle Association President David Keene,[68] and Justice Fellowship President Pat Nolan.[69] The Judicial Conference of the United States has consistently opposed mandatory minimum sentences for almost 60 years,[70] and the American Law Institute has opposed them for 50 years.[71] Many other organizations have noted the defects of mandatory minimums, including the Federal Judicial Center,[72] the Constitution Project's Sentencing Initiative,[73] the U.S. Conference of Mayors,[74] the RAND Corporation,[75] a panel of the National Academy of Sciences,[76] Families Against Mandatory Minimums,[77] and the Federal Public and Community Defenders.[78] Mandatory minimums have also been condemned by numerous judges[79] and academics,[80] religious

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[68]Written Testimony of David Keene submitted to the Subcommittee on Crime, Terrorism and Homeland Security of the U.S. House of Representatives Committee on the Judiciary (July 14, 2009), http://judiciary.house.gov/hearings/printers/111th/111-48_51013.PDF.

[69]Pat Nolan, President, Justice Fellowship, *Mandatory Minimums, Unjust and Unbiblical*, http://www.justicefellowship.org/key-issues/issues-in-criminal-justice-reform/issue-2/823 (last visited Sept. 16, 2011).

[70]*See* Statement of Paul G. Cassell, *supra* note 52 (reviewing Judicial Conference opposition to mandatory minimums in 1953, 1962, 1965, 1967, 1971, 1976, 1981, 1990, 1991, 1993, 1994, 1995, and 2006).

[71]*See American Law Institute, Model Penal Code: Sentencing, Tentative Draft No. 2*, § 6.06, comment d (March 25, 2011).

[72]Barbara S. Vincent & Paul J. Hofer, *The Consequences of Mandatory Prison Terms*, Federal Judicial Center (1994)("evidence has accumulated indicating that the federal mandatory minimum sentencing statutes have not been effective for achieving the goals of the criminal justice system").

[73]The Constitution Project Sentencing Initiative, *Principles for the Design and Reform of Sentencing Systems* (June 7, 2005). The Constitution Project group included, in addition to me, former Attorney General Edwin Meese III (co-chair), Professor Philip B. Heymann (co-chair), Zachary Carter, then-Judge Paul Cassell, then-Judge Nancy Gertner, Isabel Gomez, Thomas Hillier II, Miriam Krinsky, Norman Maleng, Judge Jon Newman, Professor Thomas Perez, Barbara Toombs, and Professor Ron Wright. Our Reporters were Professor Frank Bowman and Dean David Yellen. Justice Alito was originally a member of the group (before he withdrew after being nominated to serve on the Supreme Court) and expressed agreement with the Principles cited above.

[74]U.S. Conference of Mayors, *Resolution Opposing Mandatory Minimum Sentences* 47-48 (June 2006).

[75]RAND Corporation Drug Policy Research Center, *Mandatory Minimum Drug Sentencing: Throwing Away the Key or the Taxpayers' Money* (1997)(concluding that mandatory minimum sentences are less effective than discretionary sentencing and drug treatment in reducing cocaine consumption or drug-related crime).

[76]See Albert J. Reiss, Jr., & Jeffrey A. Roth, eds., *Understanding and Preventing Violence* 6 (1993)(finding that even tripling the length of punishment would result in only negligible reductions in crime).

[77]Families Against Mandatory Minimums, FAMMGRAM, *The Case Against Mandatory Minimums* (Winter 2005), http://famm.org/Repository/Primer_Final.pdf.

[78]Statement of Michael Nachmanoff before the USSC (May 27, 2010).

[79]*See, e.g.*, *United States v. Powell*, 404 F.3d 678 (2d Cir. 2005); *United States v. Hiveley*, 61 F.3d 1358, 1363 (8th Cir. 1995)(Bright, J., concurring); *United States v. Abbott*, 30 F.3d 71 (7th Cir. 1994); *United States v. Madkour*, 930 F.2d 234, 236, 239-40 (2d Cir. 1991); *United States v. Angelos*, 345 F. Supp. 2d 1227 (D. Utah 2004), aff'd, 433 F.3d 738 (10th Cir. 2006); *United States v. Redondo-Lemos*, 754 F. Supp. 1401 (D Ariz. 1990); John S.

organizations, including the National Council of Churches, and many individual denominations,[81] as well as the recently formed "Right on Crime" group that includes former House Speaker Newt Gingrich, former Attorney General Ed Meese, Family Research Council President Tony Perkins, former drug czar Bill Bennett, and others.[82] Public support for mandatory minimum sentencing has waned significantly in recent years,[83] as illustrated in a recent New York Times article.[84]

III. Potential Systemic Revisions

As a final matter, there is no need to consider fundamentally overhauling the advisory system to make it more binding. In anticipation of *Booker*, a number of suggestions emerged regarding alternative sentencing regimes that would pass constitutional muster by triggering enhanced punishments based only on facts found by the jury. In my personal capacity, I have suggested a

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Martin, Jr., Editorial, *Let Judges Do Their Jobs*, N.Y. TIMES, June 24, 2003, at A31 (resigning from the bench because "[w]hile I might have stayed on despite the inadequate pay, I no longer want to be a part of our unjust criminal justice system"); Statement of Senior Judge Vincent L. Broderick (on Behalf of the Judicial Conference Committee on Criminal Law) before the House Judiciary Subcommittee on Crime and Criminal Justice, July 28, 1993 ("I firmly believe that any reasonable person who exposes himself or herself to this [mandatory minimum] system of sentencing, whether judge or politician, would come to the conclusion that such sentencing must be abandoned in favor of a system based on principles of fairness and proportionality.").

[80]*See, e.g.*, Rachel E. Barkow, *Recharging the Jury: The Criminal Jury's Constitutional Role in an Era of Mandatory Sentences*, 152 U. PENN. L. REV. 33 (2003); David Bjerk, *Making the Crime Fit the Penalty: The Role of Prosecutorial Discretion Under Mandatory Minimum Sentencing*, 48 J. L. & ECON. 591 (2005); Marc L. Miller, *Domination and Dissatisfaction: Prosecutors as Sentencers*, 56 STAN. L. REV. 1211 (2004); Paul G. Cassell, *Too Severe?: A Defense of the Federal Sentencing Guidelines (and a Critique of Federal Mandatory Minimums)*, 56 STAN. L. REV. 1017 (2004); William W. Schwarzer, *Sentencing Guidelines and Mandatory Minimums: Mixing Apples and Oranges*, 66 S. CAL. L. REV. 405 (1992); Henry Scott Wallace, *Mandatory Minimums and the Betrayal of Sentencing Reform*, 30 FED. B. NEWS & J. 158 (1993).

[81]Inter-Faith Drug Policy Initiative, *Fact Sheet on Mandatory Minimum Sentences*, http://www.idpi.us/downloads/pdf/factsheet/mm_factsheet.pdf.

[82]Right on Crime, *The Conservative case for reform: fighting crime, prioritizing victims, and protecting taxpayers*, http://www.rightoncrime.com/priority-issues/prisons/ (last visited September 6, 2011).

[83]*See* Julian Roberts, *Public Opinion and Mandatory Sentencing*, CRIM. JUST. & BEHAVIOR, 30 (4), 483 (2003)(only one third of those polled favored mandatory minimums); Eagleton Institute of Politics Center for Public Interest Polling, *New Jersey's Opinions on Alternatves to Mandatory Minimum Sentencing* (2004)(more than three quarters of those polled would support allowing judges to set aside mandatory sentences "if another sentence would be more appropriate"); StrategyOne/FAMM poll (2008)(finding, among other things, that 8 in 10 of those polled believe courts not Congress should determine sentences), http://www.famm.org/Repository/Files/FAMM%20poll%20no%20embargo.pdf.

[84]Richard Oppel Jr., *Sentencing Shift Gives New Leverage to Prosecutors*, N.Y. Times, Sept. 26, 2011, at A1.

simplified guideline system based on a limited set of core culpability factors to be determined by the jury.[85] Others have since discussed such an alternative at greater length.[86] I now believe such an overhaul is unwarranted.

First, it does not appear that a simplified system driven by jury findings would result in more uniform sentencing outcomes when compared with the present advisory system. This is because the ranges under a jury-driven system would almost certainly have to be significantly wider than the ranges under the present guidelines. Given that the median variance under the advisory system is roughly 12 months, virtually all sentences that are considered variances today would be well within the guideline range under a jury-driven system. To overhaul the system in this manner could actually increase variations among sentences because the ranges would be so much wider.[87] Starting over with an entirely new regime driven by jury fact-finding would be a significant and complex undertaking. There is no compelling reason to put the federal criminal justice system through such upheaval to accomplish sentencing results that vary more widely than under the existing advisory system.

Second, while scrapping the advisory system and substituting a new jury-driven system would be a great deal of work for little or no policy benefit, there are real potential disadvantages of such a new system. Asking juries to decide matters that were traditionally thought of as sentencing considerations could change trial dynamics in ways that are difficult to foresee and that would

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[85] James Felman, *How Should Congress Respond if the Supreme Court Strikes Down the Federal Sentencing Guidelines?*, 17 FED. SENT'G. REP. 97 (2004).

[86] *See, e.g.*, William K. Sessions III, *At the Crossroads of the Three Branches: The U.S. Sentencing Commission's Attempts to Achieve Sentencing Reform in the Midst of Inter-Branch Power Struggles*, 26 J.L. & Pol. 305 (2011) ("At the Crossroads"); Frank O. Bowman, *Beyond Band-Aids: A Proposal for Reconfiguring Federal Sentencing After Booker*, 2005 U. CHI. LEGAL F. 149 (2005).

[87] Judge Sessions' proposal, for example, would provide for 36 ranges varying in width from 16 months to 286 months, with two-thirds of the ranges being 80 months wide or wider. *See* At the Crossroads, *supra* note 86, at 341.

require highly complex jury instructions and bifurcation of proceedings in some cases. Moreover, like the initial guidelines, any system of binding guidelines will risk a return to the prior systemic flaws of undue rigidity and unwarranted uniformity.

Third, such a system would introduce intractable sources of unwarranted disparity. Individual prosecutors would determine the sentencing range in many cases by deciding what facts to charge and what facts to bargain away. Those decisions would not be made or explained in open court or subject to judicial review. A jury-driven system would also prevent policy evolution based on empirical data and judicial feedback. The sentencing range in each case would be set by the prosecutor's charges and the jury's factfinding or the defendant's admissions in a plea. Judges would have no role in determining the range and little ability to sentence outside the range based on individualized considerations or the purposes of sentencing.

Fourth, if the only argument for replacing the advisory system with a new jury-driven system is concern about the percentage of cases sentenced outside the guidelines range, and I have heard no other argument advanced, the argument lacks force because the rate of below-range sentences is already dropping. The promise of the continued evolution of a sentencing system that can respond to empirical research and judicial feedback stands before us. We may be on the verge of true and lasting sentencing reform. We should not quit before we have seen what can be accomplished.

In closing, we appreciate the Subcommittee's consideration of the ABA's perspective on these important issues and are happy to provide any additional information that the Subcommittee might find helpful. Thank you for the opportunity to address you this morning.

APPENDIX
NUMBER AND EXTENT OF DECREASE -- FY2005-2011Q3

		2005 After 1/12/05	2006	2007	2008	2009	2010	2011Q3
GOVERNMENT SPONSORED								
	Total number	11,662	17,239	17,896	19,063	18,671	19,174	15,251
5K1.1	Number & percent of all below-range	7,206 61.8%	10,134 58.8%	10,049 56.1%	10,048 52.7%	9,296 49.8%	8,974 46.8%	6,708 44%
	Median Decrease in months	34	30	29	30	30	30	30
5K3.1	Number & percent of all below-range	3,092 26.5%	5,166 30%	5,233 29.2%	5,894 30.9%	6,701 35.9%	7,205 37.6%	6,088 39.9%
	Median Decrease in months	8	8	7	7	7	7	8
Other Govt	Number & percent of all below-range	1,364 11.7%	1,939 11.2%	2,614 14.6%	3,121 16.4%	2,674 14.3%	2,995 15.6%	2,455 16.1%
	Median Decrease in months	11	12	10	10	12	15	15.3
NON-GOVERNMENT SPONSORED								
	Total number	6,199	8,507	8,433	9,972	11,925	13,809	10,013
3553(a)	Number & percent of all below-range	2,979 48.1%	4,243 49.9%	4,957 58.8%	6,678 67%	8,892 74.6%	10,590 76.7%	7,658 76.5%
	Median Decrease in months	13	12	12	12	13	13	13
Down Dep	Number & percent of all below-range	1,117 18%	1,903 22.4%	1,757 20.8%	1,544 15.5%	1,456 12.2%	1,598 11.6%	1,386 13.8%
	Median Decrease in months	11.9	10	10	10	10	10	11
Down Dep w/3553(a)	Number & percent of all below-range	464 7.5%	1,432 16.8%	1,013 12%	915 9.2%	807 6.8%	814 5.9%	638 6.4%
	Median Decrease in months	13	15	15	15	18	18	19.5
All Remaining (counted as non-government sponsored)	Number & percent of all below-range	1,639 26.4%	929 10.9%	706 8.4%	835 8.3%	770 6.4%	807 5.8%	331 3.3%
	Median Decrease in months	10	8	6	6	6	6	6

Source: USSC, 2005-2010 *Sourcebook of Federal Sentencing Statistics* tbls. 30-31D; USSC, 2011 Preliminary Quarterly Data Report, Third Quarter Release, tbls. 7-13

Mr. SENSENBRENNER. Thank you very much.

The Chair yields himself 5 minutes for purposes of questions and a comment or two.

The whole business of the sentencing guidelines and mandatory minimum of sentences has been extremely frustrating to Members of the Committee on both sides of the aisle.

During my tenure as Chairman, I was very critical of judges that did not follow the law in explaining downward departures on the record and had difficulty with one judge in Minnesota who sealed the record when he announced a downward departure.

Now, we got that opened up. It required a threat of an impeachment proceeding in order to do that. I think that there is a lack of appreciation on the Federal judiciary and a lot of the Bar that Congress' oversight responsibility extends to the judicial branch of government as well as to the executive branch of government.

We don't hear a lot about that but anytime oversight has been extended to the judicial branch of government, those who try to do it get accused of threatening judicial independence, and I reject that emphatically.

It is our job to look at how these laws operate and make changes as we see necessary.

Now, Judge Saris, the downward departure rate in the District of Massachusetts is 35.7 percent. In the Middle District of Georgia, it is 4.7 percent.

Now, why should somebody who is convicted of a similar crime in Massachusetts be about nine times more likely to receive a downward departure than one who is convicted in Georgia?

Judge SARIS. Thank you, and it is an important question that goes to the heart of this hearing.

Out of the Sentencing Reform Act—Oh. Is it on—yeah. It provides and it is a key provision in there, which is the purpose of the Sentencing Reform Act is to eliminate unwarranted disparities but to create sufficient flexibility to take into account aggravating and mitigating circumstances not otherwise taken into account in the guidelines.

Post-*Booker*, the Supreme Court said not once but seven times that judges not—should start with the guidelines as your initial baseline and starting point and then what you do is you must look at the statutory factors in 3553(a).

And so what I am saying is when you look at the caseloads in different districts they may be different.

Mr. SENSENBRENNER. Has the Commission made any analysis of the statements that the law requires the sentencing judge to make when there is either an upward or downward departure and had some kind of a statistical comparison of the reasons the sentencing judge gave that explanation?

Judge SARIS. There is a form—a Statement of Reasons—that a judge must fill in stating what the guideline range is and whether they departed under a traditional departure——

Mr. SENSENBRENNER. Yeah.

Judge SARIS [continuing]. And whether they varied. And so that what they are supposed to do and one of the things we——

Mr. SENSENBRENNER. But the question is has there been any comparison made by the Sentencing Commission on why there is such a great disparity between downward departures in your district, for example, as compared to the Middle District of Georgia.

Judge SARIS. Well, as I have mentioned, it is very caseload specific and also there are differences between regions that have always existed. So some of it is perhaps what you are worried about. But some of it is, for example, if you have more crack cases or, for example, if you have different prosecutorial practices.

Some of it varies by district and we have not—we have done a very detailed statistical analysis of the comparison and, as you know, we came in here today with certain legislative proposals——

Mr. SENSENBRENNER. We will look at them.

Judge SARIS [continuing]. To make sure that the guidelines are effective——

Mr. SENSENBRENNER. Okay.

Judge SARIS [continuing]. And we are responding to this concern.

Mr. SENSENBRENNER. A couple of questions on how the Commission operates. One is the—with the unmandatory guidelines the money expended by the Commission has increased 20 percent since the *Booker* decision and the Commission has two full-time commissioners at full Federal salaries, whereas the other commissioners do not receive a full Federal salary. Can you explain those two issues?

Judge SARIS. Well, part of this is historic. When the Commission was first set up, everyone was full time because people were writing the guidelines. Now, we have three full-time commissioners who get salaries. One of those spots isn't filled.

Typically, sometimes in the past those were filled by judges so that the judge was just getting the increment in the salary. But right now, we have two full-time commissioners and they do what the rest of us do—they work hard, they go—they train and are involved in the—in the writing of the guidelines.

If what—if what you are asking is do—is that still justified in today's world, I think the Commission would feel—we actually have three full-time spots, not two—I think the Commission would feel at this point——

Mr. SENSENBRENNER. Okay.

Judge SARIS [continuing]. We do not need the three full-time.

Mr. SENSENBRENNER. Could you please send us the salary qualifications and duty description of each employee you have hired since you became chair?

Judge SARIS. Yes.

[The information referred to follows:]

Date of Hire:	**01/03/2011**
Name:	**Robert Dumville**
Title:	**Research Associate**
Grade/Step:	**07/01**
Salary Range:	**$42,209 – $97,333**
Salary:	**$42,209**
Comments:	**Filled vacancy created on 08/27/2010**

Research Associate
GS-07

INTRODUCTION

This position is located in the Office of Research and Data (ORD). The incumbent assists the research staff in the preparation and analysis of qualitative and quantitative data for monitoring the application of the federal sentencing guidelines and for other related Commission or criminal justice research. The incumbent reports to senior research staff and the director of ORD.

REPRESENTATIVE DUTIES

- Contributes to Commission presentations and reports by analyzing qualitative and quantitative data under supervision of senior research staff.
- Assists with bibliographic work.
- Participates in data collection, projects, or special requests under supervision of senior research staff.
- Reviews criminal justice case files and accurately codes cases for data entry in special coding projects under supervision of senior research staff.
- Participates as a member of Commission policy teams under supervision of senior research staff. Attends policy team meetings and accurately codes cases for data entry.
- Learns to review criminal justice case files and check the accuracy of 70-80 departure cases each day: (1) assesses (according to the latest coding protocols) the departure (or variance) status, (2) determines if the sentence is above or below the range and noting the reasons why sentence is outside the range, (3) verifies final guideline offense level, criminal history category and range, noting the differences between the Pre-sentence Report and the statement of reasons, (4) verifies the statutory range, and the type of statement of reasons.
- Learns to review 50-60 cases each day that need edits, thoroughly resolves edits and accurately identifies edit cases that cannot be resolved.
- Learns about the federal sentencing guideline application, the criminal justice system, and federal criminal statutes.
- Learns to write and execute simple SAS program code and works with large data files.
- Assists in the design and development of spreadsheets using Excel or QuattroPro, inserting basic formulas.
- Assists in the preparation of datafile documentation, statistical tables, and graphic displays and presentations.

- Assists research staff in evaluating research problems and applying or adapting available research methods to solve research problems.

- Performs support or administrative tasks as assigned and directed.

FACTOR 1, JOB REQUIREMENTS:
Basic knowledge of Commission policies, the federal sentencing guidelines, and the federal criminal justice system. Demonstrated experience in a research environment, or other research related field. Experience or knowledge of the methods used to analyze empirical data. Demonstrated experience with quantitative or qualitative methodological research techniques and social science statistical procedures. Experience using SAS, SPSS, or other statistical programming software to analyze quantitative data. Ability to handle multiple assignments, focus on details and produce precise work products in a timely manner to ensure deadlines are met. Knowledge and experience using a wide array of computer software packages, such as Oracle, WordPerfect, Word, Excel, PowerPoint, Excel, QuattroPro, and DBMS Copy to assist in evaluating or implementing research techniques and presenting research findings. Excellent verbal communication skills and the ability to communicate effectively in writing. Ability to successfully interact with employees at all levels and work effectively as a member of a team. Excellent interpersonal skills are critical to the success of the research team. The ability to ask questions, communicate problems and respond positively to constructive criticism are essential qualities of a research associate.

FACTOR 2, SCOPE AND EFFECT OF WORK:
The purpose of the work is to provide assistance to policy makers, *e.g.*, the Commission and the Congress, with empirical data describing criminal offenses in the federal system and the appropriate sentences for those offenses. This work assists the Commission in developing and refining the federal sentencing policies and guidelines.

FACTOR 3, COMPLEXITY:
The incumbent must be able to perform quantitative and qualitative analysis of federal sentencing data and related data, and assist in the review of existing data to determine applicability to the development and refinement of the federal sentencing guidelines. Development of data collection instruments that satisfies the needs of special research projects adds to the complexity. While established social science research methods and techniques are generally applicable, the research assistant, in consultation with senior research staff, may occasionally have to adapt established methods and techniques to execute assignments which adds to the complexity. The incumbent must respond to assignments in a timely manner and display accurate results.

FACTOR 4, WORK PARAMETERS:
The incumbent works under the general supervision of a research associate or senior research associate who provides supervision, assigns work, defines general parameters, and establishes timetables for the completion of assigned work. While instructions for executing assignments are provided, the incumbent must exercise own initiative and judgement in selecting appropriate methods of analysis. Occasionally, the incumbent will receive direction from the director of ORD and the staff director. Projects are reviewed by senior research staff.

FACTOR 5, PERSONAL INTERACTIONS:
Contacts are with staff in the Office of Research and Data and Commission employees, as well as organizations or individuals under contract to perform research or policy projects for the U.S. Sentencing Commission. Other external contacts are with persons from other government agencies and organizations with an interest in guideline development and application. Contacts are for the purpose of gathering and interpreting data, and answering requests as directed by senior research staff.

FACTOR 6, ENVIRONMENTAL DEMANDS:
The work is performed in an office setting. Some lifting of heavy boxes that contain case files is required.

Robert Dumville

Objective

To work in and with the criminal justice system and build on my current research experience.

Experience

2010-Current | United States Sentencing Commission | Washington, DC

Research Intern (Coding)

- Code PV/Revocations.
- Fraud Project (Coding offence information from PSRs).

2007-2010 | Human Emotions Research Lab | Fairfax, VA

Undergraduate Research Assistant

- Assist graduate students and professors with research.
- Transcription, data entry, data cleaning, and data analysis, as well as participant tracking.
- Conducting independent research in conjunction with the Psychology Honors program.

2008-2009 (Winter/Spring) | Ben & Jerry's Scoopalicious | Fairfax, VA

Shift Manager

- Interact with and serve customers.
- Oversee scoopers and other employees.

2006-2009 (Summers) | Ben & Jerry's Beachfront | Virginia Beach, VA

Shift Manager/Assistant Manager

- Interact with and serve customers.
- Oversee scoopers and other employees.
- Overall store management, ordering and stocking, cash management.

Education

2006-2010 | George Mason University | Fairfax, VA

BA in Psychology, Minor in Sociology (Focus on Criminology)

- Honors in General Education
- Honors in Psychology
  - Honor's Thesis: Criminogenic Cognitions in Jail and College Samples

References

References are available on request.

Date of Hire:	**02/07/2011**
Name:	**Elizabeth Jones**
Title:	**Research Associate**
Grade/Step:	**09/01**
Salary Range:	**$42,209 – $97,333**
Salary:	**$51,630**
Comments:	**Filled vacancy created on 12/17/2010**

Research Associate
GS-09

INTRODUCTION

This position is located in the Office of Research and Data (ORD). The incumbent assists the research staff in the preparation and analysis of qualitative and quantitative data for monitoring the application of the federal sentencing guidelines and for other related Commission or criminal justice research. The incumbent reports to senior research staff and the director of ORD.

REPRESENTATIVE DUTIES

- Contributes to Commission presentations and reports by analyzing qualitative and quantitative data under supervision of senior research staff.
- Assists with bibliographic work.
- Participates in data collection, projects, or special requests under supervision of senior research staff.
- Reviews criminal justice case files and accurately codes cases for data entry in special coding projects under supervision of senior research staff.
- Participates as a member of Commission policy teams under supervision of senior research staff. Attends policy team meetings, assists with designing coding instruments and instructions, accurately codes cases for data entry, performs quality control procedures on the work of other team members, writes SAS programs for data analysis of data produced by the team, merges team datafiles with existing Commission datafiles.
- Reviews criminal justice case files and checks the accuracy of 70-80 departure cases each day: (1) assesses (according to the latest coding protocols) the departure (or variance) status, (2) determines if the sentence is above or below the range and noting the reasons why sentence is outside the range, (3) verifies final guideline offense level, criminal history category and range, noting the differences between the Pre-sentence Report and the statement of reasons, (4) verifies the statutory range, and the type of statement of reasons.
- Reviews 50-60 cases each day that need edits, thoroughly resolves edits and accurately identifies edit cases that cannot be resolved.
- Demonstrates good knowledge of federal sentencing guideline application, the criminal justice system, and federal criminal statutes.
- Writes and executes SAS program code and works with large data files. Merges datafiles in SAS. Uses DBMSCopy to change datafiles from one format to another. Becomes familiar with other Commission data such as the corporate datafile, re-sentencing datafile, appeals datafile, etc.

- Assists in the design and development of spreadsheets using Excel or QuattroPro, inserting basic formulas and creating accurate footnotes.
- Assists in the preparation of datafile documentation, statistical tables, and graphic displays and presentations.
- Assists research staff in evaluating research problems and applying or adapting available research methods to solve research problems.
- Performs support or administrative tasks as assigned and directed.

FACTOR 1, JOB REQUIREMENTS:
Basic knowledge of Commission policies, the federal sentencing guidelines, and the federal criminal justice system. Demonstrated experience in a research environment, or other research related field. Experience or knowledge of the methods used to analyze empirical data. Demonstrated experience with quantitative or qualitative methodological research techniques and social science statistical procedures. Experience using SAS, SPSS, or other statistical programming software to analyze quantitative data. Ability to handle multiple assignments, focus on details and produce precise work products in a timely manner to ensure deadlines are met. Knowledge and experience using a wide array of computer software packages, such as Oracle, WordPerfect, Word, Excel, PowerPoint, Excel, QuattroPro, and DBMS Copy to assist in evaluating or implementing research techniques and presenting research findings.
Excellent verbal communication skills and the ability to communicate effectively in writing. Ability to successfully interact with employees at all levels and work effectively as a member of a team. Excellent interpersonal skills are critical to the success of the research team. The ability to ask questions, communicate problems and respond positively to constructive criticism are essential qualities of a research associate.

FACTOR 2, SCOPE AND EFFECT OF WORK:
The purpose of the work is to provide assistance to policy makers, *e.g.*, the Commission and the Congress, with empirical data describing criminal offenses in the federal system and the appropriate sentences for those offenses. This work assists the Commission in developing and refining the federal sentencing policies and guidelines.

FACTOR 3, COMPLEXITY:
The incumbent must be able to perform quantitative and qualitative analysis of federal sentencing data and related data, and assist in the review of existing data to determine applicability to the development and refinement of the federal sentencing guidelines. Development of data collection instruments that satisfies the needs of special research projects adds to the complexity. While established social science research methods and techniques are generally applicable, the research assistant, in consultation with senior research staff, may occasionally have to adapt established methods and techniques to execute assignments which adds to the complexity. The incumbent must respond to assignments in a timely manner and display accurate results.

FACTOR 4, WORK PARAMETERS:
The incumbent works under the general supervision of a research associate or senior research associate who provides supervision, assigns work, defines general parameters, and establishes timetables for the completion of assigned work. While instructions for executing assignments

are provided, the incumbent must exercise own initiative and judgement in selecting appropriate methods of analysis. Occasionally, the incumbent will receive direction from the director of ORD and the staff director. Projects are reviewed by senior research staff.

FACTOR 5, PERSONAL INTERACTIONS:
Contacts are with staff in the Office of Research and Data and Commission employees, as well as organizations or individuals under contract to perform research or policy projects for the U.S. Sentencing Commission. Other external contacts are with persons from other government agencies and organizations with an interest in guideline development and application. Contacts are for the purpose of gathering and interpreting data, and answering requests as directed by senior research staff.

FACTOR 6, ENVIRONMENTAL DEMANDS:
The work is performed in an office setting. Some lifting of heavy boxes that contain case files is required.

ELIZABETH M. JONES

Job Title: Research Associate in for the U.S. Sentencing Commission of the Judicial Branch
Vacancy Announcement Number: #11-11

Experience

February 2011 Present — United States Sentencing Commission, Office of Research and Data — Washington, D.C.

- Research Associate, February 2011 – Present

  - Analytical Processing
  Gained experience in coding Federal cases in Oracle and was able to understand the coding process from both a Data and Research perspective. Coding experience will enable higher quality while performing departure and variance edits, Type I edits, and Type II edits.

  - Crack Recidivism Policy Team
  Supervised by Kim Hunt and quality controlled by Andrew Peterson. Analyzed and coded RAP sheets of crack offenders resentenced per 2007 Amendment and those who met eligibility but were released prior to the effective date to determine recidivism rates. Gained experience in working on a policy team and learning a new coding system within Oracle.

  - Departure and Variance Checks
  Continuing to train and gain experience and confidence in departure and variance checks. Currently being quality controlled by Jennifer Hathaway and understanding Edits, specifically Edits 113 and 666.

August 2008 – February 2011 — Jury Services Incorporated of the National Capital Area — Alexandria, VA

- Research Associate, August 2008 – Present
- Intern, May 2008 – August 2008
  Assisted in a wide array of jury consulting practice areas, including:

  - Venue and Case Research
  Researched jurisdiction demographics and jury selection procedures by analyzing U.S. Census data, locating jurisdiction jury plans, and personally observing jury selection. Used past laws and cases for important issues related to each individual case.

  - Statistical Analysis & Research
  Data entry into Microsoft Excel and/or SPSS. Creating databases and using SPSS database to analyze juror questionnaire responses and venue research. Using output statistical data and charts and including them into legal documents.

- Legal Focus Groups and Mock Trials

Assisted in execution of legal focus groups and mock trials by securing locations and recruiters, supervising participant recruitment, drafting assessment questionnaires, moderating deliberation groups, entering assessment questionnaire data into Access databases, generating frequency and open-ended response outputs, and drafting portions of final report for clients.

- Voir Dire and Jury Selection

Assisted in voir dire and jury selection by drafting supplemental juror questionnaires, analyzing completed questionnaires and coding juror responses on a summary sheet, drafting follow-up voir dire questions based on questionnaire responses, and conducting background research of jurors for federal, district, and state courts.

Education

2006-2008 **Marymount University** Arlington, VA

- M.A. in Forensic Psychology in May '08
- G.P.A. 3.41
- Program requirement included: Statistical Research and Evaluation

2002-2006 **McDaniel College** Westminster, MD

- B.A. in Psychology with minors in German and Sports Coaching
- G.P.A. 3.17
- Dean's List: Spring '05, Fall'05, Spring '06

Other Qualifications

Experience in:

- Oracle Case Processing

Intermediate to Advance Abilities in:

- Microsoft Word, PowerPoint, and Access
- Corel WordPerfect
- Microsoft Excel
- SPSS (data entry, descriptive statistics, correlations, crosstabs, regressions, data-collapsing/combining, etc.)

References

[redacted]

Date of Hire:	05/17/2011
Name:	Olga Sklyar
Title:	Senior Financial Specialist
Grade/Step:	13/03
Salary Range:	$89,033--$136,771
Salary:	$94,969
Comments:	Filled vacancy created on 01/14/2011

SENIOR FINANCIAL SPECIALIST
GS-13/14

INTRODUCTION

This position is located in the Office of Administration, in the Office of Finance. The incumbent reports to the Director of Administration and is responsible for coordinating and performing financial activities that support the financial operations of the Commission. The incumbent assists in directing the management of and obligating, monitoring, and accounting the Commission's financial resources and supervising the work of the financial specialist. This includes coordinating and/or performing a variety of financial activities. The Senior Financial Specialist is responsible for ensuring the accuracy of the work and ensuring that the Commission's Office of Finance is in compliance with the appropriate policies and procedure, by consulting best practices and determining the appropriate policies and procedures that apply to the Commission. These sources include the General Services Administration; the Office of the Comptroller General (*i.e.*, Comp. Gen. Decisions); the Judiciary's Guide to Policies and Procedures; Chapter 13, Finance and Budget; Chapter 19, Travel and Relocation; and other resources regularly consulted by finance when conducting research and completing assignments.

DUTIES AND RESPONSIBILITIES

- Executes and monitors the agency's budget using an automated financial management and accounting system along with various spreadsheets.

- In conjunction with the Director of Administration, assists in the development of the annual spending plan and is responsible for budget execution. This includes monitoring and analyzing spending patterns; recommending adjustments in funds allocated and/or identifying the need for supplemental appropriations; provides status reports and special reports for use by management to review the funding situation and actual performance against the spending plan.

- Develops spending plans and financial reports.

- Develops strategies and implements long-term spending plan and goals for the Commission's Office of Finance by analyzing spending trends to predict future expenses that summarize and forecast the Commission's financial position

- Conducts research and analysis related to financial matters, travel regulations, appropriations law, and procurement.

- Develops, implements, and revises financial and other administrative procedures and policies that may be used by all Commission staff and are designed to ensure efficient and effective administrative support to the Commission's programs. Conducts analyses of financial management functions on an ongoing basis and recommends improvements to the processes.

- Assists the Director of Administration in formulating and presenting the agency's budget and budget materials (*i.e.*, tables, narratives, briefing materials).

- Provides financial oversight, technical advice, assistance, leadership, and support to employees at all levels.
- Serves as the Commission's contracting officer. develops solicitations for requests for bids or requests for proposals. Assesses requests for contract services, analyzes and compares bids, negotiates contracts, and administers and monitors contract management activities.
- Represents the Commission by participating in meetings with, providing information to, and obtaining information from the Administrative Office of the United States Courts (AO). Information provided is of a program or financial nature and reflects Commission policies, goals, and priorities.
- Effectively controls, obligates, and accounts for all appropriated funds.
- Monitors financial trends, current, and fiscal year budgetary documents (JNET, House/Senate, Judicial Conference, etc.) and information. Provides weekly briefings to the director of administration about issues that may impact the Commission.
- Acts as liaison with the AO's budget, disbursement, accounting, and travel offices.
- Ensures information on the Commission's SCNN Policy Page with respect to finance is current and available for staff.
- Supervises the work of the Financial Specialist.
- Performs other duties as assigned.

Factor 1, JOB REQUIREMENTS
Experience performing financial management of an accounting operation to include allocating resources and auditing financial activities. Experience in all areas of the accounting and budgeting process. Knowledge of appropriations law and federal travel regulations. Ability to conduct independent, thorough, research; analyze findings; interpret policies, rules, and regulations; and summarize information so that it may be conveyed verbally and in writing to a variety of audiences. Must be technically proficient and have advanced experience working in MS Excel spreadsheets and good word processing skills using MS Word. Comprehensive knowledge of federal procurement regulations, procedures, and practices. The ability to work with staff at all levels.

Factor 2, SCOPE AND EFFECT OF WORK
The purpose of the incumbent's work is to provide knowledge about financial matters that is sufficient and meets best practices and the regulations that apply to the Commission in all areas of finance. The position is instrumental in determining and assisting with obtaining sufficient funds to carry out the Commission's programs and policies and to accomplish its goals and objectives. It is key to ensuring fiscal integrity, control of funds, and compliance with legal and ethical requirements. The job has the potential to make significant contributions to the effectiveness of the agency, the efficiency of its staff, and the appropriate use of government resources.

Factor 3, COMPLEXITY
The work involves estimating appropriate resource levels, sometimes given minimal program information; assisting with acquiring adequate funds to meet the Commission's objectives and mandates; developing and maintaining financial controls for the commitment, obligation, and disbursement of funds; providing sound financial management advice to agency officials, especially since guidelines leave much to agency discretion.

The work requires the application of planning-programming-budgeting methods and techniques, analysis of the cost effectiveness of various alternatives, and assessments of whether there is proper balance between program requirements and resource allocations, in order to recommend reallocation, de-obligation, or reprogramming to correct imbalances and in order to plan for appropriate timing of budget, procurement, and other financial actions.

Factor 4, WORK PARAMETERS
The incumbent is expected to work independently with little supervision necessary, however, work is reviewed by and under the general supervision of the Director of Administration, who provides overall policy and planning guidance. Work is assigned in the form of broad objectives. Duties are performed independently; consultation with the supervisor occurs when controversial, unprecedented, sensitive, or far-reaching problems are encountered or when dollar amounts exceed formal delegations of authority.

Factor 5, PERSONAL INTERACTIONS
Informal and formal contacts are with Commissioners, managers, staff, other agency's representatives, and contractors. These contacts are for the purpose of exchanging financial and procurement information to further benefit the Commission. The incumbent interacts with staff, managers, the public, and financial specialists from other agencies, in particular at the AO.

Factor 6, ENVIRONMENTAL DEMANDS
Work is performed in an office setting. The work requires no unusual physical demands.

OLGA SKLYAR, MBA

Senior Program Manager/ Financial Analyst

7+ years of program analysis experience with demonstrated record of excellence, accuracy and accomplishment in driving efficiency and productivity

SECURITY CLEARANCES

U.S. Citizen, Public Trust-DHS (Department of Homeland Security), Clearable

PROFILE

- Expertise in program management,federal contracts,government acquisition/ procurement
- Financial analysis, reporting and budgeting, account reconciliations, spending and funds tracking
- Metrics development and technology performance analysis, process improvement
- Extensive experience in Microsoft Excel, reporting, business analysis, and revenue forecasting
- Full cycle federal contract management (from Requisitions to Invoicing, Budget, ODCs, requesting and analysing funding requirements, variance analysis)
- Excellent with financial data, data accuracy, financial modelling, spreadsheets.

EXPERTISE

Business Analysis/Reporting/Metrics
Budget/Government Accounting
Accounting/Finance/Pricing
Business Intelligence/Databases/Reports

Federal Contracts
Acquisition/ Procurement
Program Management Support
Financial Management

SUMMARY OF POSITIONS HELD

Management Program Analyst
Program Budget Analyst
Pricing/Acquisition Analyst

Dashboard Reporting Analyst
Strategy/ Pricing Analyst
Acquisition Specialist

CAREER

2010--Present

ALON, INC
DEPARTMENT OF HOMELAND SECURITY (WASHINGTON DC)
U.S. Immigration and Customs Enforcements (ICE), Office of the Chief Information Officer (OCIO), Engineering Division
MANAGEMENT PROGRAM ANALYST/ BUDGET ANALYST

Formulate/track/ monitor the monthly budget requirements; manage multi-million dollar federal contract (including processing Requisitions/Awards/MODs/ /Reconciling and Processing ODCs/Invoices), support procurements and acquisitions at ICE, perform financial analysis and budget support for the FSS Bridge project

Procurement/Acquisition

- Support procurements of multi-million dollar federal contracts for Immigration and Customs (ICE), Office of the Chief Information Officer (OC.O), to include the full range of tactical communication requirements, i.e., maintenance and operations, hardware, software, and services.
- Develop acquisition stratogies for the procurement of multi-million dollar federal contracts for Immigration and Customs (ICE), Office of the Chief Information Officer (OCIO), Tactical Communication (TACCOM) Program, to include the full range of tactical communication requirements, i.e., maintenance and operations, hardware, software, and services. Provide a comprehensive range of acquisition activities for procurements of multi-million dollar tactical communication projects and concurrently managing multiple projects with tight deadlines.

Financial Analysis

- Provide a comprehensive range of financial solutions for procurements of multi-million federal contract project and concurrently managing tight deadlines.

- Create G-514s/Training/Obligations documents and performing financial analyses for the federal contract
- Take charge of administering and accounting for obligations
- Prepare financial analyses, reconcile accounts and monitor spending, track funds
- Reconcile and analyze vendor invoices, invoice payments, burn rate

Budget Analysis/ Program Management

- Created financial models using Microsoft Excel for budget formulation;
- Create the formulations and submit funding requirements for ESS Bridge multi-million dollar contract
- Support ESS Bridge Project (Engineering Support Services Bridge) for the Customs Enforcement (ICE). ESS supports ICE engineering web services hardware and software implementation and security engineering services.
- Administer ESS Bridge funds from allotment through final payment;
- Support all of ESS Bridge financials, communicating with ICE Office of Acquisitions (OAQ) for contract award, the ICE finance center for payment processing and utilizing FFMS
- Prepare budget requirements and establish project requirement priorities and coordinate funds and resources for ESS Bridge project; when budget is aligned and developed, generate a supporting requisition in FFMS.
- Created and implemented a funds tracking spreadsheet for the contract management
- Manage Invoices, Requisitions, Awards for the contract, track funds (Extensive Excel Spreadsheet)
- Maintain and map funds to be used for different CLINs of the contract
- Analyze and forecast funding requests
- Forecast project's burn rate based on prior years' data
- Maintain ODC spreadsheet, record all payments and track outstanding balances
- Reconcile project outstanding balances with FFMS reports; perform variance analysis

KEY ACHIEVMENTS

- Manage multi-million federal contract (process Requisitions, Awards, Invoices, ODCs, EWWs)
- Maintain extensive Excel spreadsheet and control of all financial records relevant to ESS Bridge.
- Support Budget Analysis, create financial models using Microsoft Excel to be used for Burn Rate Analysis and Budget formulations, funding requests
- Create G-514 Requisition documents and develop financial analysis for the contract

FANNIE MAE, (Washington, DC) 2004-2009
MANAGEMENT PROGRAM ANALYST/ BUSINESS ANALYST
Developed metrics, pricing structures, created and managed three Executive Dashboard Reports for Automated Solutions and Technology Division at Fannie Mae. Led the team of six to create and manage the monthly dashboard reports.

Budget/Expense Reporting

- Managed month end Budget and Expense Report for Automated Underwriting solutions cost centers E-Business division at Fannie Mae.
- Provided Senior Management with end-of month budget summary and performance analysis of actual vs. plan; managed quarterly reports
- Managed discrepancy and variance analysis, reported the results and posted monthly summary; providing summary of findings to the Fannie Mae E-Business Executive Team..

Pricing Analysis

- Built various profit analysis models that provided Fannie Mae with optimal pricing strategy. Established customer needs, selected appropriate business criteria, and developed pertinent metrics to extract, analyze and present relevant date to the E-Business Leadership Team at Fannie Mae.
- Analyzed lenders performance (M&A, volume analysis, marginal revenue analysis, technology revenue and average fee calculations) and provided internal trend analysis to determine the best potential pricing structure.
- Evaluated the current pricing strategy for technology solutions and projects at Fannie Mae, E-business division and proposed optimal pricing strategies for current and new initiatives.
- Participated in Chicago Pricing Conference, 2004.

Revenue Forecasting/Dashboard reporting

- Managed monthly average fee calculations and forecasting for ABS (Automated Business Solutions) at E-Business Division at Fannie Mae.
- Performed monthly actual vs. plan revenue reconciliation, variance analysis and revenue reporting
- Developed 5-year strategic revenue forecasting model for ABS (Automated Business Solutions) at E-Business Division at Fannie Mae. The model was acknowledged to be providing the most accurate results in the technology division.
- Evaluated and projected various scenarios using the revenue forecasting model. Presented results to the E-Business Executive Team and Economic Office Team at Fannie Mae.
- Created Dashboard reports summarizing E-Business Automated Technology performance data, and provided monthly reports to the Executive Team at Fannie Mae.
- Provided Executive Team with the monthly findings, market analysis and economic and technology performance insights

KEY ACHIEVMENTS

- Developed unique 5 Year Technology Fee Revenue Forecast Model for e-business division. Voted best model for producing the most accurate revenue plan results in e-business division
- Built profit analysis models that provided Fannie Mae with optimal pricing strategy
- Participated in Chicago Pricing Conference, 2004
- Conducted business analysis, trend analysis, market and economic updates for Executive Team at ABS (PDF, Word)
- Developed and managed scorecard metrics for the ABS Management Scorecard, monitored project performance and program requirements

AMERICAN COUNCIL OF EDUCATION, WASHINGTON DC 2003-2004
RESEARCH ANALYST

AMERICAN SOCIETY OF LANDSCAPE ARCHITECTS, WASHINGTON DC 2000-2002
CORPORATE ACCOUNTANT/ACCOUNT RECEIVABLE MANAGER (WWW.ASLA.ORG)

EDUCATION

University of Maryland at College Park, (Honors) 2004
MBA Finance and Program Management)

University of Maryland at College Park, (Honors) 1997
Bachelor of Science **Business Administration/Finance**
Bachelor of Arts **Economics**

PROFESSIONAL TRAINING

(DHS) Department of Homeland Security, Washington DC
DHS Basic Records Management (10/18/2010)
FFMS Training (10/6/2010)

(DAU) Defence Acquisition University
Fundamentals of Systems Acquisition Management (10/18/2010)
Fundamentals of Earned Value Management (10/28/2010)

SKILLS

- FFMS, Excel, Budget, Federal Contracts (Requisitions/Awards/MODs/Invoices/ODCs/Funding Requirements), Accounting, Finance, Business Objects (Certified), Excel Pivot Tables
- Reconciliations, Record Keeping, Analysis
- Microsoft Office, PDF Adobe, Financial Inquiry System
- Reporting, Data Analysis, Business Intelligence, Financial Modelling, Spreadsheets

Date of Hire:	05/30/2011
Name:	Simon Martin
Title:	Deputy Director-Administration
Grade/Step:	15/07
Salary Range:	$123,758 -- $155,500
Salary:	$148,510
Comments:	Filled vacancy created on 10/29/2007

Deputy Director of Administration
GS-15

INTRODUCTION

This position is located in the Office of Administration (ADM). The deputy director of administration assists the director of administration in the management of the administrative work of the Commission. This includes oversight of the Commission's budget and projects associated with the fields of human resources, information technology, database administration, the library, and office services. The incumbent also acts for the director of administration in his or her absence.

REPRESENTATIVE DUTIES

- Financial Liaison: Serves as the financial liaison with Congressional and Administrative Office of the U.S. Courts (AO) personnel on Commission budget matters. Advocates for budget requests on behalf of the Commission.

- Budget Preparation: Analyzes Commission resources, goals, mission, needs, and external predictors to prepare an initial draft of the Commission's budget. Works with the staff director and legislative affairs director to refine budget proposal. Prepares budget analysis and drafts justification documents with the staff director.

- Budget Execution: Manages all procurement, accounting, travel, and contracting activities of the Commission. Supervises the staff of the Commission's Office of Finance (FIN). Resolves the most complex and sensitive finance issues, keeping in mind legal and ethical implications. Defines the critical focus of the finance unit, including taking the lead on the development of work plans, to meet the Commission's goals.

- Budget Monitoring: Prepares and presents the initial draft of the Commission's annual spending plan to the staff director and/or chair. Analyzes spending patterns using various financial and personnel/payroll reports and takes the lead in short-range and long-range budget planning. Prepares budget projections to meet Commission goals. Prepares regular status of funds reports and special reports as requested.

- Strategic Planning: In conjunction with the director of administration, annually develops and refines the work plan process for ADM. Implements the work plan process to enhance the performance of all staff in ADM. Assesses the progress of ongoing work projects.

- Project Management: Works with the director of administration and other administrative managers to develop time lines and project plans in the fields of human resources, information technology, database administration, the library, and office services. Assists the director of administration in daily activities that include recruiting staff, reacting to sensitive personnel issues, responding to requests from the staff director and commissioners, and logistical planning.

- Acts for the director of administration in his or her absence.

- Serves as a Commission contracting officer.

FACTOR 1, JOB REQUIREMENTS:
Thorough knowledge of the Commission's operations, functions, policies and programs, as well as Judicial Conference policies and procedures regarding administrative matters. Expert knowledge of procurement, accounting, travel, and contracting laws and regulations. Experience in advocating with Congressional staff and with other federal agencies. Ability to effectively communicate complicated budget information to high level staff both orally and in writing. Demonstrated ability to display tact and discretion in dealing with confidential or sensitive information. Ability to supervise and interact successfully with staff and others at all levels. Extensive experience with the federal budget process from start to finish. Ability to analyze and resolve the most complex financial issues. Excellent organizational, prioritizing, and interpersonal skills. Skill in planning and coordinating multiple diverse administrative projects and insuring the accuracy and timeliness of work projects in the fields of human resources, information technology, database administration, the library, and office services.

FACTOR 2, SCOPE AND EFFECT OF WORK:
The research and recommendations made by the incumbent substantially affect the financial health of the Commission. The budget work of the incumbent impacts the entire staff of the Commission, the budget and accounting staff of the AO, and Congressional staff. The work of the deputy director enables the director of administration to concentrate on the overall management of administrative projects.

FACTOR 3, COMPLEXITY:
The work covers all areas of budget, finance, and contracts. The incumbent must keep abreast of legal changes in all three arenas. Managing multiple diverse mission-critical administrative projects adds to the complexity. The incumbent must use good judgment when making quick decisions on critical budget-related matters when all information may not be present. Preparing financial reports and budget recommendations require attention to detail and foresight. The incumbent must exercise judgement when setting priorities, selecting procedures to accomplish work, and handling highly sensitive and/or political situations. Establishing and maintaining positive and effective working relationships with all contacts from other federal agencies and on the Hill requires tact and confidentiality. Creativity is needed when devising work plans to meet ADM's goals.

FACTOR 4, WORK PARAMETERS:
In budget-related matters, there are no resources for guidance and assistance. In this arena, the incumbent works independently and has wide latitude to research, plan, and carry out the work of the finance unit. Reports and recommendations generated by the incumbent are reviewed by the commissioners, staff director, and the director of administration. General guidance is given to insure the success of the budget process. The incumbent collaborates with the director of administration to set overall objectives and to plan the work of the office.

FACTOR 5, PERSONAL INTERACTIONS:
Personal contacts include members of Congress and their staff, and budget and accounting staff from the AO and other federal agencies. The purpose of these contacts is the advocacy of the Commission's budget requests and the sharing of information. Internal contacts include the commissioners, staff director, office directors, senior staff and support staff. The purpose of these contacts is to plan and coordinate the work of the office and to ensure that projects are completed timely and accurately.

FACTOR 6, ENVIRONMENTAL DEMANDS:
Work is performed in an office setting.

Simon Martin

Citizenship: United States

Strengths

Managing to the big picture; leading and empowering teams; training and mentoring staff; collecting, analyzing, and synthesizing data; applying organizational savvy; being prompt and reliable; fostering superb communication skills; maintaining high integrity; establishing and maintaining working relationships across many organizational levels.

Software competencies; Windows Office Suite (Excel, Word, PowerPoint, Project, and Access), Visio, Adobe Acrobat Professional, Lotus Notes, FAS4T (a financial accounting system), various court-related proprietary software systems.

Experience

2009-present ***Administrative Office of the US Courts, Washington DC***

As **Chief, Court Operations Section, Budget Division**, my team of eight analysts provides operational support and service on budgetary matters to nearly 400 court units throughout the United States, in addition to providing service and assistance to the courts in managing those funds. My section coordinates the calculation and issuance of the annual allotments (approximately $2.2 billion) to all appellate, district, and bankruptcy court units, as well as all probation and pretrial services units.

I have daily interaction with senior staff within the Office of Finance and Budget, as well as frequent interaction with AO senior staff. I manage numerous budget and systems projects simultaneously. I manage and produce recurring and ad hoc analyses and reports on budgetary issues for both internal and external customers, and identify and anticipate court unit financial management support needs and adapting resources and products to meet those needs. I provide analytical and management direction to professional and support staff. I staff national committees of Judges and Court Unit Executives. I direct the planning, analysis, and implementation of projects/studies (typically involving multiple functions and organizational units) to improve budget methods, policies and procedures, financial analysis and management, and financial systems of the Judiciary. I maintain and enhance system applications to ensure the timely and efficient distribution of court allotments and other court budget transactions.

2002-2009 | *United States District Court, Western District of Washington*

As **Budget and Procurement Administrator**, I led all budget activity in the District of Western Washington for the United States District Court Clerk's Office and Chambers, United States Probation Office, and the United States Pretrial Services Office. I worked closely with the three Court Unit Executives, developing and justifying budget requirements and executing approved budgets for all three court units. The three units operate with an annual decentralized budget of $17M. I provided a full range of budget services and advice to the court family, including developing and monitoring annual spending plans for each unit and planning and recommending policies and procedures across the units.

As the senior Contracting Officer and Procurement Liaison Officer, I managed the procurements our staff produced each year and ensured adherence to federal purchasing and contracting laws. I also managed internal controls and internal audit programs for the district and served as the System Assurance Analyst for our districts's financial accounting system. I completely overhauled the internal controls and in-house audit processes, resulting in their first ever "finding-free" external audit. In the time I spent in the Western District of Washington, I became a subject specialist in the areas of financial management and was frequently sent to other districts nationwide to help plan strategically. I was recruited by the Federal Judicial Center to aid other courts with strategic planning and was a repeat instructor on national financial and budget training events.

2001-2002 | *Bothell Campus, University of Washington*

As **Campus Operations Manager**, I was the senior administrative representative for the Office of Finance and Administration, focusing on general administration and financial management. Reporting directly to the Vice Chancellor for Administrative Services, I exercised independent judgment, solved problems, and participated in operations-related policy formation and implementation. Preparing analytical reports and studies documenting financial trends at UW-Bothell, I maintained strong working relationships with, and knowledge of, all academic and administrative units at UW-Bothell in order to assist with budget trouble-shooting. I was a resource to administrative staff for accounting and budgetary functions and university operating procedures, and reviewed and approved grants, payroll, purchasing, and other administrative processes for units. Other duties included setting up and closing biennial budgets, implementing merit increases and coordinating budget revisions, managing an 88,000-transaction (per annum) internal accounting database, and preparing budget reports and accounting summaries for regular meetings with department directors and senior staff. At the time, UW-Bothell had approximately 250 full-time equivalent (FTE) faculty and staff and a biennial budget of $28M. I had seven staff (specialists in facilities management, grant management, payroll, budgeting, and purchasing) directly reporting to me.

1997-2001 | ***School of Art, University of Washington***

As **Administrator** of the School of Art, I served as business manager with decision-making authority for the school in all areas, including budgeting, personnel administration, grant and contract administration, development and public relations, space and facility coordination, technological support, and establishment and enforcement of departmental policies and procedures. On an advisory basis, I provided the Director of the School of Art with financial guidance, background information, and management advice regarding personnel, safety issues, physical systems, and facilities totaling 140,000 square feet. I was the School of Art's primary interface with other departments, the College of Arts and Sciences, and the UW administration, where I provided a global view of the University and acted as an advocate for the School, promoting development, growth, and well-being of the students, faculty, staff, and facilities. At the time, the School of Art had 47 faculty FTE, 18 staff FTE, 40 hourly staff, 60 teaching assistants, 1,100 undergraduate majors, 200 graduate students, and a biennial state budget of $6.5M. I had three direct reports (with purchasing and financial responsibilities), and handled personnel actions for all of the staff.

1993-1997 | ***School of Nursing, University of Washington***

I was the **Administrator** of the Department of Biobehavioral Nursing and Health Systems. My responsibilities included financial planning and management, budget development and administration for all department state and research funds, acquisition and implementation of emerging computer technology, long-range planning and policy-making for administrative functions, and the interpretation and administration of UW policies and procedures. I implemented and supervised the management systems for payroll, budgets, purchasing, student records, research data, and personnel health and safety matters. I was also responsible for hiring, supervising, and training of all department staff, coordinating of faculty, staff, and student personnel administration, planning and coordinating department space and facility requirements, and building relations between the department and other campus offices. At the time, Biobehavioral Nursing had 30 faculty FTE, 21 staff FTE, 36 hourly staff, and 150 clinical faculty. I managed a biennial state budget of $5.5M and $7M in research funding. I had five financial and administrative staff direct reports.

When I originally joined the department, I served as **Assistant to the Chair** of Biobehavioral Nursing and Health Systems. I supervised four department support staff and assisted the department chair with day-to-day operations in a high-pressure, high-expectation environment.

My first position at the School of Nursing was **Assistant to the Chair** of the Department of Community Health Care Systems.

Education

MA, University of York, United Kingdom, 1992
BA, The Evergreen State College, Olympia, Washington, and Lyon, France, 1990
Graduate, Federal Court Leadership Program, 2007
USDA Graduate School, Budget + Financial Management + Contracting Courses

Recent Service

2010-present	Member, Board of Directors, University of York in America (alumni association)
2009-present	Instructor, Budget Fundamentals Training, Budget Division
2008-present	Instructor, Budget Best Practices, US Courts Financial Forum
2008-2009	AOUSC Administrative Services Methods Analysis Program Internal Controls Working Group
2008-2009	Reviewer, AOUSC Budget Division's update of the Court Operations Manual
2008-2009	Mentor, Internal Controls Evaluation (ICE)
2006-2010	Coach/Mentor, Federal Court Leadership Program
2004-2009	Guest Speaker/Subject Specialist, Federal Judicial Center, Washington DC
2001-2005	Board Member, UW School of Art Advisory Board
2002	Member, UW Student Fiscal Services Advisory Board
2000-2002	Member, UW President's Staff Forum

Date of Hire:	**06/27/2011**
Name:	**James Strawley**
Title:	**Assistant General Counsel**
Grade/Step:	**15/01**
Salary Range:	**$105,211 – $155,500**
Salary:	**$123,758**
Comments:	**Filled vacancy created on 12/03/2010**

Assistant General Counsel
GS-15

INTRODUCTION

This position is located in the Office of General Counsel. The incumbent assists in discharging the responsibility of the Office of General Counsel to provide legal advice and counsel to the Chair, Commissioners, and staff of the Sentencing Commission. The incumbent performs a variety of tasks and responsibilities dealing with federal sentencing, in general, and the federal sentencing guidelines, in particular.

REPRESENTATIVE DUTIES

- Conducts in-depth legal research related to sentencing and other issues involving analysis of statutes, proposed legislation, case law, and governmental and private reports. Legal research topics will include issues relating to the application of sentencing guidelines for both individual and organizational defendants, sentencing guidelines issues relating to all federal offenses, as well as statutory and constitutional challenges to the sentencing guidelines, substantive sentencing and criminal law issues, administrative law and federal agency practice, and personnel, ethical, and administrative matters
- Prepare legal memoranda and analytical reports.
- Prepare of oral and written responses to inquiries from Commissioners, Commission staff, outside attorneys, probation officers, judges, and the public generally.
- Train practitioners and judges in sentencing and guidelines practice.
- Prepare memoranda and drafts language of proposed amendments to the federal sentencing guidelines.
- Lead or participate in staff working groups that focus on new legislation, guideline amendments, or other sentencing issues.
- Participate as a Commission representative in professional conferences.
- Complete other duties as assigned by the General Counsel.

FACTOR 1, JOB REQUIREMENTS:

Law degree (J.D.) from a law school accredited by the American Bar Association is required and the incumbent must be a member of the bar of a state, territory, the District of Columbia, the Commonwealth of Puerto Rico, or a Federal court of general jurisdiction. Good knowledge of federal governmental organizations, including the Legislative, Executive, and Judicial Branches of the federal government. Extensive legal experience which is relevant to the work of the Congress, the Commission, and the courts. Applied knowledge of legal methodology and reasoning. Extensive knowledge of relevant statutes, procedural and administrative rules and regulations, canons of statutory construction, and methods of investigating the legislative history of congressional enactments. Extensive experience and skill in legal research and writing, and/or legislative or regulatory drafting or research. Experience as a supervisor. Superior ability to

interact successfully with staff and other persons at all levels. Ability to handle multiple assignments, prioritize work and successfully meet deadlines. Exceptional oral and written communication skills. Good organization and planning skills.

FACTOR 2, SCOPE AND EFFECT OF WORK:
The research, recommendations, and advice made by the incumbent substantially affect the development of policy work related to the federal sentencing guidelines and amendments. The incumbent's work affects the decision making process, and the impact may extend far beyond the General Counsel's Office, the commissioners, and ultimately impact the courts and the segment of the population to whom the sentencing guidelines are applied in the federal sentencing process.

FACTOR 3, COMPLEXITY:
The work covers all areas of the law. The incumbent must have knowledge of legal precedents, relevant statutes, the federal sentencing guidelines, procedural and administrative rules and regulations, skill in conducting leal research and writing. All areas are complex and require extensive applied experience in the legal field. The work requires constant effort to keep abreast of continually evolving changes in legal theories and precedent.

FACTOR 4, WORK PARAMETERS:
Senior staff members are available to provide consultation, guidance and assistance, however, the incumbent has wide latitude in researching, analyzing issues, writing and drafting opinions. The incumbent may provide guidance and consultation to other staff of the General Counsel's Office.

FACTOR 5, PERSONAL INTERACTIONS:
The incumbent interacts with Commission staff, office directors, the Staff Director and the commissioners to provide technical advice and guidance in a number of legal areas concerning the federal sentencing guidelines. The incumbent may also interact with members of the court and outside agencies.

FACTOR 6, ENVIRONMENTAL DEMANDS:
Work is performed in a professional office setting.

JAMES T. STRAWLEY

Professional Background

Blank Rome LLP – Philadelphia, Pennsylvania
October 2008 – Present
Senior Associate

White Collar Crime and Government Investigations:
Representation of corporations and individuals in white-collar criminal investigations and prosecutions involving tax, money laundering, health care, securities, public corruption, and fraud offenses;
Representation of corporations and individuals in civil and criminal asset forfeiture proceedings;
Research and prepare briefs and motions at all levels of the federal court system on a variety of substantive and procedural criminal law issues;
Research relating to sentencing matters and prepare sentencing memoranda on behalf of clients in the federal court system;
Coordinate documentary responses to Grand Jury subpoenas;
Advise clients as to corporate compliance issues involving the Bank Secrecy Act, the USA Patriot Act, and anti-money laundering laws and regulations;
Preparation of Bank Secrecy and Money Laundering Compliance manuals and training programs for corporations and financial institutions;
Experience conducting internal investigations;
Representative cases include: representation of an individual in an ongoing investigation for tax evasion, security fraud and insider trading, health care and tax violations, and representation of individuals in criminal tax investigation and civil tax audit.

Civil Litigation:
Representation of corporations and individuals in a variety of corporate and commercial civil litigation matters, including mass torts and product liability litigation;
Representation of corporations and individuals in civil tax controversy matters;
Representation of corporations and individuals before the Internal Revenue Service in relation to tax audits, collection matters, and other tax controversy matters.

September 2003 – June 2006
Associate

Summer 2002
Summer Associate

United States Department of Justice, Tax Division, Northern Criminal Enforcement Section – Washington, District of Columbia
July 2006 – October 2008
Trial Attorney

First chair and co-lead counsel experience trying cases in federal court;
Direct responsibility for the prosecution of criminal violations of the Internal Revenue Code involving individual and corporate tax fraud and conspiracy charges in various U.S. District Courts throughout the Northeastern United States;
Work cooperatively with various United States Attorney's Offices through the Northeastern United States and agents of the Internal Revenue Service to coordinate case strategy and witness preparation.

United States Attorney's Office for the Eastern District of Virginia – Alexandria, Virginia
September 2006 – March 2007
Special Assistant United States Attorney
Prosecute a variety of misdemeanor and felony criminal violations in both the Magistrate and District Courts; Conduct Grand Jury investigations; Represent the United States in a number of hearings, including Supervised Release Hearings, Appeals, Arraignments, Plea Hearings, and Sentencing Hearings; Draft and argue appellate briefs.

United States Attorney for the Eastern District of Pennsylvania – Philadelphia, Pennsylvania – Legal Intern (Spring 2003)

United States District Court for the Eastern District of Pennsylvania The Honorable Berle M. Schiller – Philadelphia, Pennsylvania - Legal Intern (2001)

Admitted To Practice

Pennsylvania, 2003
New Jersey, 2003
U.S. District Court for the District of New Jersey, 2003
U.S. District Court for the Eastern District of Pennsylvania, 2004
U.S. District Court for the Western District of New York, 2008
U.S. Court of Appeals for the Third Circuit, 2005
U.S. Court of Appeals for the Fourth Circuit, 2007

lucational Background

Villanova University Law School, Juris Doctor, *Summa Cum Laude*, 2003
Honors: Third in Class; Villanova Dean's Scholarship; Harold Reuschlein Scholarship; Saint Thomas More Society Award; Wapner Newman & Wigrizer Award for Excellence in Trial Advocacy
Organizations: Villanova Law Review, Volume XL VIII, Editor of Outside Articles; Texas Young Lawyers Association National Trial Competition; The Philip C. Jessup International Law Moot Court Competition

Villanova University, Bachelor of Arts in Political Science, *Magna Cum Laude*, 2000
Honors: Graduated Top 3% (3.89 GPA); Villanova Honors Program (1996 – 2000);Villanova Commuter Scholarship; Delaware County Rotary Club College Scholarship; Member of 1996 – 97, 1997 – 98, 1998 – 99 and 1999 – 2000 Dean's List
Organizations: Phi Kappa Phi National Honor Society (1999 – Present); Phi Beta Kappa National Honors Society (2000 – Present); Political Science Honor Society (1998 – Present); Villanova Pre-law Society (1996 – 2000)

Professional Organizations

Member, American Bar Association
Member, Pennsylvania Bar Association
Member, Philadelphia Bar Association
Member, Philadelphia Young Lawyers Division of the ABA White Collar Crime Committee (Steering Committee Member, 2004 – June 2006; January 2009 - Present)

Publications

Steroids In Baseball Impact More Than Just Home Runs: Ninth Circuit Establishes New Limitations On The Seizure of Electronically Stored Information, *For the Defense* (October 2009)

District Court Rules That Government Is Precluded From Using Attorney-Client Privileged Information Obtained By Corporate Counsel and Turned Over Following Internal Investigation, *For The Defense* (June 2009)

Pro Bono Activity

Child Advocate, Support Center for Child Advocacy

Date of Hire:	**07/18/2011**
Name:	**Michael Sheaffer**
Title:	**Senior Financial Specialist**
Grade/Step:	**14/05**
Salary Range:	**$89,033--$136,771**
Salary:	**$119,238**
Comments:	**Filled vacancy created on 04/08/2011**

SENIOR FINANCIAL SPECIALIST
GS-13/14

INTRODUCTION

This position is located in the Office of Administration, in the Office of Finance. The incumbent reports to the Director of Administration and is responsible for coordinating and performing financial activities that support the financial operations of the Commission. The incumbent assists in directing the management of and obligating, monitoring, and accounting the Commission's financial resources and supervising the work of the financial specialist. This includes coordinating and/or performing a variety of financial activities. The Senior Financial Specialist is responsible for ensuring the accuracy of the work and ensuring that the Commission's Office of Finance is in compliance with the appropriate policies and procedure, by consulting best practices and determining the appropriate policies and procedures that apply to the Commission. These sources include the General Services Administration; the Office of the Comptroller General (*i.e.*, Comp. Gen. Decisions); the Judiciary's Guide to Policies and Procedures; Chapter 13, Finance and Budget; Chapter 19, Travel and Relocation; and other resources regularly consulted by finance when conducting research and completing assignments.

DUTIES AND RESPONSIBILITIES

- Executes and monitors the agency's budget using an automated financial management and accounting system along with various spreadsheets.

- In conjunction with the Director of Administration, assists in the development of the annual spending plan and is responsible for budget execution. This includes monitoring and analyzing spending patterns; recommending adjustments in funds allocated and/or identifying the need for supplemental appropriations; provides status reports and special reports for use by management to review the funding situation and actual performance against the spending plan.

- Develops spending plans and financial reports.

- Develops strategies and implements long-term spending plan and goals for the Commission's Office of Finance by analyzing spending trends to predict future expenses that summarize and forecast the Commission's financial position

- Conducts research and analysis related to financial matters, travel regulations, appropriations law, and procurement.

- Develops, implements, and revises financial and other administrative procedures and policies that may be used by all Commission staff and are designed to ensure efficient and effective administrative support to the Commission's programs. Conducts analyses of financial management functions on an ongoing basis and recommends improvements to the processes.

- Assists the Director of Administration in formulating and presenting the agency's budget and budget materials (*i.e.*, tables, narratives, briefing materials).

- Provides financial oversight, technical advice, assistance, leadership, and support to employees at all levels.
- Serves as the Commission's contracting officer. develops solicitations for requests for bids or requests for proposals. Assesses requests for contract services, analyzes and compares bids, negotiates contracts, and administers and monitors contract management activities.
- Represents the Commission by participating in meetings with, providing information to, and obtaining information from the Administrative Office of the United States Courts (AO). Information provided is of a program or financial nature and reflects Commission policies, goals, and priorities.
- Effectively controls, obligates, and accounts for all appropriated funds.
- Monitors financial trends, current, and fiscal year budgetary documents (JNET, House/Senate, Judicial Conference, etc.) and information. Provides weekly briefings to the director of administration about issues that may impact the Commission.
- Acts as liaison with the AO's budget, disbursement, accounting, and travel offices.
- Ensures information on the Commission's SCNN Policy Page with respect to finance is current and available for staff.
- Supervises the work of the Financial Specialist.
- Performs other duties as assigned.

Factor 1, JOB REQUIREMENTS
Experience performing financial management of an accounting operation to include allocating resources and auditing financial activities. Experience in all areas of the accounting and budgeting process. Knowledge of appropriations law and federal travel regulations. Ability to conduct independent, thorough, research; analyze findings; interpret policies, rules, and regulations; and summarize information so that it may be conveyed verbally and in writing to a variety of audiences. Must be technically proficient and have advanced experience working in MS Excel spreadsheets and good word processing skills using MS Word. Comprehensive knowledge of federal procurement regulations, procedures, and practices. The ability to work with staff at all levels.

Factor 2, SCOPE AND EFFECT OF WORK
The purpose of the incumbent's work is to provide knowledge about financial matters that is sufficient and meets best practices and the regulations that apply to the Commission in all areas of finance. The position is instrumental in determining and assisting with obtaining sufficient funds to carry out the Commission's programs and policies and to accomplish its goals and objectives. It is key to ensuring fiscal integrity, control of funds, and compliance with legal and ethical requirements. The job has the potential to make significant contributions to the effectiveness of the agency, the efficiency of its staff, and the appropriate use of government resources.

Factor 3, COMPLEXITY
The work involves estimating appropriate resource levels, sometimes given minimal program information; assisting with acquiring adequate funds to meet the Commission's objectives and mandates; developing and maintaining financial controls for the commitment, obligation, and disbursement of funds; providing sound financial management advice to agency officials, especially since guidelines leave much to agency discretion.

The work requires the application of planning-programming-budgeting methods and techniques, analysis of the cost effectiveness of various alternatives, and assessments of whether there is proper balance between program requirements and resource allocations, in order to recommend reallocation, de-obligation, or reprogramming to correct imbalances and in order to plan for appropriate timing of budget, procurement, and other financial actions.

Factor 4, WORK PARAMETERS
The incumbent is expected to work independently with little supervision necessary, however, work is reviewed by and under the general supervision of the Director of Administration, who provides overall policy and planning guidance. Work is assigned in the form of broad objectives. Duties are performed independently; consultation with the supervisor occurs when controversial, unprecedented, sensitive, or far-reaching problems are encountered or when dollar amounts exceed formal delegations of authority.

Factor 5, PERSONAL INTERACTIONS
Informal and formal contacts are with Commissioners, managers, staff, other agency's representatives, and contractors. These contacts are for the purpose of exchanging financial and procurement information to further benefit the Commission. The incumbent interacts with staff, managers, the public, and financial specialists from other agencies, in particular at the AO.

Factor 6, ENVIRONMENTAL DEMANDS
Work is performed in an office setting. The work requires no unusual physical demands.

Michael K. Sheaffer

Vacancy Announcement: Senior Financial Specialist, 11-04

EXPERIENCE:

11/2008 – Present District of Columbia
Office of the Chief Financial Officer
Office of Budget and Planning
Washington, D.C.

Special Assistant
Accomplishments: Successfully managed the District's FY 2009 Presidential Inauguration budget of $44 million, which consisted of a direct federal appropriation and a Federal Emergency Management Agency grant; served as audit liaison with the General Accountability Office during a District audit; developed the District's American Recovery and Reinvestment Act (stimulus) financial reporting structure; and led a team that created 28 internal policy and procedure task level documents.

Duties: Provide direct support to the District of Columbia Deputy Chief Financial Officer responsible for development, justification, and presentation of the District's $9 billion dollar annual budget. Assist with management of a staff of 40 divided into four operating divisions. Prepare testimony for public hearings; review correspondence; coordinate office and enterprise-wide policies and procedures; and provide recommendations on matters related to office operations. Manage direct federal payment appropriations made to the District in the annual Appropriations Act valued at approximately $140 million annually. Serve as the subject matter expert on federal appropriation time, purpose, and amount questions. Serve as liaison with Congressional, Office of Management and Budget, and U.S. Treasury personnel on federal payment appropriation matters, to include Congressional inquiries, apportionments, Continuing Resolution guidance, and revenue.

10/2006 – 10/2008 District of Columbia
Office of the Chief Financial Officer
Office of Budget and Planning
Washington, D.C.

Budget Analyst
Accomplishments: Published seventy-two benchmarks in the FY 2008 Budget and Financial Plan as part of a legislatively mandated performance management report; served as the CFO liaison to the Mayor's performance management team; and prepared detailed actual expenditure to spending plan reports in order to monitor budget execution.

Duties: Manage direct federal payment appropriations made to the District in the annual Appropriations Act valued at $140 million

annually, analyst for two District of Columbia operating agencies valued at $14 million annually, responsible for strategic budgeting matters and performance management reporting in the District's Annual Budget and Financial Plan.

10/2004 – 8/2006 United States Army
Chief Information Officer (CIO)
The Pentagon, Washington, DC

Executive Officer (Special Assistant)
Accomplishments: Completed a complex Anti-Deficiently Act investigation on a major unit that passed legal review on the first submission; coordinated and published for U.S. Army-wide distribution an information technology purchasing guide; and facilitated the monitoring and reporting of the thirteen resource management initiatives found within the U.S. Army Chief Information Officer strategic plan.

Duties: Directly support a member of the Senior Executive Service responsible for $7 billion in annual information technology and communications spending. Assist with management of a staff of 50 divided into four operating divisions. Develop performance metrics as a component of the U.S. Army Chief Information Officer strategic plan. Develop and review executive correspondence regarding U.S. Army level funding matters, to include responses to Congressional inquiries and General Accountability Office audit findings. Serve as liaison to the U.S. Army Audit Agency for audits related to information technology budget and expenditures.

07/2003 – 10/2004 United States Army
Office of the Assistant Secretary of the Army,
Financial Management and Comptroller
The Pentagon, Washington, DC

Proponency Officer (Human Resources Development)
Accomplishments: Passed the Certified Defense Financial Manager accreditation examination on first attempt, which at that point only six percent of U.S. Army comptrollers had done so; synchronized preparation activities for newly appointed Assistant Secretary of the Army confirmation hearings; and program manager of the first career management database for U.S. Army comptrollers.

Duties: Responsible for the U.S. Army-wide life cycle management of military comptrollers. Assist in the development and execution of 20 training and development programs for the total U.S. Army workforce of military and civilian comptroller professionals in excess of 10,000 personnel. Market these programs U.S. Army-wide by presenting informational briefings before groups numbering from 20 to 800. Participate in educational panels. Implement personnel training and experience database to assist in workforce studies intended to groom the next generation of senior U.S. Army comptrollers.

07/2002- 7/2003 United States Army
The Motorola Company
Libertyville, Illinois

Operations Controller
Detailed from the Army to industry in order to participate in a competitive developmental opportunity.
Accomplishments: Made sensitive customer prepaid contracts revenue recognition recommendations that passed auditor scrutiny while in a competitive post Sarbanes-Oxley regulatory environment; and partnered with senior engineers to produce savings of $561,000.

Duties: Serve as a controller for a cellular telephone development team. Responsibilities include the forecasting, budgeting and monitoring of a $27 million annual operating budget that supported the development of a new generation of cellular telephones. Monitor operational performance in order to make revenue recognition recommendations for prepaid customer contracts.

07/1999 – 07/2002 United States Army
United States Central Command
Tampa, Florida

Chief, Security Assistance Budget
Accomplishments: Implemented a zero-based budgeting methodology to correct longstanding baseline funds distribution inequities; rewrote the policies and procedures document for use at military offices in 18 embassies and the Central Command headquarters; and planned and presented six financial management training workshops.

Duties: Responsible for planning, programming, and budgeting of multiple appropriations for U.S. military offices in 18 countries in the Middle East and Africa. Manage six different appropriations, to include Security Assistance (international programs), Operations and Maintenance, Threat Reduction, and Representational funds. Resolve funding issues between State Department and Defense Department. Coordinate with multiple agencies to ensure correct funding type and program alignment in order to prevent Anti-Deficiency Act violations. Certify the expenditure of resources as compliant with applicable policy. Participate in inspector general compliance inspections and prepare written reports on results for the official record. Supervise three employees.

07/1998 – 07/1999 United States Army
U.S. Army Central Command
Camp Doha, Kuwait

Director, Resource Management
Accomplishments: Assessed as in the top ten percent of military comptrollers by rating chain; revamped the organization's internal control program; and successfully obtained reimbursement from the Government of Kuwait for U.S. Army expenditures.

Duties: The U.S. Army's Chief Financial Officer for an Installation with a population of 4,000. Responsible for budget development and execution of a $190 million annual operating budget reimbursable to the U.S. Government by the Government of Kuwait. Monitor budget execution in nine major subprograms that model a small city to ensure appropriate spending. Delineate expenses between the U.S. Government and the Government of Kuwait based on written agreement, precedence, and protocol. Certify the expenditure of resources as compliant with applicable policy. Brief representatives of the U.S. Army, the U.S. Embassy, and the Government of Kuwait on the status of expenditures. Supervise three individuals.

10/1997 – 06/1998 United States Army
Forces Command
Atlanta, Georgia

Budget Analyst
Accomplishments: Key member of a base operations modeling team; and rated in top three of seven peers by rating chain.

Duties: Analyze budget execution of two major subordinate U.S. Army installations funded in excess of $230 million annually. Serve as the point of contact for those installations and coordinate and resolve issues related to those organizations across the higher level staff. Monitor multiple appropriations. Provide analysis on installation spending and budget trends. Prepare senior leaders for monthly readiness status report meetings on major U.S. Army units.

08/1995 – 10/1997 US Army Central Command
Atlanta, Georgia

Budget Analyst
Accomplishments: Selected by the American Society of Military Comptrollers (Atlanta Chapter) as the Budget Analyst of the Year; developed a cost model for forecasting of U.S. Army expenditures in support of Middle East contingency operations; developed first operating budget for U.S. Army operations in Qatar; and resolved complex billing issues involving strategic lift support for U.S. Army Middle East Operations.

Duties: Responsible for managing budget formulation, execution, and review for U.S. Army contingency operations in the Middle East valued at $120 million annually. Also responsible for the force protection budget development. Certify the expenditure of resources as compliant with applicable policy. Coordinate movement of funding to other organizations. Generate reports for the U.S. Army staff on current spending trends and future forecasts.

07/1994 – 08/1995 United States Army
2d Infantry Division
Camp Red Cloud, Korea

Deputy Comptroller
Accomplishments: Implemented first credit card based acquisition system in the organization, which greatly reduced procurement lead times; and conducted mid-year financial reviews with the senior leadership.

Duties: Develop the organization's $105 million annual operating budget and monitor and report budget execution. Direct the operations of 12 employees in two operating divisions that contained functions such as budget, manpower, contract management, and funds certification. Advise organizational leaders at all levels on expenditure compliance with applicable policies. Provide updates to senior leadership.

09/1986 – 07/1994 United States Army
Multiple Assignments
Fulda, Germany and Ft. Riley, Kansas

Armor Officer
Accomplishments: Twice rated in the top two of seventeen peers while in a key leadership position; led patrols along the former Iron Curtain; and participated in ground combat operations during Operation Desert Storm.

Duties: Serve as a leader in U.S. Army armor units organized for combat ranging in size from 18 to 282 personnel. Responsible for all aspects of the organization to include readiness, training, administration, maintenance, and soldier and family welfare.

EDUCATION

August, 1998	MBA	Management- Syracuse University 106 Steele Hall, Syracuse NY, 13244
August, 1993	MSA	Administration- Central Michigan University 212 Warriner Hall, Mount Pleasant MI, 48859
May, 1986	BA	History- Millersville University of Pennsylvania 1 South George St. Millersville PA, 17551

TRAINING:

Army Staff Planning, Programming, Budgeting Course, Army Staff, 2004
Earned Certified Defense Financial Manager (CDFM) Status, 2004
Fiscal Law: US Army Staff Judge Advocate School, 2004
Resource Management Budget Course: US Army Finance School, 1995
Planning, Budgeting, Programming System: US Army Finance School, 1994

Date of Hire:	08/08/2011
Name:	Benjamin Taibleson
Title:	Executive Assistant and Counsel to Chair
Grade/Step:	15/01
Salary Range:	$123,758 -- $165,300
Salary:	$123,758
Comments:	Filled vacancy created on 11/30/2010. The attached position description for this position was created in 1988. Each Chair of the Commission has tailored the assignments to best meet the Commission's needs at the time. Currently the incumbent does not monitor the agency's legislative branch liaison activities, identify agency funding priorities, assist in personnel matters, or travel with the Chair to speaking engagements. In addition, the incumbent reports to the Staff Director for administrative purposes but otherwise reports to the Chair with respect to the incumbent's duties, and the Chair reviews the incumbent's work product.

EXECUTIVE ASSISTANT AND COUNSEL TO THE CHAIR
GS-15/16

INTRODUCTION

The Executive Assistant and Counsel serves as a confidential and personal assistant to the Chair of the Commission, and reports to the staff director.

REPRESENTATIVE DUTIES

- Reviews and analyzes sentencing policy options, guideline amendments, strategies, and outreach plans, providing consultation and advice to the chair.
- Assists the chair with legal analysis and writing, specifically the preparation of the law review articles, speeches, and testimony for various groups.
- Advises the chair as to particular policy, legal, operational, or technical points that should be considered in relation to proposed guideline amendments.
- Assists the chair in correspondence management, including organizing a correspondence tracking system and drafting responses.
- Assists the chair in preparation for Commission meetings, including travel with the chair to speaking engagements.
- Acts as point of contact for the chair at the Commission on substantive issues, including monitoring the agency's legislative, judicial, and executive branch liaison activities, identifying agency funding priorities, assisting in relevant personnel matters and participating in guideline evaluation and program assessments.

Factor 1, Job Requirements
Thorough knowledge of the law and legal procedures. Extensive legal experience in the federal criminal justice system, which is relevant to the work of the Congress, the Commission, and the courts. Good knowledge of the Federal Sentencing Guidelines. Excellent knowledge of federal governmental organizations, including the Legislative, Executive, and Judicial Branches of the federal government. Familiarity with the operations of the federal judiciary, the Department of Justice, and the Congress. Excellent knowledge of the federal criminal justice system, and preferably, the federal sentencing guidelines in particular. Extensive experience and skill in legal research and writing. Superior ability to interact successfully with staff and others at all levels, particularly in situations where parties must be convinced to accept controversial positions. Knowledge of relevant statutes, procedural and administrative rules and regulations, canons of statutory construction, and methods of investigating the legislative history of congressional enactments.

Excellent ability to analyze, understand, and convey to others the effect of proposed legislation. Effective oral and written communication skills. Superior ability to interact successfully and maintain effective working relationships with Commission staff at all levels as well as with key individuals in a variety of other federal organizations and interest groups. Ability to handle multiple assignments, prioritize work and successfully meet deadlines. Good organization and planning skills.

Factor 2, Scope and Effect of Work
The research and recommendations made by the incumbent substantially affect decisions on how the chair and Commission to set priorities and respond to the work of the Commission as directed by Congress. The incumbent's work allows the chair and the staff director to concentrate on more complex issues requiring their individual attention. To the extent incumbent's work affects the decision making process, the impact may extend far beyond the Commission.

Factor 3, Complexity
The work covers all areas of the law and sentencing. The incumbent must be able to determine the approach to be taken for each case. The incumbent must use good judgment in identifying the critical legal issues and the legal precedents and develop broad, sequential legal analysis to support a substantive recommendation. Each topic is unique, requiring different choices in approach, interpretation, and analytical process. The work requires constant effort to keep abreast of continually evolving changes in legal theories and precedent.

Factor 4, Work Parameters:
Although supervisors are available for guidance and assistance, the incumbent has wide latitude in researching, analyzing issues, writing reports and recommendations, and drafting opinions and orders. Every work product is reviewed by the staff director or chair.

Factor 5, Personal Interactions:
The incumbent routinely interacts with the Chair, Commissioners, the staff director, senior staff, federal judges and their staffs, official from outside federal and state agencies, and the public.

Factor 6, Environmental Demands:
The work is performed in a professional office setting.

BENJAMIN TAIBLESON

EDUCATION

Yale Law School, J.D. 2010

Activities: YALE LAW JOURNAL, Editor-in-Chief
YALE HUMAN RIGHTS AND DEVELOPMENT LAW JOURNAL, Submissions Editor
Research Assistant to Professors Amy Chua and Yair Listokin

Honors: Edgar M. Cullen Prize (awarded for the best paper written by a first-year Yale Law School student) (2008)
John M. Olin Research Fellowship in Law, Economics and Public Policy (2009)
American Law and Economics Association 2010 Annual Meeting, Paper Presenter

Publications: *If You Misrate, Then You Lose: Improving Credit Rating Agency Accuracy Through Incentive Compensation*, 27 YALE J. REG. 91 (2010) (with Yair Listokin)
Forgiving Breach: Understanding the Preference for Damages Over Specific Performance, 21 QUINNIPIAC L. REV. 541 (2009)
Archaic Criminal Codes and Penitential Indulgences, 2009 J. JURIS. 11
Book Note, 12 YALE HUM. RTS. & DEV. L.J. 178 (2009) (reviewing ERIC M. USLANER, CORRUPTION, INEQUALITY, AND THE RULE OF LAW (2008)) (with Rebecca Krauss)

University of Wisconsin, B.S. with distinction in Economics and Political Science, 2006

Honors: Phi Beta Kappa (early election)
Rhodes Scholarship Finalist

EXPERIENCE

Law Clerk, Judge Merrick Garland, U.S. Court of Appeals for the D.C. Circuit, Washington, D.C — 2010 - 2011

Arnold & Porter LLP, Washington, D.C. — 2009
Conducted research and wrote memoranda on antitrust, intellectual property, and pro bono criminal defense issues.

American Bar Association Rule of Law Initiative, Pristina, Kosovo — 2008
Conducted comparative international research informing recommendations to the Kosovo government. Worked to build post independence legal infrastructure.

Temporary Restraining Order Project, Yale Law School, New Haven, CT — 2007 - 2008
Assisted domestic violence victims in applying for and enforcing temporary restraining orders.

Sarasas Witaed Bangbuathong, Bangbuathong, Thailand — 2007
Taught Life Skills and Health to children in semi-rural Thailand.

Center for the Study of Politics, Madison, WI — 2003 - 2006
Analyzed political campaign advertisments and local news political broadcasts as part of a multimillion dollar political media research project. Managed and supervised other researchers.

Cape Town Community Housing Company, Cape Town, South Africa — 2005
Arranged for microfinance support to South African housing welfare beneficiaries. Provided counseling to recipients to prevent default and eviction

INTERESTS

Travel (to more than seventy countries since 2004)

Date of Hire:	**10/10/2011**
Name:	**Hyun Konfrst**
Title:	**Research Associate**
Grade/Step:	**09/1**
Salary Range:	**$42,209 – $97,333**
Salary:	**$51,630**
Comments:	**Filled vacancy created on 05/13/2011**

Research Associate
GS-09

INTRODUCTION

This position is located in the Office of Research and Data (ORD). The incumbent assists the research staff in the preparation and analysis of qualitative and quantitative data for monitoring the application of the federal sentencing guidelines and for other related Commission or criminal justice research. The incumbent reports to senior research staff and the director of ORD.

REPRESENTATIVE DUTIES

- Contributes to Commission presentations and reports by analyzing qualitative and quantitative data under supervision of senior research staff.
- Assists with bibliographic work.
- Participates in data collection, projects, or special requests under supervision of senior research staff.
- Reviews criminal justice case files and accurately codes cases for data entry in special coding projects under supervision of senior research staff.
- Participates as a member of Commission policy teams under supervision of senior research staff. Attends policy team meetings, assists with designing coding instruments and instructions, accurately codes cases for data entry, performs quality control procedures on the work of other team members, writes SAS programs for data analysis of data produced by the team, merges team datafiles with existing Commission datafiles.
- Reviews criminal justice case files and checks the accuracy of 70-80 departure cases each day: (1) assesses (according to the latest coding protocols) the departure (or variance) status, (2) determines if the sentence is above or below the range and noting the reasons why sentence is outside the range, (3) verifies final guideline offense level, criminal history category and range, noting the differences between the Pre-sentence Report and the statement of reasons, (4) verifies the statutory range, and the type of statement of reasons.
- Reviews 50-60 cases each day that need edits, thoroughly resolves edits and accurately identifies edit cases that cannot be resolved.
- Demonstrates good knowledge of federal sentencing guideline application, the criminal justice system, and federal criminal statutes.
- Writes and executes SAS program code and works with large data files. Merges datafiles in SAS. Uses DBMSCopy to change datafiles from one format to another. Becomes familiar with other Commission data such as the corporate datafile, re-sentencing datafile, appeals datafile, etc.

- Assists in the design and development of spreadsheets using Excel or QuattroPro, inserting basic formulas and creating accurate footnotes.
- Assists in the preparation of datafile documentation, statistical tables, and graphic displays and presentations.
- Assists research staff in evaluating research problems and applying or adapting available research methods to solve research problems.
- Performs support or administrative tasks as assigned and directed.

FACTOR 1, JOB REQUIREMENTS:
Basic knowledge of Commission policies, the federal sentencing guidelines, and the federal criminal justice system. Demonstrated experience in a research environment, or other research related field. Experience or knowledge of the methods used to analyze empirical data. Demonstrated experience with quantitative or qualitative methodological research techniques and social science statistical procedures. Experience using SAS, SPSS, or other statistical programming software to analyze quantitative data. Ability to handle multiple assignments, focus on details and produce precise work products in a timely manner to ensure deadlines are met. Knowledge and experience using a wide array of computer software packages, such as Oracle, WordPerfect, Word, Excel, PowerPoint, Excel, QuattroPro, and DBMS Copy to assist in evaluating or implementing research techniques and presenting research findings. Excellent verbal communication skills and the ability to communicate effectively in writing. Ability to successfully interact with employees at all levels and work effectively as a member of a team. Excellent interpersonal skills are critical to the success of the research team. The ability to ask questions, communicate problems and respond positively to constructive criticism are essential qualities of a research associate.

FACTOR 2, SCOPE AND EFFECT OF WORK:
The purpose of the work is to provide assistance to policy makers, *e.g.*, the Commission and the Congress, with empirical data describing criminal offenses in the federal system and the appropriate sentences for those offenses. This work assists the Commission in developing and refining the federal sentencing policies and guidelines.

FACTOR 3, COMPLEXITY:
The incumbent must be able to perform quantitative and qualitative analysis of federal sentencing data and related data, and assist in the review of existing data to determine applicability to the development and refinement of the federal sentencing guidelines. Development of data collection instruments that satisfies the needs of special research projects adds to the complexity. While established social science research methods and techniques are generally applicable, the research assistant, in consultation with senior research staff, may occasionally have to adapt established methods and techniques to execute assignments which adds to the complexity. The incumbent must respond to assignments in a timely manner and display accurate results.

FACTOR 4, WORK PARAMETERS:
The incumbent works under the general supervision of a research associate or senior research associate who provides supervision, assigns work, defines general parameters, and establishes timetables for the completion of assigned work. While instructions for executing assignments

are provided, the incumbent must exercise own initiative and judgement in selecting appropriate methods of analysis. Occasionally, the incumbent will receive direction from the director of ORD and the staff director. Projects are reviewed by senior research staff.

FACTOR 5, PERSONAL INTERACTIONS:
Contacts are with staff in the Office of Research and Data and Commission employees, as well as organizations or individuals under contract to perform research or policy projects for the U.S. Sentencing Commission. Other external contacts are with persons from other government agencies and organizations with an interest in guideline development and application. Contacts are for the purpose of gathering and interpreting data, and answering requests as directed by senior research staff.

FACTOR 6, ENVIRONMENTAL DEMANDS:
The work is performed in an office setting. Some lifting of heavy boxes that contain case files is required.

Hyun Jun-Konfrst

EDUCATION

Master of Science in Criminology
University of Pennsylvania, Philadelphia, PA — May 2010

Bachelor of Arts in Criminology and Criminal Justice
University of Maryland, College Park, MD — December 2006

RELEVANT COURSEWORK

Sociology, Criminology, Criminal Law in Action, Evidence-based Justice Policy, Quantitative Methods, Evidence-based Sentencing, Security Administration, Political Science, Social Psychology, Research Methods–Crime Analysis, Evidence-based Crime Prevention, Contemporary Legal Policy Analysis

EMPLOYMENT

University of Pennsylvania, Philadelphia, PA — 2009 - 2010
Research Assistant
- Bio-psychosocial interdisciplinary research study focusing on the prediction and treatment of child/adolescent aggression
- In charge of data collection analysis using SPSS
- Designing and creating new questionnaires and data set
- Training new research assistants; Perform quality assurance
- Implement varied research techniques such as interviewing subjects, diagnosis for psychological disorders, performing an electroencephalogram (EEG) test and psychophysiology examinations

Lionbridge, Washington, DC — since 2008
Interpreter/Translator
- Certified Korean interpreter for the State of Maryland
- Conduct consecutive and simultaneous interpretation in legal setting
- Sight translation in office setting

Berlitz Language Center, Odenton, MD — since 2007
Korean Instructor
- Fully trained to teach language with Berlitz method
- Taught Korean to government and military personnel

Pathway Schools, Pasadena, MD — 2007 – 2008
Individualized Instructor
- Taught delinquent juveniles and students with special needs
- Provided individualized academic instruction, behavioral management programming, group instruction, crisis intervention, individual and group therapy and family support services

Department of Transportation-Shuttle UM, College Park, MD — 2004 – 2006
Security/Safety Training Supervisor
- Supervised drivers for overall safety and security, trained new drivers and investigated/monitored drivers with history of safety issues

University Book Center, College Park, MD — 2004 – 2006
Textbook Department Coordinator
- Organized textbook department and assisted customers over the phone and in person
- Coordinated ordering and shipment process

SKILLS

Language: Fluent in Korean and basic knowledge of Japanese
Computer: Microsoft Office Suite; Stata; SPSS; SQL
Other

- Excellent research skills, written and verbal communication skills
- Detail-oriented, self-starter and ability to work fast and independently
- Problem-solving skills, leadership and multi-tasking ability

EXPERIENCE

Commencement Speaker (College of Behavioral and Social Sciences) December 2006

- Delivered a commencement address on the topic of personal experience, peace proposal to the UN, and a vision for changes in Criminal Justice System at the graduation ceremony

Teaching Assistant, College Park, MD 2006

- Concepts of Law Enforcement Administration
- Assisting professor to organize class of more than 200 students

Dean's Student Advisory Council (College of Behavioral and Social Sciences) 2004 - 2006

- Representative of the Department of Criminology and Criminal Justice
- Evaluating department and college information for students
- Facilitating a coordinated relationship among departmental organizations and honor societies

Secretary of Academic Affairs, College Park, MD 2005 - 2006

- Ensuring efficient communication between the students, professors, the Office of Judicial Program, including the Student Honor Council

Lincoln Elementary School, Ironwood, MI 2003

- Teaching Assistant, as part of the child psychology research
- Assisted teacher with projects to improve children's learning skills

ACADEMIC PROJECTS AND HONORS

- **Research Project** (Evidence-Based Justice Policy) November 2009
  Policy Memorandum: Cost-effective Juvenile Corrections System
- **American Society of Criminology** since 2009
- **Independent Study Research** September 2006
  Police Suicide Prevention: Analysis on the effectiveness of police suicide prevention programs
- **United Nations Association - National Capitol Area** 2004/2005
  Campus liaison for the chapter of the University of Maryland
- **Golden Key International Honor Society** since 2005
- **National Dean's List** for academic excellence 2003/2004
- **Denise Gertz-Cohen Scholarship** 2003
  Given to students showing academic achievement as well as contribution to the community activities
- **Phi Theta Kappa - International Honor Society** since 2003

Mr. SENSENBRENNER. Okay. Thank you.

Gentleman from Virginia, Mr. Scott?

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Felman, the question of racial disparities has come up. Can you tell us the situation of racial disparities before the guidelines while the guidelines were mandatory and now that they are advisory?

Mr. FELMAN. Of course, Mr. Scott.

The evidence shows that before the guidelines and mandatory minimums were passed in 1984 there was no gap in racial sentencing trends. So there is no evidence that—and this is in the Commission's own data—there was no evidence that judges are inherently racist.

The gap between mostly Black males and White males took place when the guidelines were binding and when the mandatory minimums were enacted, most notably, of course, the famous 100-to-1 crack disparity.

We don't know what the disparity is now. Although the Commission's study suggests that there has been an increase in racial disparity, they have made it very clear that they have not considered all of the relevant factors.

They don't gather the data that is necessary to do a complete multivariate analysis and that is why their analysis, when they first put it out, contained such extreme disclaimers in it.

There is another group of researchers at Penn State University that looked at the same data with a more nuanced analysis and came to the opposite conclusion.

The suggestion that somehow African Americans would be better off under a binding harsher system is somewhat perverse. This is the best system that they could hope for because all defendants are treated more fairly when there is an opportunity to consider their individual characteristics——

Mr. SCOTT. Thank——

Mr. FELMAN [continuing]. And the data show—I am sorry.

Mr. SCOTT. Thank you. I just have 5 minutes. I wanted to get in a lot of different questions.

On downward departures, what portion of downward departures are a result of prosecutorial recommendations and what portion are judicial decisions without a prosecutorial recommendation?

Mr. FELMAN. Well, the prosecutorial—expressly encouraged ones outnumber the judge-driven ones significantly. That is almost 28 percent.

The 16.7 percent or 16.9 percent of nongovernment-sponsored gets credited to the judges but it is also important to remember that at least half the time or roughly half the time the government is not even objecting to those.

Mr. SCOTT. Thank you.

Judge Saris, we have been blaming the judges for the disparity. Has there been any study of charging policies varying from district to district where some prosecutors overcharge and the judges justifiably adjust for that by downward departures?

Judge SARIS. Well, we are in the process of finalizing the mandatory minimum report which Congress has asked us for. Actually, we are hoping it will come out within the next month, and we did just that kind of study where we took various districts at random and we looked at charging practices across the districts to compare, particularly in the context of mandatory minimum sentencing, and we will be providing that information directly to the Congress.

Mr. SCOTT. In this—the whole guideline system is based on violation of specific code sections. Many times a code section itself does not give an indication of the seriousness of the offense.

For example, a 19-year-old high school student having consensual sex with a 15-year-old high school student is the same code section with a 45-year-old having sex with a 13-year-old.

How would the guidelines deal with what is obviously a differential in seriousness?

Judge SARIS. Yes. I think you point out a very serious issue, which is that our guidelines piggyback on, if you will, the state laws where sometimes those differences are huge.

One of the departure sections that we have is if the criminal history category either seriously——

Mr. SCOTT. If you have—if you have two criminal history and everything else the same—the only difference is one is 45 and 13, the other is 19 and 15—do the guidelines allow a significant departure downward to account for the obvious lack—lesser of seriousness of the offense?

Judge SARIS. Well, obviously, in some—it depends if there is a mandatory minimum. We typically don't get those kinds of cases involving that. But if your general question is can you—it is can you downwardly depart if you feel that a sentence is——

Mr. SCOTT. You have—you have——

Judge SARIS [continuing]. You have to provide—yes, you can in some circumstances.

Mr. SCOTT. You have to depart. The guidelines would not adjust. Is that right?

Judge SARIS. Right. But there are some sanctioned departures where that is the case.

Mr. SCOTT. Now, Mr. Felman, what are some—you have upward departure and downward departure but you also have factors that increase the guidelines and reduce the guidelines.

Are the—what factors are there that would cause an upward departure and are they part of the guidelines, and what factors would cause a downward departure and are they part of the guidelines?

And if you have a case where there is obviously less seriousness, how much of a downward departure can you get? We have been talking about the differential between upward and downward. Is that part of the guidelines?

Mr. FELMAN. Am I allowed to answer it? Well, the guidelines, obviously, contain extraordinarily more aggravators than mitigators and that is why there are very few upward departures.

Most judges find the guideline range to be significantly high enough to accommodate the purposes of sentencing and that is why most of the departures are downward.

Of course, most of them are at the government's request. There are very few mitigators in the guidelines. There is role. There is pleading guilty. Other than that, that is about it. And so that is——

Mr. SCOTT. Seriousness—seriousness of the offense?

Mr. SENSENBRENNER. The gentleman's time has expired.

Mr. SCOTT. Mr. Chairman, can I have 30 seconds so he can answer this question—finish this question?

Mr. FELMAN. The only way to accommodate different——

Mr. SENSENBRENNER. Without objection.

Mr. SCOTT. Thank you.

Mr. FELMAN. The only way to accommodate seriousness—differences in seriousness of the offense is frequently through a downward departure.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. SENSENBRENNER. The gentleman from South Carolina, Mr. Gowdy?

Mr. GOWDY. Thank you, Mr. Chairman.

Your Honor, I listened as carefully as I can when Chairman Sensenbrenner asked you to explain, if you could, why there would be a nine-fold increase in downward departures in your district as opposed to Georgia, and I didn't hear a response.

Can you tell me why there would be nine times more downward departures in your district than there would be in another district?

Judge SARIS. Well, I think there probably are two reasons.

First, I don't know Georgia's caseload but in our caseload we were a very crack-heavy caseload so we had a lot of crack cases, and I would say most of the judges in our area probably varied on that.

The second thing is—I would say is I think that there are different philosophies of different judges toward variances and some judges varied more than others.

Mr. GOWDY. How many upward departures were there in the district of Massachusetts?

Judge SARIS. I don't know that but I can—I will provide that data to you but I——

Mr. GOWDY. Well, do you think it would be similar to the 20-to-1 disparity—20 times more downward departures than upward departures that is true nationwide? Do you think Massachusetts would be an anomaly?

Judge SARIS. It probably—it probably would be consistent with that but I would have to look it up and provide it for you.

[The information referred to follows]:

DISTRICT OF MASSACHUSETTS
SENTENCE IMPOSED AND POSITION RELATIVE TO THE RANGE[1]

FISCAL YEAR	NUMBER OF CASES	WITHIN THE GUIDELINE RANGE (%)	DEPARTURE/VARIANCE ABOVE THE GUIDELINE RANGE (%)	GOVERNMENT SPONSORED BELOW RANGE (%)	NON-GOVERNMENT SPONSORED DEPARTURE/VARIANCE BELOW THE GUIDELINE RANGE (%)
FY2010	442	32.1	2.5	29.6	35.8
FY2009	516	34.9	2.3	20.7	42.1
FY2008	466	50.9	1.9	15.9	31.3
FY2007	576	54.9	1.6	13.7	29.9
FY2006	509	57.2	1.2	16.9	24.8

[1]Information provided on this chart is derived from the U.S. Sentencing Commission's *Sourcebook of Federal Sentencing Statistics*, Appendix B (District of Massachusetts) for fiscal years 2006-2010. For ease of presentation, the categories of Above Range Departure/Variance and Non-government sponsored Below Range Departure/Variance represent a combination of subcategories set forth in the Sourcebooks.

Mr. GOWDY. Well, let me ask you this. You will—and I don't mean this to be a disrespectful question. How can we convince the public that the guidelines should be taken seriously when they are not taken seriously in your own courthouse?

Judge SARIS. Well, I disagree that they are not taken seriously in our own courthouse.

Mr. GOWDY. You are in the top ten in downward departures.

Judge SARIS. There are approximately 25 percent of the courthouses that vary 26 percent or over and we are in that group.

In our courthouse, we start with the guidelines. We—at that point, some—as I said, we had a lot of crack cases. But there were other reasons too. I am not trying to—I am not trying to——

Mr. GOWDY. You and I both know that there would be a lot of cocaine-based cases in Georgia as well. That is not just Massachusetts.

Judge SARIS. I don't know that district in Georgia. Districts vary.

But what I can say is that the Georgia's—the judges in our district do take the guidelines seriously, and if you look nationally even when you look at the rate of variances that there is a close gravitational pull in terms of the——

Mr. GOWDY. But the variances are always downward. They are never upward. So I guess what the public's having a hard time understanding is you don't ever think someone's criminal history is understated? There is never a reason to go higher with a sentence than lower?

Judge SARIS. Well, of course, sometimes there is.

Mr. GOWDY. But 20 to 1—20 times more downward departures—not Rule 35s, not 5K 1.1s, but judicial departures 20 times more than there would be upward departures?

Judge SARIS. Not to get too much into the weeds of Massachusetts law but in our state, for example, a misdemeanor is any offense that carries up to 2.5 years of imprisonment where in many states it is 1 year.

So sometimes what happens is something that would be a misdemeanor and not counted in one state is in our state. So people downwardly vary because of that.

So as—so that is basically there is—you have to look at the caseload, you have to look at the kinds of cases and also there is a difference in perspective. There is no doubt about it, and that is why—let me—can I—can I come back?

Mr. GOWDY. Well, that is what we are trying to get away from.

Judge SARIS. That is why we are proposing this.

Mr. GOWDY. But that is what we are trying to get away from is a difference in perspective.

The gentleman, Mr. Miner, mentioned the Southern and Northern Districts of New York and he was careful to say we are not talking about different parts of the country. Well, we ought to be talking about different parts of the country.

That is why you have a uniform Federal system—so you won't have wide disparities in Nevada and Massachusetts.

But let me ask you—I have only got a couple minutes.

Judge SARIS. Can I just say—I agree with that.

Mr. GOWDY. Do you believe Congress has the authority to set statutory maximums?

Judge SARIS. Congress?

Mr. GOWDY. Yes.

Judge SARIS. Yes. Of course.

Mr. GOWDY. Do you think Congress has the authority to set mandatory minimums?

Judge SARIS. The authority? Yes.

Mr. GOWDY. Do you believe Congress has the ability to limit the jurisdiction of the Federal courts, as we have done in the past, I hasten to add?

Judge SARIS. I think it has been done. I don't know whether that would——

Mr. GOWDY. Do you agree that——

Judge SARIS [continuing]. Be the case in sentencing. I actually would prefer not to take a position on that until I knew which context you were talking about.

Mr. GOWDY. Well, what I am asking you is do you agree with me that Congress should codify the guidelines, they should be mandatory and we should go back to the good old days where you had upward and downward departures, where judges had to explain them and where you actually didn't have these wide variances in sentences?

Should Congress codify the guidelines and they have the force of law instead of just being suggestions, which is all they are now?

Judge SARIS. No. What we are fighting for—we put a lot of thought into this. We are, as you know, bipartisan. We have Democrats and Republicans.

Mr. GOWDY. Congress is bipartisan too, your Honor.

Judge SARIS. Yes, that is right. And what we are proposing are a series of legislative adjustments to make sure that the guidelines remain strong and effective. We think they are important——

Mr. GOWDY. Do you think sentences——

Judge SARIS [continuing]. And we think they are better.

Mr. GOWDY. Should sentences reflect the will of the public?

Judge SARIS. The will of the public?

Mr. GOWDY. Yes.

Judge SARIS. In part. It should reflect congressional intent. I mean——

Mr. GOWDY. Well, you have—you have some states where the juries actually do the sentencing, right?

Judge SARIS. Sure. Certainly, in death penalty cases.

Mr. GOWDY. Well——

Mr. SENSENBRENNER. The time of the gentleman has expired.

The gentleman from Michigan, Mr. Conyers?

Mr. CONYERS. Thank you, Chairman.

Judge Saris, did you want to finish explaining to our esteemed former prosecutor what you were trying to get at?

Judge SARIS. Thank you very much.

Yes, it is good to—obviously, the congressman knows something about criminal law. He was a former AUSA, I guess. But what I was trying to say is we have looked at this data. We haven't sat silently by after *Booker*.

We have been actively monitoring what has been going on. There have been seven Supreme Court cases. In a bipartisan way, we have come together after monitoring the data actively and we have

come up with these proposals which we believe will make an effective guideline system.

And so when you say can you make them mandatory I suppose you can. The Commission hasn't taken a position on it.

But right now, we believe that this is what would be appropriate. Thank you.

Mr. CONYERS. All right. You know, we are at a hearing here. It is important, but the title is a little—I think should be reviewed. The title of this hearing today is "Uncertain Justice: The Status of Federal Sentencing and the U.S. Sentencing Commission Six Years After *U.S. v. Booker*."

Now, let me ask you, what is the uncertainty about justice? Mr. Sensenbrenner, our Chairman, raised the question of the racial factor in the American criminal justice system, which is pretty critical and is still pretty large.

We have had the Sentencing Project director, Mark Mauer, before this Committee many times and has pointed out that people of color are more likely to get arrested, more likely to be charged more, more likely to get longer sentences, more likely to be incarcerated.

So how do you react to our title versus this work I have been on and apparently Sensenbrenner too about the racial factor in criminal justice sentencing?

Mr. FELMAN. If this Subcommittee is truly concerned about addressing the disparate treatment of racial minorities, there are some very clear ways it can do that.

The real problems are things like the criminal—the career offender guideline that disproportionately impacts minorities—the way in which criminal history is handled—the crack/powder disparity remains at 18 to 1.

Many of the mandatory minimums have a disparate impact on minorities. Making the guidelines binding would do nothing to address those issues and the suggestion that justice is uncertain because of differences in district data is extraordinarily complex.

You have to look at the caseloads of these districts. In many of these districts with the high compliance rates they are border districts where you are talking about mostly immigration cases that are not very serious and the people are detained. So they are pleading out to time served.

There is no need for a variance. They are getting time served. There are differences in procedures. There are some jurisdictions in which the probation officer and the government and the court fact bargain and they fit the guideline to the agreement of the parties.

I believe the Middle District of Georgia to be one of those districts. So there isn't any need for a variance because they crank the guidelines down to fit the agreement of the parties.

In other districts, like Massachusetts, the prosecutors probably know that the judges may very well vary. So they overcharge. They charge the most serious thing. They go for every upward adjustment they can find because they probably know it is going to come down.

That is why if you really want to get serious about looking at the reality of inter-district disparity what you have to look at is average sentence lengths, and my understanding—and there is a study

and I cite it in my testimony—is that average sentence lengths in terms of variations among districts is actually lower now than it was when *Booker* was decided.

Mr. CONYERS. Well, then I want the professor—Professor Otis to know that we are not this afternoon going to reimpose mandatory sentencing. I have had a very unpleasant experience with all of the mandatory sentencing that goes on in this country.

Mr. SENSENBRENNER. Gentleman's time as expired.

The gentlewoman from Florida, Ms. Adams?

Mrs. ADAMS. Thank you, Mr. Chair.

Mr. Miner, I was just reading and I noticed that Judge Copp of Nebraska has publicly suggested on Doug Berman's sentencing website that the individual sentencing statistics for judges be published.

And it says although it has the data and although it releases data by a court-by-court basis, the Commission has never publicly released information on the extent to which an individual Federal judge sentences within or outside the guidelines.

It is important to note, you know, according to Judge Copp—in short, it is time for Federal sentencing judges like me to pay the piper.

Do you agree and do you support the Sentencing Commission publishing sentencing data for individual judges?

Mr. MINER. I do think that that should be done, whether there is a desire perhaps to not name the judge but to identify that within a particular courthouse in one corridor somebody is going below the guidelines consistently and around the corner on the exact same floor you are more likely to get a more serious sentence every single time where you have similarly situated defendants and similar crimes.

Where you are arrested and the judge that you draw should not be a mitigating or an aggravating factor. We have a Federal system. There should be consistency not just in the same courthouse and on the same floor or district by district but across the country, and we are failing in that.

Mrs. ADAMS. Mr. Otis, child porn variances are the largest compared with other crimes, apparently. Do you have any evidence or theories on why this is?

Mr. OTIS. I am sorry. Could you repeat the question? I didn't hear it.

Mrs. ADAMS. The child—child porn variances are the largest compared to with other crimes. Do you have any evidence or theories on why this is?

Mr. OTIS. What is that——

Mrs. ADAMS. Child pornography.

Mr. OTIS. Child porn. I am actually—it has been years since I have been in the U.S. Attorneys Office and I am no longer conversant with particular categories of sentencing. The thing that I am conversant with is that in my district, the Eastern District of Virginia, is apparently quite unlike Judge Saris' district.

We continue to follow the guidelines about 74 percent of the time and I am happy to say there is equal justice going there. But I don't know the answer to your specific question.

Mrs. ADAMS. Judge Saris, I listened intently as my colleague did when our Chairman was asking you but I never heard the answer.

Have you looked into why there is the disparity between you and Georgia—your district and Georgia's district? Have you looked at the variances and do you have that data and have you compiled it and do you have an answer?

Judge SARIS. Yes, we do have the data of the differences between all the districts.

Mrs. ADAMS. Have you looked into it?

Judge SARIS. We have looked into it. We believe—well, we haven't gone—coded for each individual judge but we have looked at it and we are concerned and, you know, part of—this is the judge—it is nothing that the judge is doing wrong. This is what the judge is doing in response to the Supreme Court case law. They must look at this data and some of it——

Mrs. ADAMS. Okay. Let me ask you this.

Would you share—publish your data on sentencing for individual judges?

Judge SARIS. The Commission has a policy not to release identifying——

Mrs. ADAMS. Why not?

Judge SARIS [continuing]. Information with respect to individual judges. The judicial—I think at this point the Judicial Conference has that policy and we do as well.

Mrs. ADAMS. You were recently interviewed and that interview was published on the Third Branch, the website of the U.S. courts.

In the interview, you revealed that a recent study of Federal district judges found that 70 percent felt that the penalties for receipt and possession of child pornography were too high—a sentiment likely responsible, and I quote, "a sentiment likely responsible for a more than 40 percent variance rate."

Do you believe or have cause to believe that the enormous variance is due to a policy objection over the sentences for child pornography by the U.S. judges in question?

Judge SARIS. Yes. I think that in child pornography what we have seen is a rate of variance of about 40 percent and an extent of variance of about 40 percent. Widespread dissatisfaction——

Mrs. ADAMS. Well, let me ask you this then. Do you believe that law enforcement of the United States as it applies to child pornography should depend on the sentiment of the U.S. judges about the severity of the sentences?

Judge SARIS. Well, we have concerns——

Mrs. ADAMS. Yes or no.

Judge SARIS [continuing]. About the policy. We have advocated that there be stricter review for policy disagreements. But also, I have to say, that if you see that level—that groundswell of people unhappy that is the obligation of the Commission to come back and we are doing a report on child pornography. We are going to drill down on that, yes.

Mrs. ADAMS. Do you believe that child pornography is a dangerous thing for children?

Judge SARIS. Yes.

Mrs. ADAMS. So I think that we need something looking into this if you have got a 40 percent variance——

Judge SARIS. Yes. We agree totally.

Mrs. ADAMS [continuing]. On sentiment. On sentiment. That really worries me as a former law enforcement officer.

Judge SARIS. I agree.

Mrs. ADAMS. My time is short.

Mr. Felman, you state that the Commission should collect more data. You also say that the advisory system we have now does not need to change. Then why do we need more data?

Mr. FELMAN. Well, the reason for more data is to make the advisory system better so that we can study what we are doing and see what actually works.

Mrs. ADAMS. Well, you wanted——

Mr. SENSENBRENNER. The time of the gentlewoman has expired.

The gentleman from Florida, Mr. Deutch?

Mr. DEUTCH. Thank you, Chairman.

Mr. Felman, we have learned in this series of questions in this hearing this morning that the—that Georgia, apparently, is the gold standard. Massachusetts—Massachusetts, apparently, leaves much to be desired.

In your testimony, you asserted that the ABA has been opposed to mandatory minimums for 40 years and one of the goals of the sentencing guidelines was to reduce unwarranted disparity in sentencing and treat similar offenders and offenses similarly.

But, and this gets to the point of Georgia and Massachusetts which has seemed to come front and center here, you also argue there exists an equally important objective treating dissimilar offenders and offenses differently and avoiding unwarranted uniformity.

Can you talk about the negative effect that unwarranted uniformity in sentencing has on the justice system in this country?

Mr. FELMAN. That was the principal defect in the binding guidelines—the failure to distinguish different offenders differently and to treat them differently.

It is inherent in the nature of sentencing. The mix of factors that could justify a sentencing outcome is as rich as human experience itself. It is not simply possible to write down in advance all of the things that you might want to look at or consider and weigh them.

This was recognized by the Congress in the Sentencing Reform Act. This was recognized by the Commission in their promulgation of their guidelines. They did the best they could.

But even the best system of binding guidelines is going to suffer from an inability to effectively distinguish between differently situated offenders. That, of course, is the principal flaw of mandatory minimums and the reason why the ABA has opposed them for 40 years, the Judicial Conference and the American Law Institute for 50 years.

It is the logical equivalent of sentencing by temper tantrum. It is like we are going to look at one consideration and one consideration only, one that usually bears little resemblance or rationality to the culpability of the offender and base the entire sentence on one thing.

The beauty of the advisory system——

Mr. DEUTCH. Let me—Mr. Felman, let me stop——

Mr. FELMAN [continuing]. Is that Massachusetts may be better is because they may be more accurately and more fairly distinguishing different offenders and treating them differently.

Mr. DEUTCH. Let me—let me just go back to that previous point that you made. Can you—can you give us some examples?

When you talk about—when you talk about sentencing by temper tantrum there is a sentiment among some on this Committee that we ought to go back to what had previously been referred as the good old days where we set the sentences and judge them and so there is no leeway.

Can you give us some examples—specific examples of why that—why that is problematic?

Mr. FELMAN. Well, I think the crack cocaine example is the perfect example. There was a sort of a hysteria over the death of a basketball player that led to basically an auction where you all were bidding against each other on who could raise the highest sentences.

It is sentencing by sound bite, and what we see is just a relentless upward ratchet—you know, what is the crime du jour—what does the American people want us to look like we are serious about today.

And so the result was penalties for crack—for crack defendants where a handful of a substance would get you 10 years. It was absolutely wrong. Everyone recognized it and yet it took us almost 20 years to fix it.

Mr. DEUTCH. Judge Saris, proponents of mandatory guidelines often don't realize that sentencing judges are giving the Commission feedback every time—every time there is a variance from the guidelines, and exercises of reasonable discretion in cases that warrant it.

What happens with that feedback?

Judge SARIS. Yes. We have 83,000 judgments last year which we coded, analyzed and reported on. So we start to see when there are variances or regional differences. Part of that goes into our guidelines. That is how we—how we implement and change guidelines. It also goes into the reports which we give to Congress, and we also respond to requests from all of you.

So we look at absolutely every sentence, code it, analyze it and get it back to the public either in terms of policy or in terms of reports.

Mr. DEUTCH. How do you use it to modify guidelines?

Judge SARIS. How do we——

Mr. DEUTCH. How do you use it to modify guidelines?

Judge SARIS. Well, one big area right now is when we were looking at the issue of straw purchases last year, for example. We looked at what exactly—we really went right into what people were doing for straw purchases of guns.

Were they going across the border—we could find out that about a third of the guns were going across the border to Mexico in our straw purchasing cases. We were able to look at what was going on with—why were judges varying.

Well, sometimes it was because the girlfriend who bought the gun for the boyfriend. So we were able to actually use that in pegging what—pegging the guideline.

Mr. DEUTCH. I appreciate the thoughtful response. Thank you. I yield back, Mr. Chairman.

Mr. SENSENBRENNER. The gentleman from Pennsylvania, Mr. Marino?

Mr. MARINO. Thank you, Chairman.

Good morning, ladies and gentlemen. Mr. Felman, I take issue with your statement about prosecutors overcharging.

I was a district attorney for 12 years and I was a United States Attorney for over 6 years, and one of the main goals that I tried to achieve and my staff tried to achieve was to seek justice—not to put people in prison but to seek justice.

And I can't remember any time in those 18 years as a prosecutor my staff or myself intentionally overcharging someone because of sentencing.

Do you have some statistics? Do you have some information of which I am not aware that that is occurring?

Mr. FELMAN. Well, and maybe I overstate the case.

The point I was trying to make is that there are differences in regional practices, and maybe overcharging is the wrong word. They know the justice they seek and I am not suggesting that they are seeking results that are unjust.

What I am suggesting is that they know in the various procedures in which they are working with how to get to that sentence and they know in some instances that it is necessary to push for a guideline range that is higher than what is just because they know the end result will be just because they have judges that are likely to vary.

Mr. MARINO. Let me share this with you—that, again, in my 18 years and with my staff, which was—we were in the Middle District of Pennsylvania—a top notch staff, and actually I have to say most if not all of the judges, I think, were perfect examples of what Federal judges should be.

I know there is a variance across the country. But our specific goal was if we charged someone we believed that there was enough evidence for a conviction and that is where it ended. The judging—the sentencing was up to the judge with recommendations from the prosecutors.

Judge Saris, you indicated in your testimony that the Commission is thinking about proposing presumptive guidelines, maybe like a hybrid, which would be something of a cross between advisory and mandatory guidelines.

I have some questions about whether the presumptive guidelines would work or if they would satisfy the court's concerns in light of *Booker*. But for now, when the Commission produces a plan for presumptive guidelines could you simultaneously produce a plan for mandatory guidelines as well?

Judge SARIS. Well, what we have encouraged is that the guidelines be given great weight—substantial weight. We have taken that language out of some of the Supreme Court cases—respectful weight. So your—if Congress asks us to try and come up with such a plan we, of course, are going to work with Congress.

We view ourselves as at the intersection of Congress, the executive and the judiciary. You—if you ask us to work with you we are going to work with you.

Mr. MARINO. Do you—I am asking for an opinion or your experience, not an opinion—what you have—what you have heard from other judges.

It is the consensus, at least among prosecutors, that many judges do not like mandatory sentencing. Could you expand on that a little bit? And if your answer is yes, explain to me.

Judge SARIS. I think many judges don't like mandatory sentences but the Commission will be coming out with a report, and I keep saying that—it is actually sort of imminent but not yet final—on the whole range of mandatory sentencing in the Federal system.

And so we are going to be coming out—we are going to actually study, if you look at the separate mandatories, how they affect different people, how—what their effect is racially as well as inconsistencies in applications across the country.

And then, I think, that everyone will have the data necessary to see as a policy matter what people want to do. But I think you are right to say most judges don't like them.

Mr. MARINO. How about—what is your position on Congress taking on its responsibility of enacting legislation particularly concerning mandatories?

Judge SARIS. What we think—and this is, as I say, it is a unanimous set of proposals—what we want at this point a strong and effective advisory guideline system and that is why we came up with these proposals which—it is a difficult area.

The Supreme Court keeps ruling. But we have come up with language right from the Supreme Court case law which we think, like the presumption of reasonableness across the appellate courts, which we think will provide an effective system. So it is what we want you to do.

Mr. MARINO. Chairman—Chairman, may I have 10 seconds?

Mr. SENSENBRENNER. Without objection.

Mr. MARINO. Thank you. If there are mandatories why is the Commission needed?

Judge SARIS. If there are——

Mr. MARINO. If there are mandatory sentencing why is the Commission needed?

Judge SARIS. Well, let me—at least the way they are functioning right now——

Mr. MARINO. Quickly, please.

Judge SARIS [continuing]. It is a mandatory floor and so what we do which is make proportional sentences and we also take into account, you know, did you have a gun, were you a minor, a major role—all that.

Mr. MARINO. Okay. Got it.

Judge SARIS. We sort of take into account the individual characteristics of the crime, and we are asking you to help us on offender characteristics.

That is a one-size-fits-all on my——

Mr. MARINO. Well, what I was——

Mr. SENSENBRENNER. Okay. Gentleman's time has expired.

Mr. MARINO. Thank you, Chair.

Mr. SENSENBRENNER. Gentleman from Georgia, Mr. Johnson?

Mr. JOHNSON. Thank you.

Is it just one of you all who have actually served as a judge, on our panel? Have either three of you served as a judge? Okay. And then——

Mr. SENSENBRENNER. Let the record show the other three witnesses shook their heads in the——

Mr. JOHNSON. In the negative. Thank you, Mr. Chairman, for the purposes of the record.

And I will say that it is interesting. We have these oversight hearings and we come in to examine the various issues that the judiciary is confronted with and each of us have 5 minutes to raise our parochial concern be it child molestation or drug cases or, you know, whatever the case might be—disparities between circuits or districts, and we don't enable you to enlighten us because we don't have time to listen to you.

We are just simply trying to get out our sound bites. And then based on that inexact process, we on this Committee then formulate the rules and even get to the point of micromanaging the affairs of Federal judges—people who have been to school, practiced law, become judges, heard numerous cases, have developed judicial wisdom, see the defendants coming before them.

They have an opportunity to size them up in addition to all of the other factors that are on paper that are presented to the court. The court is then, because it has been directed to by people who are interested in sound bites and parochial concerns and who have never served as judges, never even tried a case, many of them. Some of them are not even lawyers, and they tie the hands of the judges, and make the judges into mechanical slaves to apply a rigid set of guidelines that often make absolutely no sense in practical reality and often result in gross miscarriages of justice.

And some of that is due to the prosecutorial decisions that are made in terms of what to charge people with and, you know, I mean, that is just the bottom line.

So we are going to have some disparities in terms of sentencing regardless of whether or not there is a rigid setup or whether or not we go back to allowing judges to do what they do, which is to, based on all of the factors involved, make a wise and just decision.

Can anyone tell me why is it that our current mechanical system is better than the one that we had prior to 1997 where we—where we allowed judges to, within broad parameters set by the legislature in terms of range of punishment, sentences—when we allowed judges to exercise judicial discretion why is it—why is what we are doing now better or is it better than what we were doing back then? We had a sentence—we had a parole board that could make decisions on early release. What was wrong with that set-up that most states still follow?

If I could hear from Judge Saris first and then Mr. Felman.

Judge SARIS. Thank you. I was actually a staff member like a lot of the folks here on the Senate side when the Sentencing Reform Act first started coming through and I remember that the concerns were not just about regional disparities but judge disparities.

And so this was viewed—no sentencing system is a perfect system—this was viewed as the compromise system to take sentencing out of politics and to try and come up with guidelines which both eliminated the unwarranted disparities and differences but also to

allow some flexibility to take into account the individuals, and this is supposed—and I think——

Mr. JOHNSON. Does it work better?

Judge SARIS. Excuse me?

Mr. JOHNSON. Does it work better?

Judge SARIS. I wasn't a judge before then. I was—I was—but I think at this point most judges are—believe that the current system is working.

Mr. JOHNSON. Okay. All right. Let me ask Mr. Felman.

Mr. FELMAN. I think a lot of what you have just articulated is the explanation for why the United States Sentencing Commission is more important now than ever. We have an advisory system and we need somebody to be giving these judges advice.

The Sentencing Commission has the expertise and the resources to study that and to do it. In theory, at least, they should be removed from the political process.

That is why I think this body ought to minimize its directives to them. And we may have achieved the perfect balance of allowing judges to be judges but be guided by the advice and empirical data that can be provided by an agency such as the Sentencing Commission.

Mr. JOHNSON. Thank you. I will yield back.

Mr. SENSENBRENNER. The gentleman from Arkansas, Mr. Griffin?

Mr. GRIFFIN. Thank you, Mr. Chairman.

Judge Saris, I wanted to ask you what your view is of mandatory guidelines as opposed to presumptive, and what if anything has the Sentencing Commission been doing to put out a proposal or some guidelines for the Congress—your view on mandatory guidelines?

Judge SARIS. Thank you. As I mentioned in my testimony, we are about to put out a major report on mandatory minimum sentencing.

We are looking at it in the drug area. We are looking at it in the gun area. We are looking at it in the child pornography area and in aggravated identity theft. Probably left one out.

And we are going to look at how it has been applied across the districts—whether they are been consistently applied, whether they are too serious, whether they are not too serious.

As you know, we have a strong data collection section and we are going to be providing Congress with the data to evaluate it and it should be out in the immediate future.

Right now, we are here to talk about at least, you know, strengthening the guideline system and making sure that it is as effective as we can make it and providing advisory guidelines for the judges and sort of working up the area of appellate review.

Mr. GRIFFIN. Just to clarify, you talked earlier about a plan that you on the Sentencing Commission have put out. That relates to the presumptive guidelines primarily, not mandatory, correct?

Judge SARIS. Yes, that is correct. And I wouldn't—I am not even sure I actually would describe it as presumptive because the Supreme Court has said that that is unlawful. The Supreme Court has been so active in this area.

What we are trying to do—and it is sort of the questions that have been coming to me about why these districts variations—is we

are trying to sort of—right now, courts are supposed to look at individual characteristics of an offender as well as guideline characteristics. There is a whole array of things that you look at, and what we want to make sure is that judges are still giving strength—respectful weight, whatever word you want to give—to the—to the guidelines.

Mr. GRIFFIN. So in terms of the Commission's work, is it fair to say that you have—well, you tell me. Have you spent a lot of time looking for a way for a mandatory system to pass constitutional muster or have you been focused more on the advisory side?

I am just trying to figure out behind the scenes where your focus is and whether mandatory is a part of the conversation there.

Judge SARIS. Let me start with—of course, it is part of the conversation because Congress told us to be. And so we have been studying it as hard as we can and you are going to get this massive tome pretty soon.

Mr. GRIFFITH. That is the right answer. No, I am kidding.

Judge SARIS. But in terms of right now, our focus has been trying to examine, study, code all the judgments that come through, respond where judges are varying a lot to see if we can—we can make it better but also what we want to do is make sure that judges are giving sufficient weight to the guidelines and that is why right now our focus is on the guideline system—the advisory guideline system.

Mr. GRIFFIN. Thank you.

Ms. Adams, would you like a little bit of time that I have left to follow up with Mr. Felman? I yield to Mrs. Adams.

Mrs. ADAMS. Thank you.

Mr. Felman, the last question I asked you was about the data collection. You said you were for the data collection—that you needed more data. Well, in particular, you know, you state, you know—you want to know more about the exact reasons why a judge decides to give the sentence. Is that correct?

Mr. FELMAN. Yeah. I think that—as I say in my testimony, my experience has been frivolous people don't get appointed to the Federal bench in this country. They have valid and serious reasons for doing what they are doing, and I think we could benefit from studying that and learning from that.

So if there are consistent problems with a——

Mrs. ADAMS. Let me ask you something. What kind of law do you practice? Is it defense?

Mr. FELMAN. Primarily, yes, ma'am.

Mrs. ADAMS. So as a defense attorney knowing how—exactly how and what criteria a judge needs or uses to impose lenient sentences could possibly help one of your clients, correct?

Mr. FELMAN. Well, let me clarify first that——

Mrs. ADAMS. Because there is disparity and then we don't have a good understanding as to why these judges are doing other than their own personal preferences at this point. So I just wonder would that help in deciding which courts or what judges you would want to be in front of.

Mr. FELMAN. Well, I happen——

Mrs. ADAMS. Judge shopping.

Mr. FELMAN. I happen to be a practicing criminal defense attorney but my testimony today is on behalf of the American Bar Association.

Mrs. ADAMS. But the question I asked was would it help in judge shopping?

Mr. FELMAN. Would it help in judge shopping?

Mrs. ADAMS. Yes.

Mr. FELMAN. I don't get to shop for my judges. They are assigned. What——

Mrs. ADAMS. But if you have certain cases would you not be better in that courtroom than others knowing how they decide their verdicts?

Mr. FELMAN. Well, there isn't any question that there are some judges that are more sympathetic to arguments that the guideline sentence is not a reasonable one.

Mrs. ADAMS. Thank you.

Mr. SENSENBRENNER. The time of the gentleman from Arkansas has expired.

The gentlewoman from Texas, Ms. Jackson Lee?

Ms. JACKSON LEE. Thank you, Mr. Chairman, and thank the Ranking Member for this important review and I would like to yield 30 seconds to the gentleman from Virginia, Mr. Scott, the Ranking Member.

Mr. SCOTT. Thank you, and I thank the gentlelady for yielding. Just ask Judge Saris, you have been asked several times about the desirability of mandatory guidelines.

Isn't that exactly what *Booker* and the line of cases found unconstitutional?

Judge SARIS. Well, I think what *Booker* found is that you can't have judge-found facts to increase the maximum sentence that a defendant can face and at first it started with Apprendi and then it moved on to *Booker* in terms of the guideline range.

Right now, there is, I think, a 5–4 split on the *United States v. Harris* that mandatory minimums are still constitution. So it is the maximum we can't——

Mr. SCOTT. Mandatory guidelines——

Judge SARIS. In terms of mandatory guidelines they are unconstitutional.

Mr. SCOTT. Thank you. I yield back.

Ms. JACKSON LEE. I thank you very much, and I guess, Mr. Felder, I want to raise up the banner of defense lawyers and prosecutors.

I think they all are tools of a justice system that we want to be proud of and I know on the Federal cases in particular, at least in the Southern District, you are assigned your judges and I assume from the location that you come you are assigned as well.

So I want to focus on the 5–4 decision. We are glad to cite 5–4 decisions in many, many cases. That is the nature of the Supreme Court.

There are nine members and so a 5–4 decision is the majority, and the majority made a decision specifically to indicate, if I might, that the—under the sentencing guidelines the provision making the guidelines mandatory was excised—deleted.

And I think in the wisdom of the Supreme Court that do not undertake a review of facts—they assess the arguments on the law and whether there was a violation of such, made a decision that the arbiters of the law—judges, the Federal judges, you know, in this particular instance—have the wherewithal to make decisions based upon the presentation in the courtroom.

I am going to pose a question to you but let me—as I acknowledge the new chairwoman of the Sentencing Commission, I have to acknowledge my fellow Texan, Judge Hinojosa, who is here and thank him so very much for his service.

We have our meetings on airplanes and so we get a lot of work done but it is all above board though, of course. But let me just pose to you that question.

Isn't that a very strong statement that constitutionally, legally, the Supreme Court made a decision to excise that mandatory provision under the SRA?

Mr. FELMAN. Based on the principle that the Sixth Amendment entitles you to a jury trial, and if there is going to be a fact found that is going to mandate an additional penalty you have to have the jury decide that.

So these discussions that we have been having today about a binding or mandatory guideline system, in order to be constitutional, presuppose that the facts that would be used to drive that guideline range would be put to a jury. And what I think there needs to be an understanding about is the complexity of a system like that and the difficulty of solving what has been presented here to be one of undue and unwarranted disparity.

You are only going to be able to put a certain number of facts to a jury in order to keep a jury from getting completely bogged down while at the same time having a system that bears some resemblance to fairness.

And so as much as I have studied that, you are going to have to simplify it, and when you simplify it it means that the ranges that result from that verdict are wider.

And when you consider that the average variance is 12 months what that means is you could overhaul the system completely—go through all of that complexity—and at the end of the day end up with a cluster of sentencing results that is no tighter and, indeed, may even be broader.

Ms. JACKSON LEE. Well, let me—as I go to Judge——

Judge SARIS. Saris.

Ms. JACKSON LEE [continuing]. Saris—I am so sorry—there are mandatory sentencing such as when a jury rules or if in a mandatory context when the jury ruled and they might have a bunch of facts and maybe they just get something, they give a rendering—a judgment—and then that mandatory comes in.

There is also a sentencing part of the trial. Is that not correct, Judge Saris?

Judge SARIS. No. But there usually isn't although it is true that——

Ms. JACKSON LEE. Well, let me—let me just say this because I do want to be corrected on that. What I am saying is there is an opportunity to present testimony by the defense on mitigating circumstances—religion, family, didn't do it, whatever. I am talking

about in terms of the character of the defendant but the defendant not testify. Is that correct?

Judge SARIS. Yes, that is—that——

Ms. JACKSON LEE. Okay. So what I am saying is——

Mr. SENSENBRENNER. Time of the gentlewoman has expired. The gentleman from——

Ms. JACKSON LEE. Can I have an additional 10 seconds for her to answer the question?

Mr. SENSENBRENNER [continuing]. Nevada, Mr. Amodei.

Ms. JACKSON LEE. Mr. Chairman, you are so rude. Thank you very much.

Mr. AMODEI. Thank you, Mr. Chairman. I have nothing at this time.

Ms. JACKSON LEE. You are so rude.

Mr. SENSENBRENNER. Mr. Amodei.

Ms. JACKSON LEE. We are trying to get something accomplished here and you won't even allow—yield a Member an extra 10 seconds or 15 seconds. Let the record indicate how rude you are. We are in the middle of engaging and getting facts.

Mr. SENSENBRENNER. The Chair—the Chair recognized the gentleman——

Ms. JACKSON LEE. We are getting facts, Mr. Chairman, and I was——

Mr. SENSENBRENNER. Well——

Ms. JACKSON LEE [continuing]. Posing a question to Judge Saris.

Mr. SENSENBRENNER. Well, if——

Ms. JACKSON LEE. And I was not that much over my time and you have allowed other Members to go over their time.

Mr. SENSENBRENNER. If the gentlewoman would bother to show up on time then maybe she would get all the facts. The gentleman from——

Ms. JACKSON LEE. I come on time when I am not doing anything.

Mr. SENSENBRENNER [continuing]. Nevada, Mr. Amodei, is recognized.

Ms. JACKSON LEE. I am in a Homeland Security Committee marking up to make this country safer. So don't instruct me about being on time. I am glad to be here.

Mr. SENSENBRENNER. The gentlewoman is out of order.

Ms. JACKSON LEE. That is how responsible I am. I come to a Committee hearing——

Mr. SENSENBRENNER. The gentlewoman is out of order. The gentlewoman will sit down.

Ms. JACKSON LEE [continuing]. When I come when I have another markup going on. You are rude and insulting when we are trying to get information.

Mr. SENSENBRENNER. The gentleman from Nevada, Mr. Amodei?

Ms. JACKSON LEE. Thank you, Mr. Chairman. You are only here because you are in the majority. May not last long.

Mr. AMODEI. Thank you, Mr. Chairman. I have nothing at this time.

Mr. SENSENBRENNER. Does the gentlewoman from Texas, Ms. Jackson Lee, wish to ask more questions?

Ms. JACKSON LEE. I am sorry. Pardon me?

Mr. SENSENBRENNER. Does the gentlewoman from Texas, Ms. Jackson Lee, wish to ask more questions?

Ms. JACKSON LEE. Thank you for your courtesy, Mr. Chairman.

Judge Saris, as I was posing the question to get information before I move back to the Homeland Security Committee, which delayed me from coming to this meeting and they are still continuing, in the course of the defendant putting forward information that might impact a sentencing, under the advisory standards there is the ability of the court to assess that as well as the facts that the jury has assessed already.

Is that not the case?

Judge SARIS. Yes. That is absolutely the case in the sentencing portion of it.

Ms. JACKSON LEE. So there can be, if you will, the disparities that would come about through mandatory sentencing that would not allow that kind of view from the integrity of the court. Is that not correct?

Judge SARIS. Yes, that is correct. And——

Ms. JACKSON LEE. So why would we want to argue for putting in place a mandatory in light of or making these particular regulations stronger in light of *Booker* instead of taking advantage of *Booker* and yielding to the judgment of the court looking at the whole of the facts?

Judge SARIS. Right now under *Booker*, you are absolutely correct that a judge must not—may not—may look at it and must look at the—all the statutory factors so that it—right now, what we are trying to propose is to make sure that judges take the guidelines seriously and then still have the flexibility to vary when appropriate.

Ms. JACKSON LEE. You need to expand on that a little bit.

Judge SARIS. I think what I am trying to say is right now under the advisory guidelines system judges start—it is a three-part system. You start with the guidelines. Then you can depart under guideline-sanctioned departures and then you can vary if you choose.

The Supreme Court has said you must look at the statutory factors in 3553(a) and judges will look at individual offender characteristics. What we have urged the Congress to do as one of our proposals is the sentencing courts are directed to look at individual characteristics. The Commission has been instructed in its guidelines at least for some of the factors that those aren't ordinarily relevant or they shouldn't be considered.

And so what we are trying to do is—I think some of the disconnect that we have been talking about and the differences between the districts is that some judges are—that many judges are looking at those guidelines because that is what the Supreme Court tells them to do and that they are doing their job.

But the flip side is the Commission, and we have been instructed that certain things like employment and education and vocation and family ties and community ties shouldn't generally be considered. So——

Ms. JACKSON LEE. And you have been instructed by whom?

Judge SARIS. The Congress. It is part of our enabling statute in Section 994.

Ms. JACKSON LEE. Well, and now that you have the authority to recommend on advisory, would you not be able to recommend countering the Congress—when I say countering, recommending that we should—there should be an expanse to include those particular points?

Judge SARIS. Well, there is a strong doctrinal tension between these two provisions and that is why we are encouraging Congress to take a look at that and basically call that.

Ms. JACKSON LEE. But I think what confuses me is the fact that you are also suggesting a mandatory approach. You want us to mandate that don't forget to look at character, job, associating with the community. Is that what you are suggesting?

Judge SARIS. No. No. What we want people to do is take seriously the guidelines and provide for robust appellate review.

In terms of the offender characteristics, all we are saying is that judges are routinely taking them into account because the Supreme Court told them to.

But there is this other statute that says to us, the Commission, don't promulgate guidelines based on them and that is why we are saying that there is this tension which may be accounting for some of these statistics that various people have flagged here.

Ms. JACKSON LEE. Well, let me finish on this side of the Chairman's now courtesy. Let me just finish on this.

Aren't you seeing in the crack cocaine and the letters and the review that is going on that you are able now to impact on the disparities that occurred in terms of the high numbers of African Americans and other minorities under that—are you seeing as this process is going forward, letters are going out, that you are lessening the disparity at this time?

Judge SARIS. Yes. The Sentencing Commission took a leadership role on this for, I think, over 15 years and we were very gratified when the Congress passed the Fair Sentence Act.

The amendment actually doesn't go into effect until November 1st because——

Ms. JACKSON LEE. But you are reviewing now, are you not? Are you not reviewing?

Judge SARIS. It doesn't go into effect until November 1st because you, the Congress, have the right to reject it. So that becomes the effective date. And if that goes into effect, it can affect as many as 12,000 people but it first has to go through a judge who then must do a public safety review—in other words, to make sure that we are not releasing somebody who is inappropriate to be released and that is how it worked last time.

Mr. SENSENBRENNER. The gentlewoman's time has——

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Mr. SENSENBRENNER [continuing]. Again expired. Does the gentleman from Nevada wish to ask a question or two?

Mr. AMODEI. No thanks, Mr. Chairman.

Mr. SENSENBRENNER. Okay. The Chair recognizes the gentleman from Virginia for a unanimous consent request.

Mr. SCOTT. Mr. Chairman, I ask unanimous consent to enter into the record letters from FAMM (Families Against Mandatory Minimums), the NACDL (National Association of Criminal Defense

Lawyers), Federal Defenders, and the Constitution Project, all in support of the advisory system.

Mr. SENSENBRENNER. Without objection.

[The information referred to follows:]

Testimony of Mary Price,
Vice President and General Counsel
Families Against Mandatory Minimums (FAMM)

Hearing on "Uncertain Justice: The Status of Federal Sentencing and the U.S. Sentencing Commission Six Years after *U.S. v. Booker*"

Subcommittee on Crime, Terrorism and Homeland Security
House Committee on the Judiciary

October 12, 2011

Chairman Smith, Ranking Member Conyers, and members of the committee, my name is Mary Price and I am grateful for the opportunity to submit this statement on behalf of Families Against Mandatory Minimums (FAMM). Last month, FAMM celebrated its 20th year of fighting for individualized and proportionate sentences.

FAMM has enjoyed working with members of this committee over the past 20 years to make our federal sentencing laws more just and rational. As they know, FAMM is not opposed to punishment for those who violate our nation's laws. Nor do we oppose harsh punishment, including lengthy prison sentences, for those who pose a threat to our communities. For 20 years, however, we have sought to reform certain purportedly "tough on crime" policies, such as mandatory minimum sentencing laws, that have failed to live up to their sponsors' promises while imposing extraordinary social and economic costs.

We are especially proud of the successful bipartisan reforms, such as the federal safety valve, which has given courts much needed discretion to impose individualized and just sentences in certain cases without jeopardizing public safety. The safety valve was a congressional effort to ameliorate unduly harsh mandatory minimums that were applied to low-level, first-time, nonviolent drug offenders. It directs judges to waive drug mandatory minimums and has been used in more than 74,000 convictions since 1995.[1] This reform has enabled the government to provide more appropriate sentences for non-violent, low-level drug offenders and save millions of dollars in taxpayer money while continuing to protect public safety. The safety valve demonstrated that, while mandatory sentences might ensure a superficial uniformity, everyone recognizes that judicial discretion can ensure that meaningful differences between offenders are not ignored.

We applaud the Committee for calling this hearing and exercising its important oversight role on matters of criminal justice generally, and federal sentencing policies in particular. We are concerned, however, that today's hearing is aimed not at collecting evidence and data about federal sentencing policies and soliciting ideas for improvement, but rather at building a case for specific changes that will hurt, not improve, the administration of justice and upset the Constitution's separation of powers. Specifically, we think that any effort to make the sentencing guidelines mandatory or more binding on sentencing judges will:

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[1] U.S. SENTENCING COMMISSION, SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, Table 44 (2010), *available at* http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2010/SBTOC10.htm; U.S. SENTENCING COMMISSION, 1997-2009 SOURCEBOOKS OF FEDERAL SENTENCING STATISTICS, Table 44 (1997-2009), *available at* http://www.ussc.gov/Data_and_Statistics/archives.cfm; U.S. SENTENCING COMMISSION, SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, Table 39 (1996), *available at* http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/1996/sourcbk.htm.

(1) Rest necessarily on faulty premises, namely, that (a) the Sentencing Reform Act was to ensure that disparity (as opposed to *unwarranted* disparity) was to be avoided at all costs; (b) sentencing courts have disregarded the guidelines in the wake of *Booker*; (c) unwarranted disparity created by the courts has increased steadily since *Booker*; and (d) increased judicial discretion since *Booker* has resulted in greater racial disparity in sentencing; and

(2) Do more harm than good by concentrating extraordinary authority in the hands of federal prosecutors, a move that, in addition to posing a serious threat to our Constitution's structural separation of powers and fundamental individual rights, including the right to jury trial, also will exacerbate the problem of unwarranted disparity that *Booker*'s critics allegedly seek to fix.

Before explaining why we think some of the proposals we expect will be presented to the Committee at today's hearing are wrongheaded, we believe it is important to consider the context in which today's hearing takes place. First, 2.3 million Americans are currently in our federal and state prisons and jails.[2] One in 31 adults is either in prison or jail, on parole or probation.[3] "Indeed, the United States leads the world in producing prisoners, a reflection of a relatively recent and now entirely distinctive American approach to crime and punishment. Americans are locked up for crimes — from writing bad checks to using drugs — that would rarely produce prison sentences in other countries. And in particular they are kept incarcerated far longer than prisoners in other nations," according to a *New York Times* report.[4]

The federal prison population stands today at 217,827 prisoners[5] -- a five-fold increase since mandatory minimums and guidelines were enacted.[6] These prisoners strain the capacity of the Bureau of Prisons to house them. According to the Director of the Bureau of Prisons, who testified before Congress earlier this year:

> The current Continuing Resolution presents significant challenges for the BOP, as the number of inmates has increased, resulting in additional operational and staffing costs. System-wide, the BOP is operating at 35 percent over its rated capacity. Crowding is of

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[2] PEW CENTER ON THE STATES, *ONE IN 31: THE LONG REACH OF AMERICAN CORRECTIONS 4 (2009), available at http://www.pewcenteronthestates.org/uploadedFiles/PSPP_1in31_report_FINAL_WEB_3-26-09.pdf.*
[3] *Id.* at 5.
[4] "Inmate Count in U.S. Dwarfs Other Nations'," Adam Liptack, *New York Times*, Apr. 23, 2008, *available at* http://www.nytimes.com/2008/04/23/us/23prison.html?pagewanted=print.
[5] FEDERAL BUREAU OF PRISONS, WEEKLY POPULATION REPORT (Oct. 6, 2011), *available at* http://www.bop.gov/locations/weekly_report.jsp (last visited October 11, 2011).
[6] Michael Nachmanoff, Fed. Pub. Defender, E. Dist. of Va., The Sentencing Reform Act of 1984: 25 Years Later, Testimony before the U.S. Sentencing Commission (July 9, 2009), *available at* http://www.ussc.gov/AGENDAS/20090709/Nachmanoff_testimony.pdf.

> special concern at higher security facilities -- with 50 percent overcrowding at high security facilities and 39 percent at medium security facilities. The BOP must manage severe crowding by double and triple bunking inmates. As of January 2011, 94 percent of high security inmates were double bunked and 16 percent of medium security inmates and almost 82 percent of low security inmates were triple bunked, or housed in space not originally designed for inmate housing.[7]

This incarceration-reliant, budget-busting approach has prompted a backlash from many conservatives who once supported any and all policies that purported to "get tough" on crime. More and more conservatives are recognizing the limitations of a prison-first response to every crime problem, as well as the danger of increasing over-criminalization: the continual expansion of the federal criminal code with new, often vague prohibitions. For example, Right on Crime brings together prominent conservatives concerned about criminal justice policies, the burgeoning criminal code, and over-reliance on prisons.[8]

Notwithstanding this backdrop, the Committee hearing is expected to focus largely on proposals that we fear do not simply purport to reduce unwarranted sentencing disparity, but that do so by making guidelines more mandatory and thereby virtually ensuring higher across-the-board sentences while hardening unwarranted sentencing disparity and uniformity.

Second, we would note that the Committee hearing occurs at a time when criminologists of all stripes are both excited and confounded by the historic decrease in the nation's crime rate. Many left-leaning experts believed crime would rise because of the severe economic downturn of the past few years. Many right-leaning experts predicted danger because economically depressed states finally began to reduce their prison populations in favor of less expensive alternatives. As one reporter noted,

> Nationally, the drop in violent crime not only calls into question the theory that crime rates are closely correlated with economic hardship, but another argument as well, said Frank E. Zimring, a law professor at the University of California, Berkeley.
>
> As the percentage of people behind bars has decreased in the past few years, violent crime rates have fallen as well. For those who believed that higher incarceration rates

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[7] Statement of Harley G. Lappin. Director of the Federal Bureau of Prisons, Before the U.S. House of Representatives Committee on Appropriations, Subcommittee on Commerce, Justice, Science and Related Agencies 1 (March 15, 2011), *available at* http://appropriations.house.gov/_files/031511BOPDirectorStatement.pdf.

[8] RIGHT ON CRIME, STATEMENT OF PRINCIPLES, *available at* http://www.rightoncrime.com/the-conservative-case-for-reform/statement-of-principles/.

> inevitably led to less crime, 'this would also be the last time to expect a crime decline,' he said.[9]

The historic drop in crime, which admittedly cannot continue forever, is important to keep in mind because we believe that several of the proposals for reform that the Committee is expected to consider will ensure longer sentences for more offenders, regardless of whether any evidence is offered to suggest that these longer sentences will reduce crime.

1. The Faulty Premises of the Need for *Booker* "Fixes":

a. The Sentencing Reform Act (SRA) sought to eliminate all disparity.

According to critics, since the Supreme Court handed down its opinions in *United States v. Booker*, 543 U.S. 220 (2005), courts have increasingly disregarded the federal sentencing guidelines, have drifted farther from guideline-based sentences, and injected race into their sentencing decisions. These critics call for so-called "*Booker* fixes" in order to restore the guidelines to their true form as they believe it is enunciated in the Sentencing Reform Act, enacted by Congress in 1984.

These critics, however, are off the mark because they distort the stated goals and history of the SRA. Congress never intended that the guidelines would be the beginning and the end of each sentencing inquiry. Rather, the authors of the SRA clearly anticipated disparity and did not assume the infallibility of the Sentencing Commission's guideline ranges in each and every case. Of course, Congress intended the Commission to craft guidelines that reduced *unwarranted* disparities, but as the Senate Committee Report for the SRA stated, "[t]he key word in discussing unwarranted disparities is 'unwarranted.' The Committee does not mean to suggest that sentencing policies and practices should eliminate justifiable differences between the sentencing of persons convicted of similar offenses who have similar records."[10] Put simply, the Congress that enacted the SRA – and created the federal guidelines – did not believe the guidelines would be sacrosanct, nor did they elevate uniformity over individualization. Rather, Senate drafters of the SRA stated:

> The bill requires the judge, before imposing sentence, to consider the history and characteristics of the offender, the nature and circumstances of the offense, and the purposes of sentencing. He is then to determine which guidelines and policy statements apply. *Either he may decide that the guideline recommendation appropriately reflects*

[9] Richard A. Oppel, Jr., Steady Decline in Major Crime Baffles Experts," *New York Times*, May 23, 2011, *available at* http://www.nytimes.com/2011/05/24/us/24crime.html.
[10] S. Rep. No. 98-225, at 161 (1983).

the offense and offender characteristics or he may conclude that the guidelines fail to reflect adequately a pertinent aggravating or mitigating circumstance."[11]

Indeed, Congress has expressly directed the Commission to ensure that individual offender circumstances be considered at sentencing, telling the Commission to "maintain[] sufficient flexibility to permit individualized sentences when warranted by aggravating or mitigating factors not taken into account in the establishment of general sentencing practices."[12]

b. Judges have disregarded the sentencing guidelines after *Booker*.

Another faulty premise of *Booker* critics is that "courts have increasingly disregarded the federal sentencing guidelines."[13] Lest one thinks this criticism is driven by concern about consistency and uniformity, we are told that "*the most notable fact* about guideline departures…is their direction. Virtually all of them favor the criminal."[14] We are told that "the criminal is winning the departure game," that this represents "a partisan result," and that the "umpire" – presumably, the federal courts – are "playing favorites."[15] This charge should be easy to prove. Sentencing statistics should reveal a high rate of court-sponsored departures and a clear drop in overall sentence length since *Booker*.

But that is not what the data show. Instead, the Sentencing Commission's statistics reveal that post-*Booker* judges have sentenced within, above or below the guidelines at the behest of prosecutors 83 percent of the time in the third quarter of this year.[16] Judicial variances have fallen to 16.9 percent of all federal cases,[17] and these variances have not been significantly longer than pre-*Booker* departures. Pre-*Booker*, median judicial departures produced 10-12 month sentence reductions; post-*Booker*, almost 90% of below-guideline sentences included reductions of only 10-13 months.[18] The *average sentence* in the four years prior to Booker was

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[11] *Id.* at 52 (emphasis added).
[12] 28 U.S.C. § 991(b)(1)(B).
[13] Matt Miner, It's Time to Fix Our Sentencing Laws, National Law Journal, September 26, 2011, available at, http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202516629242&Its_time_to_fix_our_sentencing_laws&slreturn=1.
[14] William G. Otis, The Slow, Sad Swoon of the Sentencing Suggestions, *Engage*, June 2011, p. 30 (emphasis added).
[15] *Id.*
[16] U.S. SENTENCING COMMISSION, PRELIMINARY QUARTERLY DATA REPORT, 3RD QUARTER RELEASE, PRELIMINARY FY2011 DATA THROUGH JUNE 30, 2011, 12, Table 4 (2011), *available at* http://www.ussc.gov/Data_and_Statistics/Federal_Sentencing_Statistics/Quarterly_Sentencing_Updates/USSC_2011_3rd_Quarter_Report.pdf [hereinafter FY2011 3RD QUARTER REPORT].
[17] *Id.*
[18] Thomas W. Hillier, II, Public comment to U.S. Sentencing Commission from Federal Public Defender, Western D. of Washington 77-78 (Sept. 7, 2011), *available at* http://www.ussc.gov/Meetings_and_Rulemaking/Public_Comment/20110826/Defender-Priorities-Booker-Cover-Comments_2011-2012.pdf.

46 months.[19] The average sentence today is 43.3 months.[20] This 2.7-month drop from the pre-*Booker* average is due to crack cocaine reforms and an increase in the prosecution of low-level immigration cases. Congress directed the Commission to lower the crack cocaine guidelines. As a result, average crack sentences have dropped from 130 months pre-*Booker* to 100 months today.[21] Prosecutors are bringing 40 percent more low-level immigration cases today than before *Booker*.[22] These low-level cases have shorter guideline ranges. Average immigration sentences have dropped from 29 months before *Booker* to 18 months today.[23]

Setting aside these offenses, the average sentences for all major offenses are the same or higher today than before *Booker*.[24] Average sentences for high-dollar fraud offenses have increased 28 percent from 89 months prior to *Booker* to 123 months today.[25] Average sentences for child pornography offenses, a mere two percent of the federal docket, have increased from 75 months before *Booker* to almost 120 months today, a 37.5 percent increase in sentence length.[26]

It is true that below-guideline sentences by judges rose in the years following *Booker*, but they now appear to be on the decline. The rate of below-guideline sentences increased from 12.7 percent just after *Booker* to 18.7 percent at the end of 2010, but has dropped to 16.9 percent in the third quarter of 2011.[27]

c. Unwarranted disparity created by the courts has increased since *Booker*

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[19] U.S. SENTENCING COMMISSION, 2001 – 2005 SOURCEBOOKS OF FEDERAL SENTENCING STATISTICS, Table 13 (2001-2005), *available at* http://www.ussc.gov/Data_and_Statistics/archives.cfm.
[20] FY2011 3RD QUARTER REPORT at 31, Table 19.
[21] U.S. SENTENCING COMMISSION, FINAL QUARTERLY DATA REPORT, FY2010, 38, Figure 1, *available at* http://www.ussc.gov/Data_and_Statistics/Federal_Sentencing_Statistics/Quarterly_Sentencing_Updates/USSC_2010_Quarter_Report_Final.pdf.
[22] *Cf.* U.S. SENTENCING COMMISSION, FY 2005, USE OF GUIDELINES AND SPECIFIC OFFENSE CHARACTERISTICS, OVERALL FISCAL YEAR 45-46 (of 10,229 illegal re-entry cases, 20.9% received no prior conviction enhancement), *available at* http://www.ussc.gov/Data_and_Statistics/Federal_Sentencing_Statistics/Guideline_Application_Frequencies/2005/05_glinexgline.pdf *with* U.S. SENTENCING COMMISSION, FY 2010, USE OF GUIDELINES AND SPECIFIC OFFENSE CHARACTERISTICS 47 (of 19,767 illegal re-entry cases, 29% received no prior conviction enhancement), *available at* http://www.ussc.gov/Data_and_Statistics/Federal_Sentencing_Statistics/Guideline_Application_Frequencies/2010/10_glinexgline.pdf;
[23] FY2011 3RD QUARTER REPORT, at 36, Figure G.
[24] *See id.* at 34, Figure E (firearm offenses); 35, Figure F (alien smuggling); 38, Figure I (non-cocaine drug offenses).
[25] U.S. SENTENCING COMMISSION, FY2006-2010 DATAFILES; U.S. SENTENCING COMMISSION, FY06 – USSC FY10, Figure 5 to Sentencing Trends (on file with James E. Felman).
[26] U.S. SENTENCING COMMISSION, FY2005-2010 SOURCEBOOKS OF FEDERAL SENTENCING STATISTICS, Table 13 (2005-2010), *available at* http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2010/SBTOC10.htm *and* http://www.ussc.gov/Data_and_Statistics/archives.cfm; FY2011 3RD QUARTER REPORT, at 31, Table 19.
[27] FY2011 3RD QUARTER REPORT at 12, Table 4.

If the critics of *Booker* want to make the case that an increase in below-guideline sentences violates the noble purpose of the SRA, they will have to do more than simply show that such variances have created disparities. They will have to demonstrate that these variances are producing *unwarranted* disparities, *i.e.*, similar defendants were treated differently and/or different defendants were treated similarly.

The most recent examples of unwarranted disparity put forth by *Booker*'s critics have proven unpersuasive. At a Senate Judiciary Committee hearing on fraud in January, Senator Charles Grassley (R-Iowa) stated:

> Finally, Mr. Chairman, I'd like to note that regardless of the substantive laws we pass, the investigative and law enforcement resources appropriated, and the prosecutions brought so far, criminal fraud will not be adequately deterred unless we revisit the Supreme Court's decision in *United States v. Booker*. In that case, the Supreme Court held that mandatory Sentencing Guidelines violated the Sixth Amendment. Now that the Guidelines have been held to be merely advisory, the disparity and unfairness in judicially imposed sentences that we sought to eliminate on a bipartisan basis are returning, especially in two areas: child pornography and fraud cases of the type we are discussing today. If potential fraudsters view the lenient sentences now being handed down as merely a cost of doing business, efforts to combat criminal fraud could be undermined.
>
> Supporting this position is a Reuters analysis of 15 insider trading cases that were brought by the United States Attorney in New York in 2009 and 2010, which concluded that in 13 of them, or 87 percent, the sentences imposed were lighter than the terms prescribed by the Sentencing Guidelines, and seven, nearly half, contained no prison term. By contrast, in other cases, New York federal judges issued sentences below those called for in the guidelines 57 percent of the time, in itself a shocking change from the system that the Sentencing Reform Act of 1984 created until the Supreme Court's *Booker* decision. Nationwide, 42 percent of all federal sentences were below the guidelines. Federal judges often seem not to understand the seriousness of these crimes.[28]

The use of the Reuters "study" failed to prove that judges are recklessly substituting their judgment for that of the guidelines. First, just weeks after the article was published, the U.S. Attorney for the Southern District of New York, Preet Bharara, dismissed the Reuters analysis as "skewed" in testimony before the Sentencing Commission because it did not take into account

[28] U.S. SENATE COMMITTEE ON THE JUDICIARY, HEARING ON PROTECTING AMERICAN TAXPAYERS: SIGNIFICANT ACCOMPLISHMENTS AND ONGOING CHALLENGES IN THE FIGHT AGAINST FRAUD (Jan. 26, 2011), (Statement of the Hon. Chuck Grassley), *available at* http://judiciary.authoring.senate.gov/hearings/testimony.cfm.

the number of below-guideline sentences requested by government prosecutors.[29] Furthermore, FAMM analyzed all of the cases and sentences referenced in the Reuters article and found:

- in five of the cases, the government sought a downward departure to reward the assistance provided to the government in the investigation and/or prosecution of others. In one other case, prosecuted in both Canada and the United States, the defendants cooperated extensively with Canadian authorities and pled guilty in the United States case.
- in three of the remaining eight cases, the probation officer recommended a below guideline sentence, notwithstanding the calculated guideline range.
- in seven of the eight remaining cases, the government did not object to the below guideline sentence when given the opportunity to do so by the judge. In the eighth case, when asked, the prosecutor reiterated his position that the guideline range was appropriate but did not further object to the sentence when given the opportunity or raise additional arguments.
- in two of the eight cases, the government issued a press release hailing the sentence.
- in one of the eight cases, the government pointed to the "just below guideline sentence" approvingly in court documents filed in another of the cases.
- in none of the cases did the government appeal the below guideline sentence.[30]

While these Reuters study cases are relied on by advisory guideline critics for the need to harden up sentencing because judges are varying too much from the guidelines, clearly the variances are not owned entirely by the judiciary and should not serve as fodder for backward looking reforms. Rather they should signal what appears to be significant problems with the guidelines in these kinds of cases, problems that are recognized by all parties in litigation.

Another example, cited by majority witness Matt Miner in a recent editorial for *The National Law Journal*, is the sentencing of Richard Christman for a child pornography offense. Miner, a white collar lawyer at White & Case in Washington, D.C. and most recently former Republican staff director for the Senate Judiciary Committee, writes:

> One of Congress' purposes in creating the guidelines was to create uniformity and certainty in sentencing. The bizarre sentencing history of Richard Christman helps demonstrate how compromised Congress' goal has become. Christman, who pleaded guilty to child pornography possession, was sentenced to 57 months in October 2005.

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[29] U.S. SENTENCING COMMISSION, PUBLIC HEARING TRANSCRIPT, HEARING ON PROPOSED AMENDMENTS TO THE FEDERAL SENTENCING GUIDELINES 60-61 (Feb. 16, 2011), *available at* http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20110216/Hearing_Transcript.pdf.

[30] Mary Price, Summary Analysis of the Reuters Insider Trading Cases (draft paper on file with the author).

> But at a resentencing following a reversal of that sentence on procedural grounds, he was sentenced to a mere five days -- by the same judge. If a single federal judge cannot sentence the same defendant consistently in the same case, something is very wrong. [31]

Mr. Miner failed to point out several important facts about the case.

First, the judge involved admitted to having improperly considered unsubstantiated *ex parte* opinion evidence at the first sentencing. She revealed to the parties that she had heard from probation and pre-trial officers that they felt that the defendant had probably molested children, something that had not been alleged or charged by the government or admitted by the defendant who pled guilty to viewing child pornography.[32] She told the parties that, had she not received and credited these "feelings," she would have imposed a lower sentence on the defendant. The 57-month sentence was, unsurprisingly, vacated on appeal and the case remanded for resentencing.[33] On remand, the judge imposed the five-day sentence and 15 years of supervised release and based the variance on a thorough consideration of sentencing factors.

Second, and even more significant, was Mr. Miner's failure to mention that on appeal, the five-day sentence was vacated by the court of appeals as unreasonably low and the case was *remanded and reassigned to a different judge.*[34]

While Mr. Miner calls for congressional intervention to cure excesses of judicial discretion, clearly the courts of appeals, the first stop for prosecutors seeking reversal of unreasonably low sentences, know how to address them when they see them. In other words, the judicial system has its own mechanisms in place to address untoward sentences.

Moreover, contrary to Senator Grassley's charge that federal judges do not understand the seriousness of fraud and child pornography offenses, and Mr. Miner's suggestion that the system has been broken by judges, the comments made by the great majority of federal judges at sentencing hearings across the country suggest otherwise. Average sentences for high-level fraudsters and child pornography offenders have risen since *Booker* by 28 percent and 37.5 percent, respectively. I have read countless trial transcripts, seeking to understand why judges do what they do, and what I find are judges intent on following the law, abiding when they can by the guidelines when they help and sentencing outside the guidelines for good cause when necessary.

When they are unhelpful, as for example, in some high loss fraud cases where guideline sentences for first time non-violent offenders can reach or exceed statutory maximums, judges

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[31] Matt Miner, It's Time to Fix Our Sentencing Laws, National Law Journal, September 26, 2011, available at, http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202516629242&Its_time_to_fix_our_sentencing_laws&slreturn=1.

[32] *United States v. Christman*, 509 F.3d 299 (6th Cir. 2007)

[33] *Id.* at 312.

[34] *United States v. Christman*, 607 F.3d 1110 (6th Cir. 2010).

are forced to vary from them.[35] When judges depart from the guidelines in these two areas, they frequently appear to be acting to ***prevent*** disparity, i.e., the *unwarranted* disparity between the sentences for these offenses and the sentences recommended for more serious, often violent crimes. Put simply, without judges interceding, the current guidelines would impose longer prison terms on some first-time, non-violent insider traders and viewers (not traffickers) of child pornography than murderers, rapists, and pedophiles.

Such overwrought guidelines sometimes conflict with the commandment in 18 U.S.C. § 3553 that judges impose a sentence that is "sufficient but not greater than necessary" to achieve the purposes of punishment. Where such conflicts arise, judges are obliged to follow the law.

d. Increased discretion since *Booker* has resulted in greater racial disparity in sentencing

Booker critics also claim that court-driven racial disparity is on the rise. Critics cite a 2010 demographic study by the Sentencing Commission for the proposition that sentencing disparity due to race has increased under advisory guidelines. To begin with, the Commission study *warns readers to interpret its findings with caution* because it admittedly did not control for relevant legal reasons, including defendants' past and current violence, some criminal history, and employment record that could not be measured by the Commission because they are not followed in its own database of legally relevant characteristics.[36] Fortunately, a more comprehensive study was conducted out of Pennsylvania State University, and it concluded that there have been no post-*Booker* increases in racial disparity in sentencing.[37]

It is worth noting that racial gaps in sentence lengths were non-existent before the passage of mandatory minimum laws in 1986 and 1988. In 1987, when judges had full

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[35] *See, e.g., United States v. Parris*, 573 F. Supp.2d 744,754 (E.D.N.Y. 2008) (stating "the Sentencing Guidelines for white-collar crimes [can produce] a black stain on common sense."); *United States v. Adelson*, 441. F.Supp.2d 506, 512 (S.D.N.Y. 2006) (considering fraud guideline calculation that called for a life sentence for a first time fraud conspirator, lamenting "the utter travesty of justice that sometimes results from the guidelines' fetish with absolute arithmetic, as well as the harm that guideline calculations can visit on human beings if not cabined by common sense.").

[36] U.S. SENTENCING COMMISSION, DEMOGRAPHIC DIFFERENCES IN FEDERAL SENTENCING PRACTICES: AN UPDATE OF THE BOOKER REPORT'S MULTIVARIATE REGRESSION ANALYSIS 4, 9-10 & nn. 37-39 (2010), *available at* http://www.ussc.gov/Research/Research_Publications/2010/20100311_Multivariate_Regression_Analysis_Report.pdf.

[37] Jeffery T. Ulmer, Michael T. Light, & John Kramer, *The Liberation of Federal Judges -- Discretion in the Wake of the Booker/Fanfan Decision: Is There Increased Disparity and Divergence Between Courts?*, JUSTICE QUARTERLY (forthcoming 2011), http://www.informaworld.com/smpp/content~content=a934522285; *see also* Jeffery T. Ulmer, Michael T. Light, & John H. Kramer, *Racial Disparity In the Wake of the Booker/Fanfan Decision: An Alternative Analysis to the USSC's 2010 Report*, 10 CRIMINOLOGY & PUB. POL'Y __ (forthcoming 2011), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1675117 [hereinafter "Alternative Analysis"]. Notably, the Penn State Study found that below-guideline sentences sponsored by the government "are a greater site of racial disparity than judge initiated deviations." Alternative Analysis, at 39. Their results suggest that "disparity against Hispanic males in the prosecutorial use of substantial assistance departures has considerably increased since *Gall*." *Id.*

sentencing discretion, the average time served by Black, White, and Hispanic defendants was identical: 26.96 months. After the creation of guidelines and mandatory minimums, average time served for Blacks began a steady upward climb and has remained over 25 months higher than average time served for Whites or Hispanics.[38] That gap should narrow because of the passage of the Fair Sentencing Act and its conforming crack guideline amendments.

If the critics of the advisory guideline system are as concerned as FAMM is about the racially discriminatory impact of sentencing policies, they should join us in opposing mandatory minimum sentences. They also should oppose a restoration of mandatory guidelines. After all, the Commission already found that the crack cocaine guideline was the single greatest contributor to racial disparity in the mandatory guideline era.[39] The Career Offender guideline, according to the Commission, is another source of racial disparity.[40] Moreover, , the Commission concluded in 2004 that, under mandatory guidelines, "[t]oday's sentencing policies, crystallized into the sentencing guidelines and mandatory minimum statutes, have a greater adverse impact on Black offenders than did factors taken into account by judges in the discretionary system in place immediately prior to the guidelines implementation."[41] There are very good reasons to be concerned about racial discrimination in federal sentencing; skin color should not determine sentence length. It is more than a little curious, however, that when looking for evidence of racial bias, those who see a post-*Booker* molehill did not acknowledge the pre-*Booker* (and mandatory minimum-created) mountain.

2. Booker "fixes" will do more harm than good.

a. They will concentrate extraordinary authority in the hands of federal prosecutors, raising serious constitutional concerns

FAMM respects the vital role that federal prosecutors play in keeping our nation and communities safe. We have no doubt that the overwhelming majority of prosecutors are dedicated to seeking justice and doing so ethically. This nation was founded, however, on a clear-eyed understanding of the danger of investing any one government official (or branch of government) with too much power.

Mandatory sentencing regimes – both mandatory minimum sentencing laws and mandatory federal guidelines – transfer sentencing authority from trial judges to federal

[38] Federal Public Defenders, Average Time Served by Black, White, and Hispanic Offenders FY1984-2010, compiled from U.S. Sentencing Commission, 1984-1990 AO FPSSIS Datafiles; 1991-2010 U.S. Sentencing Commission Monitoring Datafiles (on file with author).
[39] U.S. SENTENCING COMMISSION, FIFTEEN YEARS OF GUIDELINE SENTENCING: AN ASSESSMENT OF HOW WELL THE FEDERAL CRIMINAL JUSTICE SYSTEM IS ACHIEVING THE GOALS OF SENTENCING REFORM xvi (2004) [hereinafter FIFTEEN YEAR REPORT].
[40] FIFTEEN YEAR REPORT, at 133-34.
[41] *Id.* at 135.

prosecutors. That prosecutors already have extraordinary power is not a new discovery. More than 70 years ago, former U.S. Supreme Court Justice and Nuremberg trial prosecutor Robert Jackson gave a speech at the Justice Department to a group of U.S. Attorneys. He stated:

> The prosecutor has more control over life, liberty, and reputation than any other person in America. His discretion is tremendous. He can have citizens investigated and, if he is that kind of person, he can have this done to the tune of public statements and veiled or unveiled intimations. Or the prosecutor may choose a more subtle course and simply have a citizen's friends interviewed. The prosecutor can order arrests, present cases to the grand jury in secret session, and on the basis of his one-sided presentation of the facts, can cause the citizen to be indicted and held for trial. He may dismiss the case before trial, in which case the defense never has a chance to be heard. Or he may go on with a public trial. If he obtains a conviction, the prosecutor can still make recommendations as to sentence, as to whether the prisoner should get probation or a suspended sentence, and after he is put away, as to whether he is a fit subject for parole. While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst.[42]

To this awesome authority – what Justice Jackson described as "more control over life, liberty, and reputation than any other person in America" – the critics of *Booker* want reforms that would end up awarding even greater power to control what punishments are imposed. These critics ignore the fact that prosecutors already exercise significant sentencing influence through their investigative and charging decisions. Unlike court-imposed sentences that are imposed publicly and can be appealed, prosecutors' exercises of discretion are made in private and are unreviewable.

For this reason, many legal scholars and jurists, including Justice Anthony Kennedy, have described as "misguided" the "transfer of sentencing discretion from a judge to an Assistant U.S. Attorney, often not much older than the defendant." As Justice Kennedy said:

> Often these attorneys try in good faith to be fair in the exercise of discretion. The policy, nonetheless, gives the decision to an assistant prosecutor not trained in the exercise of discretion and takes discretion from the trial judge. The trial judge is the one actor in the system most experienced with exercising discretion in a transparent, open, and reasoned way. Most of the sentencing discretion should be with the judge, not the prosecutors.[43]

As others have noted, "prosecutors are influenced by ordinary human motivations that may at times cause a loss of perspective – career advancement, path dependence, immodesty,

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[42] Robert H. Jackson, "The Federal Prosecutor," an address delivered at The Second Annual Conference of United States Attorneys 2 (April 1, 1940), *available at* http://www.justice.gov/ag/aghistory/jackson/1940/04-01-1940.pdf.
[43] Hon. Anthony M. Kennedy, "Speech at the American Bar Association Annual Meeting," Aug. 9, 2003, *available at* http://www.supremecourt.gov/publicinfo/speeches/viewspeeches.aspx?Filename=sp_08-09-03.html.

occasional vindictiveness, and so on – leading to the misapplication of mandatory minimums"[44] or guidelines.

The rise of mandatory sentencing policies and resulting increase in prosecutorial authority poses serious threats to our constitutional structure and rights. First, the extraordinary power vested in single individuals within the executive branch implicates the separation of powers doctrine. As a scholar from the Cato Institute has pointed out:

> Liberal society has long been concerned with arbitrary, oppressive action stemming from the accumulation of too much power in too few hands. The Framers' solution was to create a system of checks and balances, distributing power across government institutions in a manner that precludes any entity from exercising excessive authority and sets each body as a restraint on the others.
>
> As a matter of history and experience, an autonomous court system under the guidance of impartial jurists is considered the most indispensable aspect of American constitutional democracy. An independent judiciary was meant to protect individuals from the prejudices and heedlessness of political actors and the public. The courts were historically entrusted with certain fundamental legal decisions, including dispositive criminal justice issues that demanded evenhanded judgment, such as the imposition of punishment on another human being. "It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue." There is "wisdom, even the necessity, of sentencing procedures that take into account individual circumstances," drawing upon the judge's familiarity with each case and "face-to-face contact with the defendants, their families, and their victims."[45]

By taking away this critical authority from the judiciary and giving it to the executive branch, mandatory sentencing regimes have undermined a fundamental guarantee of individual liberty.

Mandatory sentencing regimes have also created a serious but quiet constitutional crisis: the evisceration of the Sixth Amendment's right to jury trial. Since the guidelines were adopted, federal criminal trials have slowly disappeared. Before the guidelines, more than 12 percent of

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[44] Erik Luna, Professor of Law, Washington and Lee University School of Law
Adjunct Scholar, The Cato Institute, Testimony before the U.S. Sentencing Commission, Mandatory Minimum Sentencing Provisions Under Federal Law 4-5 (May 27, 2010), *available at* http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20100527/Testimony_Luna.pdf.
[45] *Id.* at 5-6.

federal offenders were convicted by trial;[46] by 1996, the percentage was less than 9 percent;[47] by 2006, the percentage was less than 5 percent.[48] One could draw from such statistic that federal law enforcement has perfected the art of identifying only the truly guilty. However, "those who have studied this phenomenon quite reasonably attribute it to the adoption of new sentencing laws that have greatly enhanced the plea-bargaining leverage enjoyed by prosecutors.[49] The erosion of one of our most basic freedoms – the right to have one's innocence and guilt decided by an impartial jury of one's peers – is left unaddressed by those critics of *Booker* who seek a return to mandatory or more binding guidelines.

b. Contrary to their proponents' intentions, Booker "fixes" will likely lead to more instances of disparity and unwarranted disparity

Critics of *Booker* often fail to state the obvious: prosecutors, not judges, are responsible for more sentencing disparities and the size of these disparities are greater on average than those created by the courts. For this reason, seeking to "solve" sentencing disparity by focusing on judicial departures is like trying to eliminate highway traffic fatalities by painting brighter yellow lines. There are bigger problems.

Whereas courts post-*Booker* have sentenced below the guidelines in just 14.6 percent of all federal cases, ***prosecutors have requested below-guideline sentences in 25.3 percent of all federal cases***, through substantial assistance, "fast-tracking" immigration cases, and other government-sponsored motions.[50] And though the length of court-initiated, below-guideline

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[46] *See* U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, 1987 SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS, Table 5.22 (1987).

[47] U.S. SENTENCING COMMISSION, 1996 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS 15 (Figure C) (1996), *available at* http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/1996/sourcbk.htm.

[48] *See* U.S. SENTENCING COMMISSION, 2006 SOURCEBOOK ON FEDERAL SENTENCING STATISTICS 25 (2006), Table 10 (2006) (95.7% of convictions obtained by plea of guilty, 4.3% obtained by trial verdict), *available at* http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2006/SBTOC06.htm.

[49] Kate Stith, "The Arc of the Pendulum: Judges, Prosecutors, and the Exercise of Judicial Discretion, February 2004, *available at* http://ssrn.com/abstract=1099064 (quoting Ronald F. Wright, *Trial Distortion and the End of Innocence in Federal Criminal Justice*, 154 U.PA. L. REV. 79, 54 (2004); *see also* Robert G. Morvillo & Barry A. Bohrer, *Checking the Balance: Prosecutorial Power in an Age of Expansive Legislation*, 32 AM. CRIM. L. REV. 137, 137 (1995) (showing that guidelines give prosecutors "greater leverage to virtually compel plea bargaining, force cooperation, and in essence deter-mine the length of sentences"); William J. Stuntz, *Plea Bargaining and Criminal Law's Disappearing Shadow*, 117 HARV. L. REV. 2548, 2551-54 (2004) (discussing how the costs of going to trial affect plea bargaining); Mary Pat Flaherty & Joan Biskupic, *Prosecutors Can Stack the Deck*, WASH. POST, Oct. 7, 1996, at A1 (describing cases in which the maximum sentence imposed by the federal sentencing guidelines influenced a defendant's decision to plea bargain); Marc Miller & Ronald Wright, *Prosecutor Rex*, PHILA. INQUIRER, Dec. 19, 2003, at A39 (suggesting that wide margins between sentences after trials and sentences after plea bargains can unduly sway defendants towards plea bargains).

[50] U.S. SENTENCING COMMISSION, 2005-2010 SOURCEBOOKS OF FEDERAL SENTENCING STATISTICS, Table 26 (2005-2010), *available at* http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2010/SBTOC10.htm *and* http://www.ussc.gov/Data_and_Statistics/archives.cfm; FY2011 3RD QUARTER REPORT Table 2.

variances grew slightly after *Booker*, prosecutor-driven requested departures produce some very attractive sentence reductions, including 29-31 months for substantial assistance motions, 7-8 months for fast track cases, and 10-16 months in other cases.[51]

In 2004, the Commission found "that disparate treatment of similar offenders is common at presentencing stages. Disparate effects of charging and plea bargaining are a special concern in a tightly structured sentencing system like the federal sentencing guidelines, because the ability of judges to compensate for disparities in presentence decisions is reduced."[52]

Prosecutors not only have the power to create disparities when they like, they have the authority to object to and appeal disparities they don't like. When they appeal, the government wins 60 percent of the time.[53] Frequently, however, they do not use this authority. The government appealed only 86 sentences of the 81,859 imposed in 2010. Notably, only 30 of those appeals involved below-guideline variances under 3553(a).[54]

3. The Commission Holds the Key – fashioned by Congress -- to Ensuring Relevant Guidelines that Judges Can Follow.

FAMM endorses the American Bar Association proposal that the Commission lead the effort, as intended by the SRA, to gather, evaluate, and act on the information gleaned from the sentencing decisions of judges and empirical research.[55] As Mr. Felman points out in his testimony, there is still much to learn from judges about why they choose to follow or not follow sentencing guidelines and "any serious study of sentencing practices under advisory guidelines remains incomplete in the absence of data that shed light on *why* these conscientious men and women are sentencing as they are."[56]

Congress should recognize that sentences that vary widely from particular guidelines, and the fact that such sentences exist, might contain important information about the appropriateness of a given guideline. As the Supreme Court has said, when judges sentence outside the guideline range based upon the purposes and factors set forth in § 3553(a), those judges are providing 'relevant information' to the Commission so that the guidelines can 'constructively evolve over

[51] Thomas W. Hillier, II, Public comment to U.S. Sentencing Commission from Federal Public Defender, Western D. of Washington 78 (Sept. 7, 2011), *available at* http://www.ussc.gov/Meetings_and_Rulemaking/Public_Comment/20110826/Defender-Priorities-Booker-Cover-Comments_2011-2012.pdf.
[52] FIFTEEN YEAR REVIEW, at 92.
[53] *Id.*
[54] U.S. SENTENCING COMMISSION, 2010 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, Table 58.
[55] *Hearing before the Subcomm. on Crime, Terrorism and Homeland Security Committee on the Judiciary, The Status of Federal Sentencing and the United States Sentencing Commission Six Years After U.S. v. Booker* 10-14 (Oct. 12, 2011) (testimony of James Felman on Behalf of the American Bar Ass'n).
[56] *Id.* at 11.

time, as both Congress and the Commission foresaw.'"[57]

The authority the Commission can draw on to credit the feedback from the courts is found at 28 U.S.C. § 994(o), which provides in part that "[t]he Commission periodically shall review and revise, in consideration of comments and data coming to its attention, the guidelines promulgated pursuant to the provision of this section."[58] Complaints about judicial departures or variances from the calculated guidelines, particularly variances that address guideline sentences that are considered unduly long in light of the considerations and mandate of § 3553(a), miss the point. As the Supreme Court pointed out in *Rita v. United States*, 551 U.S. 338 (2007), the sentencing decisions were to be treated as a kind of feedback system.[59] Instead, for many years, Congress sought to hamper this exercise of judicial discretion, claiming that judges were engaging in exercises of undue leniency by abusing their departure authority.

Thus, another, healthier, way to look at such variances, is as valuable feedback from the front lines. This "feedback" from the courts should inform Congress and the Commission when a particular guideline results in sentences that are too severe for too many defendants who are subject to it. If the Commission were to respond to this feedback by using it to identify, investigate, and adjust problematic guidelines – as it did with crack cocaine sentences – it is likely that compliance with the guidelines will increase. The Commission has begun the healthy process of recognizing and crediting such feedback. For example, in 2010, the Commission, following a review of sentencing data, public testimony and comment, and the findings of a survey of judges, made probation and split sentences more widely available if such sentences would better accomplish specific treatment of defendants with substance abuse issues.[60] Similarly, citing "case law and public comment regarding the magnitude of the enhancement" in amendments pending before Congress now, the Commission proposes to ameliorate certain harsh criminal history rules in cases involving illegal reentry that have the effect of calling for unduly long sentences. [61]

Such evolution of guideline recommendations is a natural and intended consequence of what was contemplated by the Congress in the SRA as an ongoing dialogue of sorts between the Commission and the courts. Congress would be best served by taking a step back and allowing the process to play out, in a way impossible to achieve in the mandatory guideline years. It is

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57. *The Sentencing Reform Act of 1984: 25 Years Later: Public Hearings Before the United States Sentencing Commission*, 111th Cong. 4 (2009) (statement of Alexander Bunin, Federal Public Defender for the Northern District of New York, 4) (citing Rita v. United States, 551 U.S. 338, 358 (2007)), *available at* http://www.ussc.gov/AGENDAS/ 20090709/Bunin_testimony.pdf. [hereinafter Bunin]

58. 28 U.S.C. § 994(o) (2006).

59. *Rita*, 551 U.S. at 357-58.

60. U.S.S.G App. C, amend. 738 (Nov. 1, 2010) (Reason for Amendment).

61. U.S. SENTENCING COMMISSION, AMENDMENTS TO THE SENTENCING GUIDELINES 77 (Apr. 28, 2011) (Reason for Amendment 6, Illegal Reentry).

most likely that it will find the guidelines and judicial decisions will align as the Commission adjusts guidelines that are not useful and judges find the resulting amended guidelines of more benefit to them as they search for the correct sentence in all cases.

Thank you for considering our views.

National Association of Criminal Defense Lawyers

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Lisa Monet Wayne
President

October 11, 2011

The Honorable Jim Sensenbrenner
Chairman
Subcommittee on Crime, Terrorism,
Terrorism and Homeland Security
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Bobby Scott
Ranking Member
Subcommittee on Crime,
and Homeland Security
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Re: Hearing on "Uncertain Justice: The Status of Federal Sentencing and the U.S. Sentencing Commission Six Years after *U.S. v. Booker*"

Dear Chairman Sensenbrenner and Ranking Member Scott:

On behalf of the National Association of Criminal Defense Lawyers (NACDL), I am writing concerning the hearing, scheduled for Wednesday, October 12, 2011, on the "Status of Federal Sentencing and the U.S. Sentencing Commission Six Years after *U.S. v. Booker*," and to express the views of the criminal defense bar on the state of federal sentencing law. NACDL is the preeminent organization in the United States advancing the goal of the criminal defense bar to ensure justice and due process for persons charged with a crime or wrongdoing.

1660 L Street, NW, 12th Floor, Washington, DC 20036 | Phone 202-872-8600 | Fax 202-872-8690 | E-mail assist@nacdl.org

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At the outset, it is important to acknowledge that while our system of federal sentencing and the Sentencing Guidelines are not perfect, and that there is significant room for improvement, the shift to advisory guidelines following *Booker* has further advanced the goals of the Sentencing Reform Act (SRA) and resulted in a more just administration of our federal sentencing system. Advisory guidelines are better suited to minimize both unwarranted disparities *and* unwarranted uniformity because they are grounded in a framework based on research and experience but still afford judges the discretion to sentence similarly or differently when there is justification to do so.[1]

Mandatory or binding guidelines, on the other hand, tend to mask arbitrary disparities under the guise of methodological calculations. These calculations fail to account for manipulation through prosecutorial charging decisions and imperfect policy choices. The result is inappropriate uniformity for vastly different defendants and circumstances due to emphasis on a single commonality, typically the charging statute, drug quantity, or loss amount.[2] As acknowledged by the Commission and the Supreme Court,[3] these are precisely the types of "unwarranted" disparities the SRA attempted to eliminate. No guidelines system can fully account for the circumstances that will produce such disparities and, by removing or severely limiting judicial discretion in sentencing, judges cannot adjust and correct accordingly. Such a rigid system, intended to reduce overall disparity, actually ends up creating different, but equally unwarranted, disparities.

In addition, mandatory guidelines tend to erode the Sixth Amendment right to a fair trial by allowing prosecutors to exercise undue influence over sentences and excessive leverage over

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[1] When the Senate Judiciary Committee voted to report the Sentencing Reform Act, it emphasized that the key in any discussion about unwarranted disparities is the word "unwarranted." The Committee further explained that *justifiable* differences are not unwarranted. Rather, sentencing policies and practices should not preclude differentiation between persons convicted of similar offenses who have similar records when there is justification to do so. *See* S. Rep. No. 98-225, at 161.

[2] This is even more so in the case of mandatory minimums, which reduce all discretion and frequently mandate unjustifiable uniformity for defendants who are vastly different and inexplicable disparity for defendants who are nearly identical. For these reasons, mandatory minimums have been criticized by nearly every actor in the criminal justice system and a broad range of groups and individuals spanning the right-left, liberal-conservative spectrum.

[3] In its Fifteen Year Review, the Commission explained that unwarranted disparity means "different treatment of individual offenders who are similar in relevant ways," and "similar treatment of individual offenders who differ in characteristics that are relevant to the purposes of sentencing." U.S.S.C., *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform* 113 (2004) (emphasis omitted) [hereinafter *Fifteen Year Review*]. The Supreme Court has also recognized the need to avoid unwarranted uniformity amongst offenders who are not similarly situated and to consider unwarranted disparities created by a particular guideline itself. *See Gall v. United States*, 552 U.S. 38, 53-56 (2007); *Kimbrough v. United States*, 552 U.S. 85, 108 (2007).

defendants. The risk of being sentenced under mandatory guidelines, which inextricably tie sentence length to the prosecutor's charging decisions, effectively precludes defendants from exercising their Sixth Amendment right to a trial. The right to have a neutral, third party review the evidence and facts is fundamental to our criminal justice system.

Even if a defendant has minimal culpability or a strong defense, faced with a mandatory guidelines system that does not accurately account for culpability and, instead, conflates it with arbitrary loss amounts or drug weight, a defendant will almost always forego his right to a trial.[4] Prosecutors have unlimited discretion over charging decisions and, thus, in a system of mandatory sentencing, unlimited power to deter defendants from exercising their constitutional right to a fair trial. With every step away from judicial discretion and towards a mandatory system, prosecutorial power increases and the Sixth Amendment rights of defendants erode even further.

As previously stated, no sentencing system is perfect, and the guidelines as they now exist have plenty of components deserving of review and improvement. However, the current system undoubtedly achieves a better balance between flexibility and rigidity than the pre-*Booker* guidelines. Guidelines based on empirical research and data, judicial discretion to tailor and individualize sentences, appellate review for reasonableness, and adjustments to the actual guidelines based on judicial trends and experiential study—together, these are the characteristics necessary for a just and fair sentencing system that furthers the values articulated in the SRA. Removing any one characteristic, particularly the judicial discretion afforded by advisory guidelines, inevitably creates systematic imbalance and injustice.

For all these reasons, NACDL strongly opposes any legislation that would fundamentally alter the advisory nature of the guidelines or set in place more mandatory sentences. Contrary to the premise of the Committee's October 12th hearing, as evident in its title, the shift to advisory guidelines has not created uncertainty. Rather, the evidence and data demonstrate that sentences

[4] This risk is dramatically enhanced where the case involves the problem of deficient *mens rea*. With federal crimes, particularly white collar offenses, frequently the issue at trial is not whether the particular conduct was committed but whether the defendant acted with the required criminal intent or *mens rea*. As documented in a recent study, criminal statutes frequently incorporate weak *mens rea* requirements that do not protect persons trying to abide by the law. *See* Brian W. Walsh & Tiffany M. Joslyn, *Without Intent: How Congress Is Eroding the Criminal Intent Requirement in Federal Law* (The Heritage Foundation and National Association of Criminal Defense Lawyers (2010) *available at* www.nacdl.org/withoutintent. Although the Sixth Amendment affords such defendants the right to raise an intent defense at trial, a weak *mens rea* requirement makes success unlikely, and going to trial virtually guarantees the defendant will be deprived of any credit for cooperation and will receive a harsher sentence. Vague laws should be challenged and insufficient evidence should be confronted. However, practice demonstrates that the greatest disparity in sentencing exists between those who choose to defend themselves and those who do not. Increased judicial discretion is one way to help alleviate this unwarranted disparity and reduce the trial penalty risk.

have remained quite constant and any inconsistencies are merely an expression by judges and prosecutors alike that certain guidelines are problematic and in need of review and revision.

In general, the data shows that sentences have remained constant despite the shift to advisory guidelines—sentence length did *not* undergo much, let alone significant, change following *Booker*. Six years ago, before *Booker*, defendants received on average a 46 month sentence.[5] Today that average is 43.3 months.[6] This is hardly a dramatic change worthy of systematic overhaul. Rather, it appears to be a product of the types of crimes charged and not the new, slightly greater, discretion afforded to judges. Whereas unlawful reentry and crack cocaine sentences tend to pull the average sentence length down slightly from the pre-*Booker* average, all other major categories of offenses have remained constant or even increased slightly post-*Booker*.[7] The notable exception to these statistics is the category of "white collar offenses," which are significantly *higher* today than pre-*Booker*.[8] Despite the rhetoric surrounding the impact of *Booker*, the numbers simply do not bear out a need for overhaul; the system has remained intact and constant and the sky has not fallen.

One noteworthy, positive change since the shift to advisory guidelines post-*Booker* is the ability of the actors within the system to call attention to broken guidelines that desperately need review and revision. Judges regularly diverging from a particular guideline, and parties consistently requesting and agreeing to sentences below a particular guideline, sends a strong message that that guideline is not working and needs improvement. The advisory nature of the guidelines affords the actors within the system to provide this sort of practical feedback from the trenches and creates a much-needed mechanism for accumulating realistic experience and applying it to the guidelines framework. Where guidelines are not reflective of the realities of every day defendants and cases, the advisory system affords judges the ability to articulate this and enables the Commission to respond. Reverting to a mandatory or binding sentencing system will muzzle

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[5] U.S.S.C. 2001-2005 Sourcebook of Federal Sentencing Statistics, Table 13 (from 2001 to 2005 the average sentence varied within a three month range, with the lowest at 45 months in 2004 (post-*Blakely*) and the highest at 47.9 months in 2003.

[6] U.S.S.C. Preliminary Quarterly Data Report, 3rd Quarterly Data Report, 3rd Quarter Release (FY 2011) ("Quarterly Data Report) at 31, Table 19. The average sentence post-*Booker* has also varied, with a high of 51.8 months in 2007, to its present level of 43.3 months. U.S.S.C. 2005-2007 Sourcebook of Federal Sentencing Statistics, table 13; U.S.S.C. 2007 Final Quarterly Data Report, Figures C-I.

[7] Quarterly Data Report at 34-38.

[8] *Id.* at 33, Figure D. The average sentence for the most serious fraud offenders has increased from 89 months pre-*Booker* to 123 months today. U.S.S.C. 2006-2010 Datafiles, U.S.S.C. FY06 – U.S.S.C. FY10, Figure 5 to *Sentencing Trends*, U.S.S.C. Vice Chair William B. Carr, American Bar Association White Collar Crime Conference, San Diego, CA (Mar. 3, 2011) (on file with the author).

the actors who deal with the reality of sentencing every day and diminish the ability to adapt the system to better promote its intended goals.

For example, the Department of Justice has complained that the guidelines for some child pornography offenses and some fraud crimes are being departed from with increasing frequency.[9] However, criticism of the guidelines for both of these types of offenses has also been increasing, not only from defense attorneys and judges, but even prosecutors.[10] This is not surprising given that the guidelines for both types of offenses have significantly increased in recent years not based on empirical data, but via congressional directives typically passed at the urging of the Department of Justice. Thus, the regularity of judicial departures in these types of cases, where nearly all parties agree the guidelines are seriously flawed, is an excellent example of the benefits of an advisory guidelines system and its ability to be a mechanism for feedback and improvement.

Six years after *Booker*, the federal sentencing system, as a whole, is as sound as it ever was. Average sentence length has remained constant and, where there are regular instances of guidelines departures, it is truly a statement about the substantive quality of that particular guideline and not the system as a whole. The shift from mandatory guidelines has, in a small way, lessened the erosion of the Sixth Amendment right to trial, while advancing the goals of the SRA through more individualized sentencing. Despite the room for improvement within individual guidelines, the change to an advisory guidelines system was a much needed step towards a more just, fair, and rational federal sentencing scheme; all arguments to the contrary are belied by empirical evidence.

For these reasons, NACDL strongly opposes any effort to make the guidelines mandatory in nature and, instead, joins many other organizations and individuals in endorsing the continued use of a research and experience driven advisory guidelines system.

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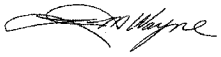
[9] *See* Letter from Jonathan Wroblewski to Hon. William K. Sessions III, Chair, U.S. Sent'g Comm'n at 1-2 (June 28, 2010) [hereinafter "Wroblewski Letter"].

[10] Prosecutor requests for downward variances in child pornography cases, not based on §5K1.1 or §5K3.1, have increased significantly. In 2007, the rate was 4.6%. That rate has increased every year since, rising to 6.4% in 2008, 8.1% in 2009, and 14.5% for the first two quarters of 2011. U.S.S.C., 2007-2010 Sourcebook of Federal Sentencing Statistics, tbl. 27. The 2011 rate is nearly 10% higher for these types of cases than the rate for all cases, which is 4.2%. Such an increase is clear evidence that even prosecutors see this guideline as broken. U.S.S.C, Preliminary Quarterly Data Report, 2d Quarter Release, 2011, tbl.3.

On behalf of NACDL, I am grateful for the opportunity to submit this letter and respectfully urge your utmost consideration. Thank you for considering our views on this matter.

Respectfully,



Lisa Monet Wayne
President

FEDERAL PUBLIC DEFENDER
Western District of Washington

Thomas W. Hillier, II
Federal Public Defender

October 11, 2011

Honorable F. James Sensenbrenner
Chair
Subcommittee on Crime, Terrorism and Homeland Security
House Judiciary Committee
Washington, D.C. 20515

Honorable Robert C. (Bobby) Scott
Ranking Member
Subcommittee on Crime, Terrorism and Homeland Security
House Judiciary Committee
Washington, D.C. 20515

Re: Hearing on: "Uncertain Justice: The Status of Federal Sentencing and the U.S. Sentencing Commission Six Years after U.S. v. Booker"

Dear Chairman Sensenbrenner and Representative Scott:

I write on behalf of Federal Public and Community Defenders to comment on the status of federal sentencing today. We support the current constitutional and evolving advisory guideline system, and we oppose the Sentencing Commission's recent proposal to enact presumptive guidelines and proposals by others to enact mandatory guidelines. We appreciate the invitation to comment.

We were stunned by the particulars of the Commission's recommendation for legislative change and its portrayal of the current system. Because no specific language has been provided, the observations below are preliminary. But even without the benefit of specific language, it is clear that the proposal is unconstitutional and not supported by adequate or accurate justification.

It seems that the Commission's proposal (and the proposal for mandatory guidelines) is being championed via a charge that is simply not accurate: that is, racial bias affects sentencing decisions by federal judges under the advisory guideline system. This is a serious charge and rests on a study that the Commission previously acknowledged omits many relevant factors that judges legally and legitimately consider at sentencing, and warned that these omissions make its results unreliable. But the Commission fails to disclose that important warning in its testimony and misleadingly implies that its study includes all relevant factors. Moreover, the Commission's study was the object of recent criticism by a team of researchers that conducted a similar study but reached different conclusions, including the fact that disparity in sentence lengths based on race and ethnicity has not increased under the advisory sentencing system.

Refutation of the premise for the Commission's proposal is not surprising. The idea that federal judges discriminate against racial minorities defies common sense. Prior to enactment of the Sentencing Reform Act (SRA), when judges had unfettered discretion, average sentence length for Black, White and Hispanic offenders was exactly the same and, according to a

1601 Fifth Avenue, Room 700, Seattle, Washington 98101 - Telephone (206) 553-1100 Fax (206) 553-0120

comprehensive review sponsored by the Department of Justice's Bureau of Justice Statistics, sentences were not based on invidious factors. Today, when judicial discretion is intricately guided by advisory guidelines and a statutory framework intended to create reasonable consistency, and when society as a whole is far less biased, it would seem implausible that federal judges are discriminating against people of color in their sentencing decisions. We do know racial disparity poisons the federal system. But the causes are primarily found in mandatory minimum laws, the guidelines themselves, and decisions related to the enforcement and prosecution of mandatory minimum laws, not in discretionary decisions by federal judges. All of this is discussed in detail below.

The Commission also contends that there is growing disparity among districts. In support, it provides a bare listing of rates of non-government sponsored below-range sentences. Whether unwarranted differences exist or are growing are complex questions upon which the Commission sheds no light. The Commission fails to warn, as it has in the past, that *unwarranted* disparity cannot be inferred from a simple listing of rates. Research performed by others shows that variation in sentence length among districts has actually decreased after *Booker*, a more relevant measure than rates. The inadequacy of the Commission's presentation on differences among districts is also discussed below.

We also focus on the advances in federal sentencing law post-*Booker*. Progress, while slow, has been significant. Indeed, the advisory guidelines played an essential role in reducing the pernicious racial effects of the crack cocaine laws. Policy disagreement by district court judges with the guidelines that expand on and enforce those laws was ratified by the United States Supreme Court and helped inspire recent reforms in Congress. Ironically, the initiative and example of the courageous district court judges who provoked that reform would be discouraged by the Commission's proposals. Now is not the time to halt the evolution of the advisory guidelines system.

Seven years after *Booker*, our federal sentencing system is closer to Congress's original intent in the Sentencing Reform Act than the mandatory system it replaced or than any system designed to exclude judges could be. The Commission has begun to respond to the judicial feedback that was previously missing by revising, with congressional approval, guidelines that were not developed based on empirical data or national experience. As it does so, judges have begun to sentence within the guideline range more often – as the Supreme Court predicted. This cooperative dialogue between judges and the Commission is what Congress intended when it enacted the SRA. And the Commission has made progress in explaining the bases for recent amendments to the guidelines, something it largely failed to do before *Booker*.

These developments, which advance the purposes of punishment, resulted simply from giving judges a meaningful role in sentencing. At the same time, there is no evidence that judges have been unduly lenient. Higher rates of below-range sentences flow from the fact that the guidelines consist almost entirely of every imaginable aggravating factor, and a near absence of mitigating factors. Because of *Booker* and its progeny, judges can now vary downward from the guidelines when a defendant's background and life history support mitigated punishment. Even with a somewhat higher rate of below-range sentences, average sentence length is the same or higher today than before *Booker* in all types of cases except crack (due to reduced guideline

ranges) and illegal reentry (due to a large increase in the prosecution of cases with low guideline ranges).

But even though post-*Booker* change has been measured, it has been important. Recent decisions by the Supreme Court emphatically endorse the authority of a sentencing judge to account for the history and characteristics of the defendant in shaping an appropriate punishment. Constraining that discretion will make worse the greatest problem facing our criminal justice system, the unsustainable size and cost of our prison population. We join the Commission in encouraging your support in reducing that population. Meanwhile, the following points (and those in the Addendum) demonstrate that the justifications for legislative change proffered by the Commission and others are unsound, and why the vast majority of federal judges, prosecutors, and defense lawyers support the current advisory system.[1]

I. The Use of Prison Sentences Continues to Increase; Sentence Lengths Remain High; Rates of Below-Range Sentences Have Begun to Drop as the Commission Reduces Unnecessary Severity.

The use of imprisonment continues to grow even after *Booker*. As the Commission's testimony shows, the average extent of reduction for nearly every offense is *less* than it was before *Booker*, and in some cases far less.[2] Average sentence length has stayed the same or increased for all categories of offenses except crack, due to reduced guideline ranges, and illegal reentry, due to a large increase in the prosecution of cases with low guideline ranges. At the same time, in 2011, the rate of below-range sentences has begun to drop, concurrent with reduction of the crack guidelines.

Type of sentence. The guidelines' recommendation of prison in most cases continues to determine the type of sentence imposed, as the Commission has previously reported,[3] and as shown in Figure 1.

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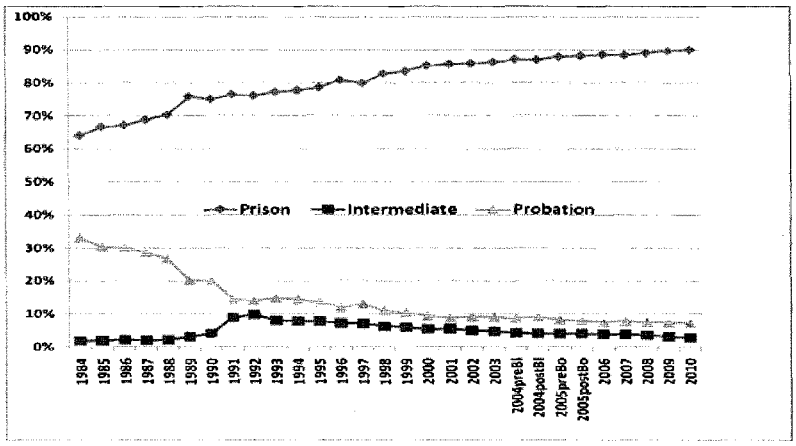
[1] *See* Lanny A. Breuer, *The Attorney General's Sentencing and Corrections Working Group: A Progress Report*, 23 Fed. Sent'g Rep. 110, 112 (2010); USSC, *Results of Survey of United States District Judges January 2010 through March 2010*, tbl.19.

[2] Commission Testimony at 26, 28, 31, 33, 36, 38, 41, 43, 45, 48, 50, 53.

[3] USSC, *Alternative Sentencing in the Federal Criminal Justice System* 12 (2009).

Figure 1
PERCENTAGE OF DEFENDANTS RECEIVING STRAIGHT PRISON, INTERMEDIATE SANCTIONS,[4] STRAIGHT PROBATION
All Felonies 1984 - 2010 4th Quarter



Sources: 1984-1990 FPSSIS Datafiles, Administrative Office of U.S. Courts; USSC, *Sourcebook of Federal Sentencing Statistics*, tbl.12 (1991-2009); USSC, *Preliminary Quarterly Data Report, Fourth Quarter FY 2010*, tbl.18.

Sentence length and extent of reduction. Average sentence length was roughly 46 months before *Booker*, and is 43.3 months as of the third quarter of 2011.[5] The small decrease is almost solely attributable to reduced guideline ranges in crack cases (a fact the Commission inexplicably omits), and a substantial increase in prosecutions of immigration cases under 8 U.S.C. § 1326(a) (with a statutory maximum of two years and a low guideline range).[6] Average sentence length for all other offenses has increased slightly or stayed the same, except that it has substantially increased in fraud cases,[7] and child pornography cases.[8]

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[4] Intermediate sanctions are prison/community split sentences, and probation with confinement.

[5] USSC, 2001-2007 Sourcebook of Federal Sentencing Statistics, tbl. 13; USSC, Preliminary Quarterly Data Report, Third Quarter FY 2011, tbl. 19, figs. C-I.

[6] *Id.*, fig. G, I.

[7] *Id.*, fig. D.

[8] *Id.*, tbl. 19; USSC, 2005 Sourcebook of Federal Sentencing Statistics, tbl. 13.

The extent of decrease when judges depart or vary from the guideline range has not increased since *Booker*. The median decrease was 12 months before *Booker*, has been 13 months since *Booker*,[9] and the median percent decrease is less than before *Booker*.[10]

Rate of below-range sentences. The rate of non-government sponsored below-range sentences has dropped to 16.9% in the third quarter of 2011, a significant decrease from 18.7% in the fourth quarter of 2010.[11] This drop during the first three quarters of 2011 (Oct. 1, 2010-June 30, 2011) corresponds with the reduction in the crack guidelines on November 1, 2010 as directed by the Fair Sentencing Act of 2010. This rate is only 4.2 percentage points lower than a year after *Booker*, when many courts were continuing to treat the guidelines as mandatory.[12] This is a measure of the success of the advisory guidelines system; when unsound guidelines are amended to better reflect the statutory purposes and factors, judges follow them more frequently. (*See* Addendum, Part IV)

The rate at which judges vary from the guideline range has been remarkably low. The guidelines are constructed almost solely of aggravating factors and have been repeatedly increased since the guidelines' inception. The guidelines contain almost no mitigating factors. For example, although state of mind is an essential component of the seriousness of the offense, the guidelines do not distinguish among offenders based on more and less culpable states of mind. They require enormous increases based on quantities of drugs possessed by others that were "reasonably foreseeable" to the defendant. They require an increase based on a gun that "was possessed" by others. The guidelines also omit, prohibit, and discourage consideration of many factors that bear directly on the likelihood of recidivism, thus recommending punishment that is excessive to protect the public. Contrary to the Commission's account, the guidelines fail to take into account a host of relevant factors, and for that reason and others, often fail to achieve the statutory purposes of sentencing. (*See* Addendum, Parts II & III)

Presentation of incorrect data. In March 2003, a Department of Justice official appeared before this Subcommittee and complained that judicial departures had increased as a result of the Supreme Court's 1996 decision in *Koon v. United States*, 518 U.S. 81 (1996).[13] Within a month,

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[9] *See* USSC, 2003-2004 Sourcebook of Federal Sentencing Statistics, tbl. 31A; USSC, 2005-2010 Sourcebook of Federal Sentencing Statistics, tbls. 31A-31D; USSC, Preliminary Quarterly Data Report, Third Quarter FY 2011, tbls. 10-13; Testimony of James E. Felman on Behalf of the American Bar Association before the Subcomm. on Crime, Terrorism, and Homeland Security, Comm. on the Judiciary of the House of Representatives, Appendix (Oct. 12, 2011).

[10] *See* USSC, 2003 Sourcebook of Federal Sentencing Statistics, tbl. 31A (40%); 2004 Sourcebook of Federal Sentencing Statistics, tbl. 31A (35.1% pre-*Blakely*, 37.5% post-*Blakely*); USSC, Preliminary Quarterly Data Report, Third Quarter FY 2011, tbls. 10, 12 (over 90% of downward departures and variances are 34.8% or less below the range).

[11] USSC, Preliminary Quarterly Data Report, Third Quarter FY 2011, tbl.4.

[12] *Id.* (12.7% first quarter 2006).

[13] Statement of Associate Deputy Attorney General Daniel P. Collins before the Subcomm. on Crime, Terrorism, and Homeland Security of the of the H. Comm. on the Judiciary (Mar. 11, 2003), in 15 Fed. Sent'g Rep. 331, 331 (2003).

Representative Feeney introduced an amendment to the PROTECT Act based on that same representation.[14] On April 30, 2003, a revision of the Feeney Amendment was passed into law, restricting judicial departures but creating a new "fast track" departure for the government.

Later, it came to light that the Department's claims that judicial departures had increased after *Koon* were erroneous. From the early 1990s until 2003, the Commission reported a large and growing number of government-sponsored departures as if they were initiated by judges. What appeared in the Commission's public data as an increase in judicial departures was actually an increase in government-sponsored departures, primarily on the border in immigration and drug cases. The Commission knew the true source of the increase in below-range sentences,[15] but did not correct the way in which it publicly reported the departure rates until after the PROTECT Act was passed.

In October 2003, after the PROTECT was passed, the Commission reported that, excluding southwest border districts, "the national rate of increase in the departure rate is substantially the same during the pre-*Koon* and post-*Koon* eras, and actually declines during the most recent year for which such data is available."[16] The General Accounting Office,[17] and academic researchers,[18] also found that much of the data relied upon by supporters of the PROTECT Act was inaccurate and that the increase in sentences below the guideline range attributed to judges was in fact the product of prosecutorial practices.

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[14] 149 Cong. Rec. H2423 (daily ed. Mar. 27, 2003); 149 Cong. Rec. H3061-01 (daily ed. Apr. 10, 2003).

[15] *See* Statement of John R. Steer, Vice-Chair, U.S. Sent'g. Comm'n, before the Subcomm. on Criminal Justice Oversight, U.S. Senate Judiciary Committee, at 6, 8-9, 10 &Exh. 14 (Oct. 13, 2000) (the "overall biggest set of influences [on departure rates] has been an array of prosecutorial charging and plea bargaining initiatives," the "greatest changes" in the departure rate "since 1992 have occurred in immigration and drug trafficking offenses," "typically initiated by the several U.S. Attorneys," "the two largest categories of reasons" for all downward departures were "agreements to deportation involving unlawful aliens (including various 'Fast Track' plea arrangements)," which had grown from .2% to approximately 20% from 1994 to 1999, "and plea agreements generally," which comprised about 20% from 1992 to 1999).

[16] USSC, *Report to Congress: Downward Departures from the Federal Sentencing Guidelines* 55 (2003). Until 2003, the Commission had included all government-sponsored departures other than substantial assistance departures in the "other downward departure" rate. After the PROTECT Act was passed, the Commission reported that at least 40% of these "other downward departures" were sought by the government. *Id.* at 54-56, 60.

[17] GAO, *Federal Drug Offenses: Departures from Sentencing Guidelines and Mandatory Minimum Sentences, Fiscal years 1999-2001* (2003) (citing problems with Commission data collection and coding procedures).

[18] Max Schanzenbach, *Have Federal Judges Changed Their Sentencing Practices? The Shaky Empirical Foundations of the Feeney Amendment*, 2 J. Empirical Legal Stud. 1 (2005); Mark T. Bailey, *Feeney's Folly: Why Appellate Courts Should Review Departures from the Federal Sentencing Guidelines with Deference*, 90 Iowa L. Rev. 269 (2004).

In the aftermath of the PROTECT Act, the Judicial Conference and the Commission changed the manner in which sentences are reported to, and categorized, by the Commission, although the potential for misunderstanding remains.[19] Given this history, one would expect the Commission to be especially careful to prevent partisan misuse of its data or the drawing of false inferences from inaccurate, incomplete, or highly aggregated data.

Yet, in its testimony before this Subcommittee, the Commission relies in part on the same kind of data that led to the enactment of the PROTECT Act and fails to adequately explain problems with the data in both the pre- and post-PROTECT Act periods. The graph in the Commission's Appendix C and the rates of below-range sentences shown for immigration and other offenses over time (at pp. 26, 28, 38) make it appear as if the rate of non-government sponsored departures increased after the decision in *Koon*, when they did not, and were far higher in immigration and marijuana cases after *Koon* than they actually were. The Commission's characterization of *Koon* as having actually increased judicial discretion and the rate of judicial departures[20] is wrong. *Koon* incorporated the Commission's restrictive departure standard into the appellate standard of review,[21] and therefore did not increase judicial discretion or the rate of judicial departures, as the Commission itself reported in October 2003. It is unclear what conclusions are meant to be drawn from the Commission's data and description of the post-*Koon* period, but they appear to invite the same misunderstandings that led to previous legislation restricting judicial discretion.

II. The Commission Offers No Meaningful Analysis of Differences Among Districts, Much Less Evidence of Growing or Unwarranted Differences.

The first ground for the Commission's proposed overhaul is what it calls "growing disparities among circuits and districts."[22] Whether differences are growing or unwarranted, what kinds of differences there are, and what causes them, are complex questions upon which the Commission sheds no light. There are a host of local conditions and interactions among judges and prosecutors that legitimately cause differences among districts, as the Commission has been repeatedly advised,[23] and has previously acknowledged.

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[19] Paul J. Hofer, *How Well Do USSC Sentencing Data Help Us Understand Post-Booker Sentencing?* 22 Fed. Sent'g Rep. 89 (2010).

[20] Commission Testimony at 4-5.

[21] *See Koon*, 518 U.S. at 92-95; Kate Stith, *The Hegemony of the Sentencing Commission*, 9 Fed. Sent'g Rep. 14 (1996); Paul Hofer *et al.*, *Departure Rates and Reasons After Koon v. U.S.*, 9 Fed. Sent'g Rep. 284 (1997).

[22] Commission Testimony at 1.

[23] *See, e.g.*, Statement of the Honorable Robert L. Hinkle Before the U.S. Sent'g Comm'n (Feb. 11, 2009); Statement of Alexander Bunin, Federal Public Defender for the Northern District of New York, Hearing before the U.S. Sent'g. Comm'n, at 7-11 (July 9, 2009); Tr. of Public Hearing before the U.S. Sent'g Comm'n, Chicago, Ill., at 99-100 (Sept. 9-10, 2009) (remarks of the Hon. Karen K. Caldwell, Eastern District of Kentucky); Statement of Nicholas T. Drees Before the U.S. Sent'g Comm'n, Denver, Colo., at 6-9 (Oct. 21, 2009); Twentieth Annual National Seminar on the Federal Sentencing Guidelines,

The only information the Commission provides is: (1) the low and high rate by district of only non-government sponsored below range sentences for certain offenses, and (2) and a list by district of only non-government sponsored below range sentences for all offenses. The Commission omits any information about whether variations in sentence length among districts have grown. The Commission omits any discussion of government-sponsored rates of below range sentences by district, although this has a very substantial bearing on non-government sponsored rates.[24]

The Commission warned not long ago that "[a]nalyzing sources of . . . regional disparity is complicated because the potential sources are so many, varied, and interacting,"[25] and that "[i]nferring unwarranted disparity from uncontrolled comparisons of average sentences or rates of departure may be erroneous."[26] "The causes of variation in the rates of departure, and their potential effect on unwarranted sentencing disparity cannot be resolved through simple examination of reported rates. . . . When assessing the role of departures in creating unwarranted sentencing disparity . . . caution is advisable and caveats are unavoidable."[27]

A. <u>There is Less Variation Among Districts in Sentence Length Than When the Guidelines Were Mandatory.</u>

Focusing only on rates, the Commission provides no information about whether differences in *sentence length* have grown among districts, a measure that would seem to be much more important in assessing whether inter-district disparity has grown. Other researchers,

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Orlando, Florida (May 4-6, 2011) (remarks of the Hon. John Gleeson, Eastern District of New York); Letter to the Hon. Patti B. Saris from Thomas W. Hillier, II, Public Comment on USSC Notice of Proposed Priorities for Amendment Cycle Ending May 1, 2012, at 59, 65-68 (Sept. 7, 2011).

[24] *See* John Gleeson, *The Sentencing Commission and Prosecutorial Discretion: The Role of the Courts in Policing Sentence Bargains*, 36 Hofstra L. Rev. 639, 656 n.66 (2008) ("These differences matter, not just to the residents of our nation's communities, but to the jurors, lawyers, and judges in them. They are acted upon in numerous ways, including in plea bargaining decisions, to produce results that prosecutors and judges believe are just. To be sure, those results are not uniform. Some drug couriers get a four-level downward role adjustment based on the happenstance of being arrested in New York rather than in Miami, just as some illegal immigrants get a three-level fast-track adjustment based on the happenstance of being arrested in Arizona rather than in Utah.").

[25] USSC, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform* 93 (2004) ("Sentencing can be influenced by differences among the districts and circuits in their sentencing case law and 'personas.' These, in turn, are influenced by the political climates of different regions of the country. A great deal of research has established the importance of the local norms of different district courts---what some researchers have called court communities. The norms of different courts are also influenced by practical constraints, such as court workload and the availability of different types of sentencing options.").

[26] *Id.* at 100.

[27] *Id.* at 111.

using the Commission's datasets, have performed this analysis. They found that the "sentence length variance" among districts was 6.6% before the PROTECT Act, 5.8% after the PROTECT Act, 5.2% after *Booker*, and 6.3% after *Gall*.[28] Thus, there is now *less variation in sentence length* than before the PROTECT Act when the guidelines were mandatory.

B. The Commission's Rates Tell Us Nothing Meaningful.

Then Judge (and former U.S. Attorney) Alito said in 1992 that the Commission's "[c]omparisons of the departure rates of different circuits and districts seem to me . . . unsound."[29] He gave several examples of different mixes of types of cases and different magnitudes of cases, set forth in the footnote, and concluded that "no meaningful" or "reliable" comparisons among districts can be made by looking at the Commission's statistics.[30]

The same is true of the Commission's presentation today. The Commission's presentation makes it appear that there are wide differences, with no effort to illuminate the reasons for the differences.[31] Prosecutorial decisions are the primary driver of differences among districts. Yet, there is no analysis of the kinds of cases prosecutors bring, or any discussion of government-sponsored departures and variances. Nor does the Commission

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[28] Jeffery T. Ulmer, Michael T. Light, & John Kramer, *The "Liberation" of Federal Judges' Discretion in the Wake of the Booker/Fanfan Decision: Is There Increased Disparity and Divergence Between Courts?*, Justice Quarterly (forthcoming 2011) ["Penn State Study – Interdistrict Disparity"], at 18 http://www.tandfonline.com/doi/abs/10.1080/07418825.2011.553726.

[29] Samuel A. Alito, *Reviewing the Sentencing Commission's 1991 Annual Report*, 5 Fed. Sent'g Rep. 166 (1992).

[30] "For example, the types of cases prosecuted in federal court in a particular district may be heavily influenced by cases that state and local authorities are able and willing to prosecute. The types of cases prosecuted in a federal district may also be affected by . . . investigative resources . . ., the number of federal prosecutors, and the number of judges and the competing pressures on the district court docket. Finally, each United States Attorney exercises a degree of discretion in setting priorities that are responsive to the district's perceived needs. . . . To take one example, cases involving immigration offenses or simple drug possession, which have very low departure rates, make up 35% of the cases in the Southern District of California but only 6% of the cases in the Southern District of Florida and 3% of the cases in the Eastern District of New York. Consequently, no reliable inter-district comparisons can be made without controlling for differences in the mix of offenses prosecuted. There are other important differences in the mix of cases prosecuted-such as the magnitude of cases falling within a particular offense category-and these differences may also affect departure rates. In two large offense categories, drug and fraud cases, there are very substantial differences in the magnitude of cases prosecuted in the more populous, urbanized districts as opposed to the less populous, more rural districts. If departure rates within an offense category vary based on the magnitude of the case . . . , then meaningful inter-district comparisons cannot be made without controlling for inter-district differences in the magnitude of cases within particular offense categories. . . . The point is that we just can't tell from the Commission's statistics, and we will not be able to tell until a much more sophisticated analysis of each district's cases is performed." *Id.*

[31] Commission Testimony at 26, 28, 31, 33, 36, 38, 41, 43, 46, 48, 50, 53.

disclose that the difference between the highest and lowest government-sponsored rates by district is 12.4 percentage points higher than the difference between the highest and lowest non-government sponsored rates by district.[32]

The Commission provides no explanation at all of why, as it says, the non-government sponsored below range rate in illegal entry cases was a high of 66.7 percent in one district and a low of 1.1 percent in another, or even which districts those were.[33] The lowest rate is likely either New Mexico, which has a 3.5% non-government sponsored rate for all immigration cases (not just illegal entry cases), or Arizona, which has a 4.2% non-government sponsored rate for all immigration cases.[34] These rates are low for good reason. In Arizona, which has a "fast track" program, the government-sponsored rate is 64.7%.[35] In New Mexico, which also has a "fast track" program, the government sponsored rate is 29%,[36] and many defendants who do not receive "fast track" departures are prosecuted under 8 U.S.C. § 1326(a) and receive time served.[37] Thus, in most cases in Arizona and New Mexico, there is no need or even opportunity for judges to depart or vary because the government's actions produce low sentences.

The highest rate the Commission reports for illegal entry cases (66.7%) is most likely for the Southern District of New York, which has a 63.9% non-government sponsored rate for all immigration cases, but only a 2.5% government sponsored rate.[38] The Southern District of New York, unlike Arizona and New Mexico, has no "fast track" program and no § 1326(a) cases. According to the Commission, the presence of fast track programs in some districts and not others creates geographical disparity.[39] Judges in the Southern District of New York (and

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[32] In 2010, prosecutors sought downward departures and variances in 60.4% of cases in the Southern District of California and in 3.7% of cases in the District of South Dakota, a difference of 56.7 percentage points. Judges imposed downward departures and variances in 49% of cases in the Southern District of New York and in 4.7% of cases in the Middle District of Georgia, a difference of 44.3 percentage points. *See* USSC, 2010 Sourcebook of Federal Sentencing Statistics, tbl. 26.

[33] Commission Testimony at 26.

[34] We cannot be certain which districts the Commission has found to have the highest and lowest rates for illegal entry cases alone because the Commission publishes rates by district for all immigration cases together, rather than reporting illegal entry separately.

[35] USSC, 2010 Statistical Information Packet, Arizona, tbl. 10.

[36] USSC, 2010 Statistical Information Packet, New Mexico, tbl. 10.

[37] The information regarding the high number of § 1326(a) cases comes from the Defender in the District of New Mexico.

[38] USSC, 2010 Statistical Information Packet, Arizona, New Mexico, Southern District of New York, tbl. 10.

[39] USSC, *Report to the Congress: Downward Departures from the Federal Sentencing Guidelines* 66-67 (2003) (criticizing fast-track programs for creating a "type of geographical disparity").

elsewhere) vary to alleviate that disparity.[40] The average *sentence length* for immigration cases is highest in the Southern District of New York at 23.5 months, while in Arizona it is 20 months, and in New Mexico is 6 months.[41]

As one example of a similar dynamic in the drug trafficking area, in the Eastern District of Kentucky, only 6% of drug offenders receive a non-government sponsored below range sentence, but 63.2% of drug offenders receive a government-sponsored departure for cooperation, and average sentence length is 70 months.[42] In the Southern District of West Virginia, only 10.7% of drug offenders receive a government sponsored departure for cooperation, but 35.1% receive a non-government sponsored below range sentence, and average sentence length is 75 months.[43]

Mr. Miner decried the different rates of non-government sponsored departures and variances in 2010 in the Northern (17.2%) and Southern (49%) Districts of New York, but average sentence length was 44.4 months in the Northern District of New York, 54.1 months in the Southern District of New York, and 51.1 months nationally.[44]

The ranking of districts in the Commission's Appendix tells us nothing. For example, the non-government sponsored rate of below guideline sentences in the Western District of Texas was only 11.1% in 2010, well below average. This bare statistic fails to reveal that a large portion of the caseload consists of immigration cases prosecuted under 8 U.S.C. § 1326(a) (with a statutory maximum of 2 years), and marijuana cases prosecuted under 21 U.S.C. § 841(b)(1)(D) (with a statutory maximum of 5 years).[45] Immigration cases are 60% of the caseload and the median sentence is 8 months.[46] Marijuana cases comprise 63.7% of all drug

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[40] According to a former federal prosecutor, "what we've done is to set penalties at unsupportably high levels and then use those high penalties as the starting point for a program of huge sentencing discounts." Frank O. Bowman, III, *Only Suckers Pay the Sticker Price: The Effect of "Fast Track" Programs on the Future of the Sentencing Guidelines as a Principled Sentencing System*, Written Statement Prepared for Hearing Before the U.S. Sent'g. Comm'n, at 1 (Sept. 23, 2003). "[W]hat makes fast track possible and makes it run is the high guideline ranges under § 2L1.2, a guideline that lacks any empirical basis." Statement of Thomas W. Hiller, II and Davina Chen, Hearing Before the U.S. Sent'g Comm'n, at 27 (May 27, 2009).

[41] USSC, 2010 Statistical Information Packet, Arizona, New Mexico, Southern District of New York, tbl. 7.

[42] USSC, 2010 Statistical Information Packet, Eastern District of Kentucky, tbls. 7, 10.

[43] USSC, 2010 Statistical Information Packet, Southern District of West Virginia, tbls. 7, 10.

[44] USSC, 2010 Statistical Information Packet, Northern District of New York, Southern District of New York, tbl. 7.

[45] The information regarding the high number of § 1326(a) and marijuana cases comes from the Defender in the Western District of Texas.

[46] USSC, 2010 Sourcebook of Federal Sentencing Statistics, Appendix B (Western District of Texas).

cases compared to 26.3% nationally. The guideline range in these marijuana cases is 18-24 months (or less) with reductions for acceptance of responsibility and safety valve, and 12-18 months (or less) with minor role. Unlike many other districts, there is no need for below-range sentences in many cases in the Western District of Texas.[47] Many defendants serve most of their sentences before they are even sentenced.

For a number of reasons for different rates in the District of Massachusetts and the Middle District of Georgia, and other information on this issue, *see* Addendum, Part I.

C. The SRA Recognized That There *Should* Be Local Differences.

The SRA did not require nationwide uniformity, instead recognizing that regional differences are relevant in three different ways—"the community view of the gravity of the offense," "the public concern generated by the offense," and "the current incidence of the offense in the community."[48] The guidelines do not to take account of local conditions, but judges and prosecutors take account of such differences and always have.

That is presumably why the Attorney General has adopted a policy of "district-wide consistency," in accordance with "district-specific policies, priorities, and practices," and "the needs of the communities we serve."[49] In considering the need for just punishment, one question is, "What penalty is needed to restore the offender to moral standing within the community?"[50] As the Second Circuit found in upholding an upward variance in a firearms case in the Southern District of New York, the "community view of the gravity of the offense" and the "public concern generated by the offense" are relevant to the seriousness of the offense.[51] A failure to take into account local conditions and norms would create unwarranted uniformity.[52]

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[47] *See* USSC, 2010 Sourcebook of Federal Sentencing Statistics, Appendix B (Western District of Texas: 24.6% drug cases, 50.6 months mean, 33 months median; Southern District of New York: 36% drug cases. 65.7 months mean, 57 months median; Delaware: 27% drug cases, 82.4 months mean, 78 months median; Rhode Island: 53% drug cases, 72.5 months mean, 60 months median).

[48] *See* 28 U.S.C. § 994(c)(4), (5), (7).

[49] Memorandum to All Federal Prosecutors from Attorney General Eric H. Holder Jr. regarding Department Policy on Charging and Sentencing, at 1, 3 (May 19, 2010).

[50] *United States v. Cole*, slip op., 2008 WL 5204441 *4 (N. D. Ohio Dec. 11, 2008).

[51] *See United States v. Cavera*, 550 F.3d 180 (2d Cir. 2008) (en banc).

[52] *See* Vincent L. Broderick, *Local Factors In Sentencing*, 5 Fed. Sent'g Rep. 314, 314 (1993) ("Local variations are important because of the wide spectrum of conditions, attitudes and expectations spanning the nation. Overcentralization can produce a rigidity engendering hostility and causing diminution of respect for the national government."); Michael O'Hear, *Federalism and Drug Control*, 57 Vand. L. Rev. 783, 821-22 (2004) (discussing the distortion of drug policy by federalization and justified regional differences).

III. The Commission Gives an Incomplete and Misleading Account of Demographic Differences in Sentencing.

Accusing federal judges of racial bias is a serious charge. We are therefore disappointed to see the Commission overstate its results and fail to caution that its conclusions are insufficiently reliable to be the basis for any policy changes. The Commission's regression analysis omits many relevant factors that would explain the racial differences it reports, omits other relevant information, and fails to acknowledge that the Commission's results have been contradicted by prominent researchers using a different statistical model. This other research finds that racial and ethnic disparity has not increased under the advisory guidelines.

1. The failure to account for all relevant factors that legitimately affect sentencing decisions makes the Commission's conclusions unreliable. The Commission does not collect, and its analysis does not include, many relevant factors that legitimately and legally affect judges' sentencing decisions, and that would likely change the result if they were included.[53] In addition, the Commission's "refined model" omits many highly relevant factors, such as criminal history points, that are known to correlate with both race and sentence lengths, thus overstating the magnitude of the race effects reported.[54]

Rather than caution the Subcommittee that its study omits many relevant factors, the Commission strongly implies the opposite, stating that "this tool . . . accounts, or controls, for the effect of each factor in the analysis. Each factor is separately assessed and the extent to which each factor influences the outcome is measured."[55]

In its March 2010 report on demographic differences, the Commission devoted two full sections to explaining that reliable conclusions could not be drawn from its analysis because relevant factors are missing from its datasets. In a section entitled "Cautions When Reviewing the Results of This Report," it stated:

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[53] Kate Stith & José A. Cabranes, *Fear of Judging: Sentencing Guidelines in the Federal Courts* 107, 115 (1998).

[54] In its March 2010 report, the Commission stated these factors were omitted because their inclusion "somewhat artificially overstated" the impact of the presumptive sentence and "understated" the impact of other independent variables. The Commission claimed that the remaining independent variables are "independent of and not correlated with one another." USSC, *Demographic Differences in Federal Sentencing Practices: An Update of the* Booker Report's *Multivariate Regression Analysis* at 19-20 (2010) [USSC, *2010 Demographic Differences Report*]. No inter-correlation matrix was included in the report, however, and it is implausible that race and gender are not correlated with other independent variables, such as offense type. The effect of the omission of these legally relevant factors is to ignore the fact that judges legitimately weigh some legally relevant factors differently than the guidelines rules. Conversely and ironically, by *not* restricting the presumptive sentence, *id.* at 20 n. 69, the "refined model" assumes that judges weigh the guideline recommendation itself somewhat differently than the law indicates. These differences in model specification are contestable; different researchers believe different choices are appropriate. The Commission's choices resulted in race effects larger than would otherwise be the case.

[55] Commission Testimony at 53-54.

[O]ne or more *key factors* which could affect the analysis may have been *omitted* from the methodologies used because a particular factor is unknown or was erroneously excluded from the analysis, or *because data concerning such a factor is unavailable in the Commission's datasets. Examples* of factors for which no data is readily available in the Commission's datasets *include a measure of the violence in an offender's criminal past, information about crimes not reflected in an offender's criminal history score as calculated under the sentencing guidelines, and information about an offender's employment record.* For these reasons, *the results presented in this report should be interpreted with caution.*

Although the Commission's analysis demonstrates that some differences in the sentences imposed on certain groups of offenders are associated with specific demographic characteristics, it is also *important to note that these differences may be attributable to one (or more) of a number of factors that, while correlated with the demographic characteristics of offenders, are not caused by them.* For example, *judges make decisions when sentencing offenders based on many legal and other legitimate considerations that are not or cannot be measured.* Some of these factors could be correlated with one or more of the demographic characteristics of offenders but not be influenced by any consideration of those characteristics.[56]

In another section entitled "Limitations of Regression Analysis," the Commission stated:

As is apparent, the *usefulness* of regression analysis is *entirely dependent on the data being used.* Therefore, one *important concern* when using regression analysis is an *awareness of what data might be missing* from the analysis. The *omission of one or more important variables usually causes the value of the variables that are included in the model to be overstated.*

For example, a judge sentencing two offenders convicted of similar crimes with the same criminal history score under the federal sentencing guidelines *might impose a longer sentence on the offender with a more violent criminal past than on the offender with a less violent, or non-violent, criminal history.* Similarly, a judge sentencing two offenders convicted of similar crimes might be influenced by the *presence of violence in one case that was not present in the other case and was not reflected in the final offense level* for those cases as determined under the sentencing guidelines. Additionally, judges might be influenced by *crimes not reflected in the criminal history score or by an offender's contacts with the criminal justice system that do not result in a conviction.* Further, an offender's *employment record may have some influence on the sentence imposed.* Data on these factors are not available in the Commission's datasets.[57]

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[56]USSC, *2010 Demographic Differences Report* at 4.

[57]*Id.* at 9.

The Commission explained that, while the datasets it used did not include information on whether offenders had violent criminal history events, it had determined through a random sample from a different dataset that 43.7 percent of black offenders, 24.4 percent of white offenders, 18.9 percent of Hispanic offenders, and 23 percent of "other" offenders had violent criminal history events.[58] Further, not every incidence of violence is reflected in the guideline offense level, and the criminal history score includes only offenses of which the offender was convicted.[59] Employment is not included in the guidelines at all and therefore was not included in the analysis. The Commission stated: "[O]ne or more unmeasured factors that are not available for inclusion in the analysis . . . potentially *could change the results if they were included.*"[60]

Why is this so? When there is a statistical correlation between a missing but relevant factor and a demographic factor, such as race, and judges take the relevant factor into account, the analysis appears to show evidence of demographic effects when judges are in fact taking proper account of relevant factors. When judges are required to take account of relevant factors (such as employment and violence in criminal history), which are not included in the guidelines (and thus not included in the Commission's datasets), the analysis appears to show an increase in demographic effects when judges are in fact taking greater account of relevant factors.

2. The Commission misstates its own findings. The size of effects associated with demographic factors in multiple regression analyses commonly fluctuate for a variety of reasons. The Commission previously noted that race effects have been statistically significant some years but not others, making it implausible that deeply rooted racial bias in judicial decision making accounts for the associations between race and sentence lengths in the years it is found.[61]

Yet in its testimony for this hearing, the Commission states that differences in sentence length between Black and White male offenders "have increased steadily since *Booker*."[62] In fact, its analysis of March 2010 reported larger effects for black males than those found in its latest analysis using the most recent data. Compared to its March 2010 analysis, the effect for black males *decreased* in the post-*Gall* period—from a 23.3 percent difference through September 30, 2009,[63] to a 20 percent difference through September 30, 2010.[64] This information is not mentioned in the Commission's testimony.

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[58] *Id.* at 9 n.37.

[59] *Id.* at 10 nn.38-39.

[60] *Id.* at 9 n.35.

[61] *See* discussion in *Fifteen Year Review*, at 123-27.

[62] Commission Testimony at 54.

[63] USSC, *2010 Demographic Differences Report* at 22.

[64] Commission Testimony at 54.

The Commission also fails to mention that under a different model spanning the entire ten-year period from 1999 through 2009, the greatest difference by far in sentence length between black and white offenders occurred in 1999 when the guidelines were mandatory.[65]

3. The Commission appears to be comparing apples and oranges because different models in different time periods contain different control variables. In March 2010, the Commission adopted a new model with a new beginning date of May 1, 2003, rather than fiscal year 1999. The Commission said that it was important to include detention status in its analysis because similar offenders may receive different sentences as a result of whether they were detained before sentencing or not (*e.g.*, they may receive time served if detained but probation if not), and if detention status was associated with race or gender (*e.g.*, because of offense type or inability to post bail), it would confound the results.[66] The Commission was unable to include sentences imposed from 1999 to 2003 in this new model because it had no data on detention status for the years 1999 to 2003.[67]

The Commission now includes a time period for which it said it has no data on detention status and compares it to periods for which detention status is included. The new time period begins on October 1, 1999 and ends April 2003,[68] but the Commission said it has no data on detention status before 2003. Unless the Commission obtained data on detention status for this new time period in some way that it has not explained, it is comparing apples, with no data on detention status before 2003, to oranges, including detention status after 2003.

4. Prominent experts reached the opposite conclusion. Shortly after release of the Commission's report on demographic differences in March 2010, a team of researchers at Pennsylvania State University, including a former Staff Director at the Commission, released a study, also using the Commission's datasets, but reaching different, and additional, conclusions. They found that:

- Disparity in sentence lengths based on race, ethnicity and gender has *not* increased after *Booker* and *Gall*.[69]

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[65] USSC, *2010 Demographic Differences Report* at 14.

[65] *Id.*

[66] *Id.* at 18.

[67] *Id.* at 2 & n.4.

[68] Commission Testimony at 53 n.164.

[69] Jeffery T. Ulmer, Michael T. Light, & John Kramer, *The "Liberation" of Federal Judges' Discretion in the Wake of the Booker/Fanfan Decision: Is There Increased Disparity and Divergence Between Courts?*, Justice Quarterly (forthcoming 2011) ["Penn State Study – Interdistrict Disparity"], at 24, http://www.tandfonline.com/doi/abs/10.1080/07418825.2011.553726.

- Black-white differences in sentence length are significantly *smaller* in the post-*Booker* and *Gall* periods compared to the pre-PROTECT Act period (October 2001-April 2003) when the guidelines were mandatory.[70]
- There is less variation among districts in the extent to which race influences sentence length after *Booker* and *Gall* than during the pre-PROTECT Act or PROTECT Act periods.[71]
- Gender differences in sentence length are significantly *less* in the post-*Gall* period than in either the pre-PROTECT Act or PROTECT Act periods.[72]
- The effects of race and gender on sentence length were considerably *less* after *Booker* and *Gall* than in 1994-95.[73]
- There were no statistically significant differences in sentence lengths across time periods for Hispanics or non-citizens.[74]
- There is no evidence that *Booker* has "produced greater disparity in the likelihood of minority offenders to receive non-substantial assistance downward departures."[75]

The Penn State Study concluded: "Put simply, racial and gender sentence length disparities are less today, under advisory Guidelines, than they were when the Guidelines were arguably their most rigid and constraining."[76]

The different conclusions of the Commission and Penn State studies are the result of different methodologies. Researchers can model the sentencing decision as either (1) a single decision (How long to imprison?) or (2) a series of decisions (First, *whether* to imprison, and second, for those offenders for whom imprisonment is necessary, *for how long*?). Different factors affect the two decisions differently. For example, a defendant's current employment may influence a judge to prefer probation, so that the defendant can keep his job and continue to support his dependents.[77] A defendant with violence in his criminal history is more likely to be sentenced to prison than a defendant with no violence in his history.

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[70] *Id.* at 24.

[71] *Id.* at 30.

[72] *Id.* at 24.

[73] Jeffery T. Ulmer, Michael T. Light, & John H. Kramer, *Racial Disparity In the Wake of the Booker/Fanfan Decision: An Alternative Analysis to the USSC's 2010 Report*, 10 Criminology & Pub. Pol'y _ (forthcoming November 2011) ["Penn State Study – Alternative Analysis"], at 31-32.

[74] Ulmer *et al.*, Penn State Study – Interdistrict Disparity, *supra* note 69, at 24.

[75] Ulmer *et al.*, Penn State Study – Alternative Analysis, *supra* note 73, at 33.

[76] *Id.* at 32.

[77] *See* USSC, Staff Discussion Paper, *Sentencing Options under the Guidelines* 16 (1996) (finding that "offenders who were viably employed were 21 percent more likely to receive an alternative sentence than unemployed offenders").

These kinds of considerations led the Penn State team to prefer the second approach.[78] The Commission chose the first approach, studying all types of sentences together and treating probationary sentences as zero months of imprisonment. The Penn State researchers found that what appeared to be lengthier prison sentences for black male offenders under the advisory guidelines was, in fact, an increased difference in the portion of black and white male offenders who received probation after *Gall*. Even this difference, however, "did not attain statistical significance" when viewed across time periods in the same model.[79] Moreover, the decision whether to imprison is most sensitive to the very offender characteristics missing from the Commission's data, such as employment and violence in criminal history, which are likely to affect the court's decision whether to sentence the defendant to incarceration.[80]

Variations in methodology and findings in this field of research are longstanding and caution against basing policy decisions on the results of this type of study: "Any findings that are sensitive to minor changes in model specifications such as these must be interpreted with caution."[81]

The only fair conclusion is that there is no reliable evidence that judges act on racial bias when they exercise greater discretion in sentencing.

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[78] Ulmer *et al.*, Penn State Study – Alternative Analysis, *supra* note 73, at 11-15.

[79] *Id.* at 28.

[80] The two studies also differed in their approach to immigration offenses. The Penn State researchers excluded immigration offenses because the overwhelming majority involve non-citizens, who are often non-White, and because immigration cases are handled differently from other crimes, for example, through the use of deportation as a sentencing option and the government's use of "fast track" programs that are dependent not on the defendant's criminal conduct but the district in which the defendant is prosecuted. Ulmer *et al.*, Penn State Study -- Alternative Analysis, *supra* note 73, at 15-16, 29-30, 38. If immigration cases are included, it cannot be fairly concluded that any racial or ethnic disparity found is due to discrimination based on these characteristics rather than the result of differences in how non-citizens and immigration cases are handled. This choice by the Penn State researchers is supported by Commission staff research: "Non-citizens are less likely to receive an alternative than are U.S. citizens, reflecting perhaps the impending deportation of the defendant and the absence of a local residence suitable for home confinement. Higher imprisonment rates for non-citizens and for immigration offenders appeared to account for the higher aggregate imprisonment rates for Hispanic defendants. No differences in the use of alternatives were found between Whites, Blacks, and Hispanic defendants after controlling for all other factors in the model." USSC, Staff Discussion Paper, *Sentencing Options under the Guidelines* 16 (1996).

[81] Douglas C. McDonald & Kenneth E. Carlson, U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Sentencing in the Federal Courts: Does Race Matter? The Transition to Sentencing Guidelines, 1986-90*, at 106 (1993).

5. Unproven allegations of racial bias by judges divert attention from proven sources of unfairness in sentencing, and ignore the fact that judicial discretion helps to correct these problems.

Allegations of racial bias infecting judicial decisions were made before the sentencing guidelines were adopted, but were later proven unfounded. In a comprehensive review sponsored by the Department of Justice's Bureau of Justice Statistics in 1993, leading sentencing researchers concluded:

> During 1986-1988, before full implementation of the guidelines, white, black and Hispanic offenders received similar sentences, on average, in Federal district courts.[82]
>
> [The] few studies [that] examined actual Federal sentencing decisions prior to the introduction of the guidelines . . . . showed that sentencing was not greatly dependent on the judge that one drew. Rather, outcomes generally corresponded to differences in cases and offenders' characteristics that were commonly seen as legitimately considered. . . . Differences clearly thought to be unwarranted (*e.g.*, by the offender's race or ethnicity) were found to be uniformly small or statistically insignificant.[83]

Despite the repudiation of the charges, racial bias was and is routinely cited as a core reason that judicial discretion must be constrained. In fact, the guidelines and the mandatory minimums on which many guidelines are based are responsible for significant racial disparity. The 1993 Bureau of Justice Statistics review concluded that "there were substantial aggregate differences in sentences imposed on white, black, and Hispanic offenders . . . sentenced under guidelines from January 20, 1989, to June 30, 1990," and that nearly all of these "can be attributed to [factors] that current law and sentencing guidelines establish as legitimate considerations in sentencing decisions."[84]

After its own comprehensive review in 2004, the Commission concluded that some of these laws and guidelines with a disproportionate impact on racial minorities were not justified by the purposes of sentencing.[85] The Commission concluded that "if unfairness continues in the federal sentencing process, it is more an 'institutionalized unfairness' built into the sentencing rules themselves rather than a product of racial stereotypes, prejudice, or other forms of discrimination on the part of judges. . . . Today's sentencing policies, crystallized into the sentencing guidelines and mandatory minimum statutes, have a greater adverse impact on Black

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[82] *Id.* at 1.

[83] *Id.* at 25.

[84] *Id.* at 1.

[85] *Fifteen Year Review* at 131-34.

offenders than did the factors taken into account by judges in the discretionary system in place immediately prior to guidelines implementation."[86]

Studies like the Commission's and Penn State's do not measure the effects of the *sentencing rules themselves* on racial unfairness. These studies treat the guidelines, mandatory minimum statutes, and pre-sentencing decisions of law enforcement agents and prosecutors that control the guideline calculation as "legally relevant," fair and appropriate. They do not assess the demonstrated adverse impact of rules that are needlessly harsh and that disproportionately punish minorities, such as the different treatment of powder and crack cocaine (which was lessened by the Fair Sentencing Act of 2010) or the severe treatment of prior drug offenses under the so-called "career offender" guideline, or the impact of unequal law enforcement scrutiny, arrests, and charging and plea bargaining decisions.[87]

Nor do these studies assess how much increased judicial discretion after *Booker* has improved fairness in sentencing by permitting judges to offset the effects of these unfair rules and practices. The fact is, defendants of all groups are treated more fairly when judges can discount unjustified and excessively severe rules, take greater account of relevant differences among defendants, and correct for unfairness in prosecutorial practices and policies.

Notably, the Penn State Study found that below-guideline sentences sponsored by the government "are a greater site of racial disparity than judge initiated deviations."[88] The Commission, however, even as it seeks to constrain judicial discretion, has not studied whether prosecutors' decisions have a racial effect.

The mandatory guidelines created unwarranted disparity arising from unjust rules and the uneven exercise of prosecutorial discretion. Judges were not permitted to correct these problems. The Commission's proposal to reinstate several features of the mandatory guidelines system, under the guise of correcting demographic disparity, would reinstate this unjust regime.

IV. <u>The Racial Gap Caused By the Guidelines and Mandatory Minimums Should Be the Commission's Greatest Concern.</u>

As shown in Figure 2, the racial gap in sentence length was non-existent before the mandatory guidelines and mandatory minimums went into effect. In 1987, *when judges still had complete discretion to impose sentences for any reason or no reason at all, average time served for Black, White and Hispanic defendants was the same.* By 1989, when the guidelines and mandatory minimums had taken effect,[89] average time served for Black offenders was already

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[86] *Id.* at 135.

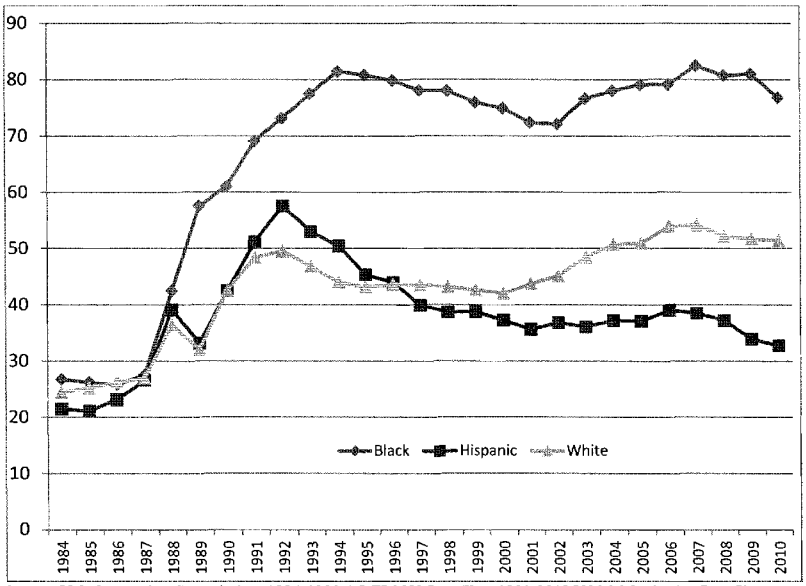
[87] *Id.* at 89-92, 133-35.

[88] Ulmer *et al.*, Penn State Study – Alternative Analysis, *supra* note 73, at 2, 34-35, 39.

[89] The guidelines were upheld on January 18. 1989. *Mistretta v. United States*, 488 U.S. 361 (1989). Mandatory minimums for drug trafficking were applicable to offenses committed after November 1, 1987. *See* Pub. L. No. 99-570, § 1004(b) (Oct. 27, 1986).

more than two years higher than for Whites and Hispanics. Average time served for Hispanics began to drop in 1992 due to the government's use of fast track departures and charge bargains, and has dropped even further in recent years due to a large increase in the prosecution of immigration cases with a low statutory maximum and low guideline range. Sentences for Black offenders, however, continued to soar above the others under the mandatory rules. The gap between time served by Blacks and Whites was greatest in 1994 (at 37.7 months), then began to narrow until 2003, when the PROTECT Act was passed and time served by Black offenders began to grow again. Fortunately, the gap between Blacks and Whites narrowed significantly from 29.3 months in 2009 to 25.4 months in 2010, and will narrow further in 2011 due to the FSA amendments to the guidelines and mandatory minimums.

Figure 2
AVERAGE TIME SERVED BY BLACK, WHITE, AND HISPANIC OFFENDERS
FY1984-2010



Source: U.S. Sentencing Commission, 1984-1990 AO FPSSIS Datafiles; 1991-2010 USSC Monitoring Datafiles. Time served is estimated from the sentence imposed. In the Monitoring Datafile TIMESERV assumes good time credits will be applied. Offenders receiving no term of imprisonment are excluded [SENTIMP=1, 2].

The growth in the racial gap during the mandatory guidelines era was caused by a number of factors, but especially by guidelines and mandatory minimums that greatly increased sentences for crimes most typically committed by African American defendants, even though

these increases did not further any purpose of sentencing. Rules that fail to further the purposes of sentencing are unjust even if they do not have an adverse racial impact, but are especially unjust when they do have an adverse racial impact.

Substantial progress has made in crack sentencing, but problems remain. For example, the Commission has noted that the guidelines' treatment of criminal history, especially minor offenses, may have an adverse impact on minorities without advancing the purposes of sentencing.[90] Guideline ranges increase steeply based on the defendant's criminal history category.[91] African Americans comprise only 20.7% of the defendant population but 32.6% of defendants in the three highest criminal history categories.[92] This does not necessarily mean that African American defendants have committed more crimes when they arrive in federal court. Rather, as the Commission has found, they have a higher risk of arrest and prosecution due to local police and prosecutorial practices in impoverished minority neighborhoods.[93] Research presented to the Commission shows that local arrests and prosecutions for minor offenses (such as driving under the influence, disorderly conduct, and drug possession) have an enormous disparate impact on African Americans.[94] Thus, "while the guidelines say [they are] treating like with like by treating people with the same prior records the same, in fact a black person . . . and a white person with [the same] prior record are not the same, because the patterns of enforcement, the patterns of arrest in their respective communities, on average, are so different."[95]

Another example is the "career offender" guideline, a guideline that originated with a congressional directive but that the Commission made much broader than required.[96] The

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[90] *Fifteen Year Review* at 134.

[91] For example, a defendant with an offense level of 12 has a range of 10-16 months in Criminal History Category I, but a range of 30-37 months in Criminal History Category IV. A defendant with an offense level of 32 has a range of 121-151 months in Criminal History Category I, but a range of 210-262 months in Criminal History Category IV.

[92] USSC 2010 Monitoring Dataset.

[93] *See Fifteen Year Review* at 134 (African-Americans have a higher risk of arrest and therefore more criminal history points than similarly situated white defendants).

[94] Tr. of Hearing Before the U.S. Sent'g Comm'n, New York, NY, at 418-26 (July 9-10, 2009) (testimony of Christopher Stone, Kennedy School of Government, Harvard University).

[95] *Id.* at 424.

[96] Congress directed the Commission in 28 U.S.C. § 994(h), directing the Commission to "assure that the guidelines specify a sentence to a term of imprisonment at or near the maximum term authorized for categories of defendants in which the defendant is eighteen years old or older and: (1) has been convicted of a felony that is (A) a crime of violence, or (B) an offense described in" 21 U.S.C. § 841, 21 U.S.C. §§ 952(a), 955, 959, and 46 U.S.C. § 70503; "and (2) has previously been convicted of two or more prior felonies, each of which is" the same type of crime. The career offender guideline, however, includes as qualifying prior convictions state drug offenses (where the statute requires only the enumerated federal offenses) and state misdemeanors if punishable by more than one year (where the statute requires only felonies). *See* USSG §§ 4B1.1, 4B1.2.

Commission found that this guideline recommends punishment that vastly overstates the risk of recidivism, serves no deterrent purpose, and has a racially disparate impact, in just the kinds of cases the Commission chose to include but Congress did not require, *i.e.*, where the defendant qualifies as a "career offender" based on state drug convictions, which are often minor.[97]

In 2004, the Commission found that the use of mandatory minimums varies depending on the decisions of prosecutors and that "charging decisions disproportionately disadvantage minority offenders."[98] For example, Black offenders receive an enhancement under § 924(c) for possession of a firearm *instead of* the less severe two-level increase under the guidelines at a greater rate than White offenders, and this reflects a discretionary choice by prosecutors.[99]

Rather than making unreliable claims that increased judicial discretion has caused increased demographic disparities, the Commission should turn its attention to much more serious problems.

V. Defendants of All Groups Are Treated More Fairly When Judges Can Discount Unjustified Rules and Take Account of Relevant Factors the Guidelines Ignore.

The Commission failed to include mitigating factors in the guidelines, and also placed these relevant factors off limits for departure, without explanation or justification of any kind, and contrary to empirical evidence. The Commission did so despite instructions from Congress to consider including these factors in the guidelines, and to do so intelligently and dispassionately, and to give supporting reasons for its decisions.[100] The Commission did so despite instructions from Congress to maintain sufficient flexibility to permit individualized sentences when warranted by mitigating factors not taken into account in the guidelines.[101] (*See* Addendum, Part III)

Some who would prefer a sentencing system composed of mandatory rules that include no mitigating factors and that have a disproportionate adverse impact on the poor and minorities, imply that judicial consideration of mitigating factors is unfair to minorities. The implication appears to be that minority offenders are uneducated, so consideration of education as a mitigating reflects or is equivalent to racial bias.

This is inaccurate. African American offenders benefit from consideration of offender characteristics at a rate proportionate to or greater than their representation in the offender

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[97] *Fifteen Year Review* at 133-34.

[98] *Id.* at 89-91.

[99] *Id.* at 90.

[100] *See* 28 U.S.C. § 994(d); S. Rep. No. 98-225, at 175 (1983).

[101] 28 U.S.C. § 991(b)(1)(B).

population. For example, while 27.3% of non-immigration offenders in 2010 were African American, 35.7% of offenders who received a below-range sentence for education or vocational skills, and 31.3% of offenders who received a below-range sentence based on the need for education, training or treatment, were African American.[102] The proportional share for African Americans is even greater if immigration offenders are included, because immigration offenders frequently waive their right to present mitigating evidence to the court under "fast track" agreements.[103] Data for a number of below-guideline sentences based on offender characteristics is set forth in the table.

African Americans – FY 2010 – Below-Range Sentences Based on Offender Characteristics	
African American % of non-immigration offenders	**27.3%**
Education, Vocational Skills	35.7%
Need for Training, Skills, Treatment	31.3%
Previous Employment Record	25.7%
Mental & Emotional Conditions	24.4%
Physical Conditions	23.2%
Drug or Alcohol Dependence	26.2%
Family Ties & Responsibilities.	26.3%
Rehabilitation	26.7%
Mule/Role in Offense	24.6%
Childhood Abuse	33.3%
Disadvantaged Upbringing/Lack of Youthful Guidance	33.6%
Criminal History Category Overstates Seriousness or Risk of Recidivism	27.2%

VI. Proposals for Legislative Change Would Cause Upheaval With Nothing to Be Gained.

Making the guidelines more mandatory under the Commission's proposals would not survive constitutional scrutiny and would create unnecessary upheaval in the meantime. Replacing the guidelines with mandatory laws driven by facts alleged in an indictment and proved to a jury or, most often, negotiated in a plea bargain would be very difficult to implement, while inviting greater variation in sentencing and creating massive hidden disparities.

The Commission proposes that Congress enact laws: (1) requiring judges to give the guidelines and policy statements "substantial weight" at sentencing; (2) requiring judges to

[102] USSC, 2010 Monitoring Dataset.

[103] Thus, for example, only 18.6% of *all* offenders in 2010 were African American, but 32.4% of all offenders who received a below-range sentence for education or vocational skills, and 29.5% of all offenders who received a below-range sentence based on the need for education, training or treatment, were African American. USSC, 2010 Monitoring Dataset. "Fast track" deals are used not only in immigration cases, but also in drug trafficking cases in at least four border districts, *i.e.*, Arizona, New Mexico, Southern District of California, and Eastern District of New York.

follow its "three-step" procedure to ensure that the guidelines and the policy statements and commentary restricting consideration of the factors set forth in § 3553(a) are afforded "proper weight," a thinly veiled version of excised § 3553(b)[104]; (3) requiring judges to follow the Commission's incorrect interpretation of § 994(e) and other unspecified directives to the Commission in 28 U.S.C. § 991 et. seq.; (4) requiring appellate courts to apply a presumption of reasonableness to guideline sentences on appeal; (5) requiring appellate courts to require judges to give greater justifications the greater the variance; and (6) requiring appellate courts to apply "heightened review" to "policy disagreements" with the guidelines.[105]

The Commission Chair informed the Subcommittee that the Commission's proposals are taken directly from the Supreme Court's decisions. If that were so, the Commission would not be asking Congress to enact them. Since the Commission does not propose specific language, we will not address its general descriptions in any detail, but have the following observations now.

All of the Commission's proposals rest on the Commission's contention that the guidelines and policy statements "consider" the purposes of sentencing and factors set forth in § 3553(a), and therefore should be given "substantial weight."[106] Contrary to the Commission's assertion, the Supreme Court has rejected this theory and all that flows from it.

This theory appeared in the Commission's testimony before Congress in February 2005 and March 2006,[107] and the Commission quickly "trained" sentencing judges, appellate judges, probation officers and prosecutors to adopt it.[108] Circuit and district court splits soon developed, with some giving the guidelines and policy statements "substantial weight" at sentencing, adopting a conclusive presumption of reasonableness for guideline sentences on appeal, applying a presumption against sentences outside the guideline range at sentencing and on appeal, applying various forms of "heightened review" to non-guideline sentences such as requiring proportional justifications for variances, and deeming disagreements with the Commission's policies to be *per se* unreasonable. These courts "continued to treat the Guidelines as virtually

[104] The "three-step" procedure the Commission asks Congress to enact is set forth at USSG § 1B1.1. Contrary to the Commission's assertion, the courts of appeals have not agreed with steps (b) and (c) of the Commission's "three-step" as actually written in § 1B1.1. To follow § 1B1.1(b) and (c) would be unlawful.

[105] Commission Testimony at 55-59.

[106] Commission Testimony at 6, 56, 57, 58.

[107] *See* Prepared Testimony of Judge Ricardo H. Hinojosa Before the Subcommittee on Crime, Terrorism and Homeland Security (Feb. 10, 2005); Prepared Testimony of Judge Ricardo H. Hinojosa before the Subcommittee on Crime, Terrorism, and Homeland Security, Committee on the Judiciary, United States House of Representatives at (Mar. 16, 2006).

[108] USSC, *Final Report on the Impact of United States v. Booker on Federal Sentencing* 42 (2006) ("training program explains how the sentencing guidelines reflect Congress' objectives in the SRA and that the guidelines accordingly should be given substantial weight in fashioning sentences post-*Booker*").

mandatory after . . . *Booker*."[109] Other courts declined to accept the premise that the guidelines incorporate the statutory purposes and factors, or the various devices that followed from it, recognizing that to do so would be unconstitutional.

The Supreme Court has resolved these issues against the positions the Commission now advances.[110] While the guideline range is to be treated as the "starting point and the initial benchmark," and is to be given "respectful consideration," the Court has rejected all devices that explicitly or implicitly require or permit the guidelines to be given special "weight" at sentencing or on appeal.[111] The Commission's testimony notwithstanding, "respectful consideration" and "substantial weight" are two very different things; the first is constitutional, the second is not. Further, the Court has repeatedly rejected the Commission's underlying theory that the guidelines incorporate all of the statutory purposes and factors. For one thing, this would mean that the guidelines would be at least as mandatory as they were before *Booker*, and for another, it is not true.[112] The Commission's claim that there is "uncertainty" about the weight to be given the guidelines is without merit.

And none of this is necessary. As the Commission Chair noted, the guidelines exert a strong gravitational pull, in large part because the guidelines are the only factor with a number affixed, and are the starting point and initial benchmark. The guideline range is the starting point whether the court ultimately follows it, varies based on individual circumstances of the offense or characteristics of the defendant, or varies because the guideline range, apart from case-specific facts, fails to achieve § 3553(a)'s objectives.[113]

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[109] *Rita v. United States,* 551 U.S. 338, 366 (2007) (Stevens & Ginsburg, JJ., concurring).

[110] *See United States v. Booker*, 543 U.S. 220 (2005); *Cunningham v. California*, 549 U.S. 270 (2007); *Rita v. United States*, 551 U.S. 338 (2007); *Kimbrough v. United States*, 552 U.S. 85 (2007); *Gall v. United States*, 552 U.S. 38 (2007); *Spears v. United States*, 129 S. Ct. 840 (2009); *Nelson v. United States*, 129 S. Ct. 890 (2009); *Pepper v. United States*, 131 S. Ct. 1229 (2011).

[111] *See Rita*, 551 U.S. at 351, 357; *Gall*, 552 U.S. at 47, 49-51, 53-60; *Kimbrough*, 552 U.S. at 90-91, 108; *Nelson*, 129 S. Ct. at 891-92; *Pepper*, 131 S. Ct. at 1241-43, 1246-50. One Justice has argued, to no avail, that the guidelines be given "some significant weight." *Gall*, 552 U.S. at 66-67 (Alito, J., dissenting). Even the appellate presumption of reasonableness that the Court permits, but does not require, is rebuttable, is not binding, does not reflect greater deference to the Commission than to the sentencing judge, has no independent legal effect, and rests solely on the district court's independent judgment that a sentence within the guideline range is appropriate after considering all § 3553(a) purposes and factors. *Rita*, 551 U.S. at 347, 350.

[112] *See Rita*, 551 U.S. 351, 357; *Kimbrough*, 552 U.S. at 96, 101-02, 109-10; *Gall*, 552 U.S. at 46 n.2, 51-60; *Pepper*, 131 S. Ct. at 1242-43, 1247-50.

[113] *See Kimbrough*, 552 U.S. at 109 ("district courts must treat the Guidelines as the 'starting point and the initial benchmark'"); *Gall*, 552 U.S. at 49 (same).

The gravitational pull of the guidelines is seen in the data. The extent of variances below the range is less than it was before *Booker* for most kinds of offenses.[114] The variation in sentence lengths among districts has actually decreased since the guidelines were mandatory.[115] Average sentence length is the same or higher in all types of cases except crack (due to the reduced guideline ranges) and illegal reentry (due to a large increase in the prosecution of cases with low guideline ranges).

We also fail to see how the Commission's proposals would create a "stronger and more effective" guidelines system insofar as it is designed to reduce judicial feedback and discourage courts from considering relevant factors. As the Commission notes: "Each Supreme Court case has required the Commission to increase its efforts to provide meaningful guidance to the courts and the entire criminal justice system, and to ensure that the guidelines continue to reflect the purposes of sentencing."[116] That is the key to stronger and more effective guidelines.

A mandatory guidelines system with jury factfinding would be very difficult to design and implement, as Mr. Miner acknowledges. As Mr. Felman has demonstrated and as Mr. Miner would likely agree, the ranges would have to be wider than variances are today, *i.e.*, 12-13 months, and would thus invite greater variations in sentencing.[117] Perhaps recognizing this flaw, Mr. Miner seems to propose "advisory" guidelines within these broader mandatory ranges with the judge's findings within the "prescribed range" subject to *de novo* review. Advisory guidelines subject to *de novo* review is an oxymoron.

Appellate review would be much less effective than the current reasonableness standard (the effectiveness of which is discussed in the Addendum, Part VI). A jury verdict in favor of the defendant would not be appealable by the government.[118] A jury verdict against the defendant would be reversible only if, "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."[119] Most sentences would not be appealable at all because they would be decided conclusively by plea bargains.

Professor Kevin Reitz, Reporter for the American Law Institute's revision of the Model Penal Code and an expert on guidelines systems, observes: "No member of Congress should work to overhaul the post-*Booker* Guidelines on the theory that they herald a return to the bad

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[114] Commission Testimony at 26, 28, 31, 33, 36, 38, 41, 43, 45, 48, 50, 53.

[115] Ulmer *et al.*, Penn State Study – Inter-District Disparity, *supra* note 69, at 18.

[116] Commission Testimony at 61.

[117] The current table has 256 narrow ranges. Mandatory guidelines with jury factfinding would have to have 35-50 much wider ranges.

[118] *United States v. Martin Linen Supply Co.*, 430 U.S. 564 (1977).

[119] *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

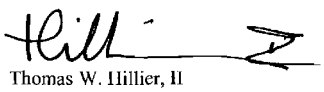
old days of fully discretionary judicial sentencing or on the theory that the new 'advisory' Guidelines are extremely permissive compared with norms in guidelines sentencing systems nationwide. . . . [T]he *Booker*-ized Guidelines . . . remain as restrictive of judicial sentencing discretion as any system in the United States."[120] The Commission's data, as well as more sophisticated research, proves this to be true.

Those concerned with variation in sentences should stick with a system in which there are 256 narrow advisory ranges with gravitational pull, within the statutory framework that Congress designed to create reasonable consistency.[121] This system is constitutional only under the careful limits the Supreme Court has laid down. Pushing those limits is a recipe for disaster.

VII. Conclusion

We hope this information is helpful in addressing the status of post-*Booker* sentencing objectively. We are moving slowly, but in the right direction. Proposals for wholesale change or the more limited suggestions of the Commission will retard progress, further bloat the prison population and do nothing to lessen the racial imbalance in that population.

Very truly yours,



Thomas W. Hillier, II
Federal Public Defender

TWH/mp

[120] Kevin R. Reitz, *The Enforceability of Sentencing Guidelines*, 58 Stan. L. Rev. 155, 171 (2005).

[121] S. Rep. No. 98-225, at 50 (1983).

ADDENDUM
INFORMATION IN RESPONSE TO QUESTIONS AND ISSUES RAISED AT THE HEARING

This addendum provides further information in response to questions and issues raised at the hearing on October 12, 2011.

I. What explains different rates in the District of Massachusetts and the Northern District of Georgia, and in other districts? P. 2.

II. Do the guidelines take into account all relevant sentencing factors? What problems are created by unwarranted uniformity? Why is the rate of below-range sentences higher than the rate of above-range sentences? P. 7.

III. Does the Sentencing Reform Act direct the Commission to ensure that offender characteristics are not considered at sentencing? P. 19.

IV. How does the Commission take account of feedback from sentencing decisions? P. 27.

V. Does the public support the level of punishment recommended by the guidelines? P. 31.

VI. How is the appellate standard of review working? P. 31.

I. Numerous Factors Contribute to Differences Between Massachusetts and the Middle District of Georgia, and to Differences Among Other Districts.

A. Massachusetts versus Middle District of Georgia and other districts

Average sentence length was slightly higher in the District of Massachusetts (69.4 months) than in the Middle District of Georgia (68.8 months), and well above the national average of 51.1 months.[1] Average sentence length was higher in the District of Massachusetts than the national average for each major category of offense.[2]

Rates. The rate of below-guideline sentences in the District of Massachusetts has dropped by seven percentage points, from 35.7% in FY 2010 to 28.7% during the first three quarters of FY 2011; the rate for the Middle District of Georgia has increased from 4.7% in 2010 to 5.7% thus far in 2011.[3]

Some of the reasons for the difference in rates between the District of Massachusetts and the Middle District of Georgia (and other districts) are as follows:

1) Career Offender. The District of Massachusetts has the second highest percentage of total caseload in the nation of defendants categorized as "career offenders."[4] The career offender guideline recommends some of the most severe punishments in the Guidelines Manual. If the instant offense is drug trafficking, as it is for 85% of career offenders in the District of Massachusetts,[5] the guideline range is 210-262 months, 262-327 months, or 360 months to life.[6] A great many of these defendants would not be "career offenders" at all in other districts, and have less serious prior records than "career offenders" in other districts.

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[1] USSC, 2010 Statistical Information Packet, District of Massachusetts, Middle District of Georgia, tbl. 7.

[2] USSC, 2010 Statistical Information Packet, District of Massachusetts, tbl. 7 (drug trafficking – 78.9 months versus 78.4 months nationally; firearms – 98.9 months versus 90.7 months nationally; fraud – 52 months versus 30.5 months nationally; immigration – 22.7 months versus 18.3 months nationally).

[3] USSC, Preliminary Quarterly Data Report, Third Quarter FY 2011, tbl.2.

[4] USSC 2010 Monitoring Dataset.

[5] *Id.*

[6] The career offender guideline originated with 28 U.S.C. § 994(h), directing the Commission to "assure that the guidelines specify a sentence to a term of imprisonment at or near the maximum term authorized for categories of defendants in which the defendant is eighteen years old or older and: (1) has been convicted of a felony that is (A) a crime of violence, or (B) an offense described in" 21 U.S.C. § 841, 21 U.S.C. §§ 952(a), 955, 959, and 46 U.S.C. § 70503; "and (2) has previously been convicted of two or more prior felonies, each of which is" the same type of crime. The career offender guideline, however, includes as qualifying prior convictions state drug offenses (where the statute requires only the enumerated federal offenses), and state misdemeanors if punishable by more than one year (where the statute requires only "felonies"). *See* USSG §§ 4B1.1, 4B1.2.

This is because, although Congress appears to have intended that the career offender guideline would apply only to offenders with prior convictions that were "felonies" under the law of the convicting jurisdiction,[7] the Commission made the guideline applicable to prior convictions if the offense was punishable by more than one year even if the state classifies the offense as a misdemeanor.[8]

The statutory maximum for many Massachusetts state misdemeanors, including possession with intent to distribute marijuana, resisting arrest, and assault and battery, is two years or two and a half years, whereas most states set the maximum for these offenses at one year. These offenses, with the exception of one less serious form of battery as of 2011,[9] are qualifying prior convictions under the career offender guideline.

Thus, for example, a defendant with two prior convictions (or even diversionary dispositions under state law) for resisting arrest for which he received probation for no more than one year would be a career offender in the District of Massachusetts. Elsewhere, where resisting arrest is punishable by no more than one year, a defendant with the same prior dispositions would not only not be a career offender but would receive no criminal history points and be safety valve eligible.[10] If both defendants were convicted of trafficking in 28 grams of crack, the defendant in the District of Massachusetts would be subject to a guideline range of 210-262 months (or 151-188 months if he pled guilty), while the defendant in the other district would be subject to a guideline range of 51-63 months (or 37-46 months if he pled guilty).

In addition, until 2011, the First Circuit held that juvenile adjudications counted as career offender predicates,[11] though the career offender guideline requires adult convictions.[12]

Finally, the expanded scope of the career offender guideline in Massachusetts is further magnified by the practice of the U.S. Attorney's Office of bringing into federal court crack cases involving small amounts if the career offender guideline applies to the defendant.

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[7] *See* 28 U.S.C. § 994(h)(2) (requiring that the defendant "has previously been convicted of two or more prior *felonies*"). When § 994(h) was enacted in 1984 and today, the term "felony" was and is defined as follows: "The term 'felony' means any Federal or State offense classified by applicable Federal or State law as a felony." *See* 21 U.S.C. § 802(13), § 951(b).

[8] USSG § 4B1.2, comment. (n.1).

[9] Recently, the First Circuit reversed prior precedent and held that reckless battery is no longer a "violent felony" under 18 U.S.C. § 924(e). *United States v. Holloway*, 630 F.3d 252 (1st Cir. 2011). The same analysis applies for purposes of a "crime of violence" under USSG § 4B1.2.

[10] *See* USSG § 4A1.2(c)(1).

[11] *United States v. McGhee*, 651 F.3d 153 (1st Cir. 2011) (reversing prior precedent counting juvenile adjudications).

[12] USSG § 4B1.2, comment. (n.1).

These circumstances make the career offender guideline applicable to a large number of offenders with minor records in the District of Massachusetts, subjecting them to decades-long guideline ranges, while similarly situated offenders in other districts are prosecuted in state court or, if prosecuted in federal court, are not career offenders.

Further, as the Commission itself has found, the severe punishment recommended by the career offender guideline, as applied to those who qualify based on prior drug convictions, vastly overstates the risk of recidivism, serves no deterrent purpose, and has a racially disparate impact.[13]

Judges in the District of Massachusetts varied from the career offender guideline 43.4% of the time in 2010. Given all of the above, this represents a *reduction* in unwarranted disparity.

The Commission could reduce the unwarranted disparity that judges in the District of Massachusetts are correcting by defining "felony" as Congress appears to have intended.

2) Charge bargaining. The variance rate in career offender cases is only 5.3% in the Middle District of Georgia, which makes it an extreme outlier (the mean is 27.7%, the median 25%).[14]

Besides the differences from Massachusetts noted above, prosecutors in the Middle District of Georgia charged a violation of 21 U.S.C. § 843(b) (a "telephone count") as the instant offense in 15.8% of the career offender cases, rather than a drug trafficking violation under 21 U.S.C. § 841. Because the statutory maximum for this offense is at most 8 years, the career offender guideline is at most 51-63 months. If the same person were charged under 21 U.S.C. § 841 (as they would be in Massachusetts), the guideline range would be 210-262 months, 262-327 months, or 360 months to life.

3) Fact bargaining. There is very little fact bargaining in the District of Massachusetts, because prosecutors fear being accused of withholding information from the court. One judge in the district has been vocal about his belief that fact bargaining is illegal and constitutes lying to the court. *See United States v. Green*, 346 F. Supp.2d 259 (D. Mass. 2004); *United States v. Yeje-Cabrera*, 430 F.3d 1, 21-30 (1st Cir. 2005). While the First Circuit has approved fact bargaining, *id.*, practice in the district is very much influenced by the judge's position.

4) Crack. In 2010, crack cases comprised 16.1% of all cases in the District of Massachusetts, and 12.1% of the cases in the Middle District of Georgia; the national average was 5.6%.[15]

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[13] USSC, *Fifteen Year Review* at 133-34.

[14] USSC 2010 Monitoring Dataset.

[15] USSC, 2010 Statistical Information Packet, District of Massachusetts, Middle District of Georgia, fig. A.

The overall rate of below-guideline sentences in the District of Massachusetts dropped by seven percentage points, from 35.7% in FY 2010 to 28.7% during the first three quarters of FY 2011, while the overall rate for the Middle District of Georgia increased from 4.7% in 2010 to 5.7% thus far in 2011.[16] Data regarding the kinds of cases in which the variance rate dropped in Massachusetts in 2011 is not yet available, but most likely, judges in the District of Massachusetts were frequently varying from the crack guideline before the amendments directed by the Fair Sentencing Act effective the first quarter of FY 2011, and are now following the guideline, while judges in the Middle District of Georgia followed the crack guideline before and after the FSA amendments.

5) Driving offenses. The Middle District of Georgia has an unusually large number and percentage of "miscellaneous offenses," comprising 31% of its caseload, compared to 3.1% nationally, and 1.8% in the District of Massachusetts.[17] The vast majority of "miscellaneous" offenses in the Middle District of Georgia are traffic offenses on a nearby military base. Most are sentenced within the guideline range, which is so low that over 90% were sentenced to probation and the average sentence for those sentenced to prison was 6.9 months.[18] The District of Massachusetts may get one traffic offense a year.

B. Eastern District of Virginia

Mr. Otis testified that he was proud that in his district, the Eastern District of Virginia, the rate of within guideline sentences is almost 74%. This is not correct and is another example of how the Commission's bare statistics lead to misunderstanding.

The Eastern District of Virginia leads the nation in departures based on cooperation *after* sentencing under Fed. R. Crim. P. 35—with 370 such sentences in 2010.[19] In every other district, all or the vast majority of departures for cooperation are sought and granted at sentencing, not after.[20] This means that other districts' within guideline rates account for cooperation departures, while the Eastern District of Virginia's does not. While the Commission reports a within guideline rate of 73.7% for the Eastern District of Virginia in 2010,[21] the rate

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[16] USSC, Preliminary Quarterly Data Report, Third Quarter FY 2011, tbl. 2.

[17] USSC, Statistical Information Packet, Fiscal Year 2010, Middle District of Georgia, District of Massachusetts, tbl. 1.

[18] *Id.*, tbls. 5, 7.

[19] USSC, 2010 Sourcebook of Federal Sentencing Statistics, tbl. 62 (370 Rule 35 reductions in the Eastern District of Virginia).

[20] *Id.*

[21] USSC, 2010 Statistical Information Packet, Eastern District of Virginia, tbl. 10 (1,453 sentences within the range of 1,971 total sentences = 73.7%).

was actually 62% when the government's Rule 35 departures are included.[22] Comparing the Eastern District of Virginia to other districts without its high number of Rule 35 departures is comparing apples to oranges.

Further, of all sentences outside the guideline range in the Eastern District of Virginia in 2010, 60% were directly sought by the government, while 40% were granted without a government motion.[23] Mr. Otis contends that the rules must always be followed, apparently only by judges. Mr. Otis supports a mandatory system in which each sentence would be determined by the prosecutor's charge and plea bargaining leverage. In that event, there would be massive hidden disparity subject to no review.

C. Other examples of prosecutors' different approaches leading to different rates among districts

The U.S. Attorney for the Northern District of Illinois testified that in his district, drug defendants without an extensive criminal history not eligible for safety valve relief or a substantial assistance motion are permitted to plead to a less serious offense to avoid an overly harsh mandatory minimum sentence.[24] In this district, telephone counts under 21 U.S.C. § 843(b) are charged at nearly nine times the national average.[25] But the rate of government-sponsored below-range sentences in drug trafficking cases is 27.1%, less than the national average of 34.5%.[26]

In the adjoining Iowa districts, prosecutors bring charges carrying the highest mandatory minimum possible, and in the Northern District of Iowa even bring charges in order to prevent the safety valve from applying.[27] But the rate of government-sponsored below-range sentences in these two districts, at 40.8% and 45.7%, is much higher than the national average of 34.5%.[28]

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[22] Adding the 370 Rule 35 reductions brings the total number of cases to 2,341. The total number of cases within the guideline range remains at 1,453. Dividing 1,453 by 2,341 = 62%.

[23] Of 888 sentences above or below the guideline range (370 under Rule 35 and 518 others), the government sought 527 of them. Dividing 527 by 888 = 60%.

[24] Tr. of Public Hearing before the U.S. Sent'g Comm'n, Chicago, Ill., at 249-50 (Sept. 9-10, 2009) (remarks of Patrick J. Fitzgerald, U.S. Att'y, N.D. Ill.).

[25] Telephone counts comprise 0.6% of the national caseload, but 5.2% of the caseload in the Northern District of Illinois. USSC, Statistical Information Packet, Fiscal Year 2010, Northern District of Illinois, tbl.1.

[26] *Id.*, tbl. 10.

[27] Statement of Nicholas T. Drees Before the U.S. Sent'g Comm'n, Denver, Colo., at 6-9 (Oct. 21, 2009).

[28] USSC, Statistical Information Packet, Fiscal Year 2010, Northern and Southern Districts of Iowa, tbl.10.

In the Northern District of Illinois, the non-government sponsored rate in drug trafficking cases is greater than average, while in the Iowa districts it is less.[29] It would seem that the transparency of judicial decision-making is preferable to the exercise of prosecutorial discretion, behind closed doors and not subject to review.

Conclusion

Based on the above and the information in Part II of our main letter, it should be clear that prosecutorial practices and policies play a substantial role in creating local differences. The guidelines themselves can also cause local differences, as the career offender guideline does in the District of Massachusetts. The question of whether local differences are warranted or unwarranted is exceedingly complex and cannot be answered by listing rates of below guideline sentence imposed without a government motion by district.

II. The Guidelines Do Not Take Account of Many Relevant Factors that Bear Directly on the Purposes of Sentencing, Creating Unwarranted Uniformity and Unnecessary Cost, as Shown by Empirical Evidence.

Representatives Scott and Deutch asked questions regarding whether the guidelines account for differences in culpability, whether the guidelines take account of all relevant factors, and what problems treating unlike offenders alike causes. Representative Gowdy expressed concern that rates of below-guideline sentences are higher than above-guideline rates (1.7% above, 27.7% government-sponsored below, 16.9% non-government-sponsored below[30]).

A. The guidelines are constructed almost solely aggravating factors, and omit, discourage, and prohibit relevant mitigating factors.

The Commission states that "the guidelines take into consideration all of the sentencing factors set forth in 18 U.S.C. § 3553(a),"[31] but this is not accurate.

Section 3553(a) requires that the sentencing court "shall impose a sentence that is sufficient, but not greater than necessary, to comply with" the purposes of sentencing, and in determining the particular sentence, "shall consider" (1) the "nature and circumstances of the offense and the history and characteristics of the defendant," (2) the "need for the sentence imposed" to (A) reflect the seriousness of the offense, promote respect for law, and provide just punishment; (B) afford adequate deterrence; (C) protect the public from further crimes of the defendant; (D) provide the defendant with needed educational or vocational training, medical care, or other treatment "in the most effective manner," (3) the "kinds of sentences available" by statute, (4) the kind and range of sentence established by the guidelines for the "category of

[29] USSC, Statistical Information Packet, Fiscal Year 2010, Northern District of Illinois, Northern and Southern Districts of Iowa, tbl. 10.

[30] USSC, Preliminary Quarterly Data Report, Third Quarter (2011), tbl. 4.

[31] Commission Testimony at 6; *see also id.* at 55-58.

offense" and the "category of defendant," (5) any "pertinent" policy statement, (6) the need to avoid "unwarranted disparities," and (7) the need to provide restitution to any victims.

The guidelines do not incorporate these principles, purposes, and factors in important ways and for a variety of reasons. For one thing, the Commission is not required to recommend sentences that are "sufficient, but not greater than necessary, to comply with" the purposes of sentencing in each case. For another, the original Commission constructed the guidelines in an imbalanced way, and this has left an indelible imprint on the guidelines. While Congress directed the Commission to construct the guidelines of both mitigating and aggravating characteristics of the defendant and circumstances of the offense,[32] the Commission constructed the guidelines almost solely of aggravating factors, as even a cursory review of the Guidelines Manual reveals.[33] The aggravating factors are based primarily on quantifiable "harms," largely neglect *mens rea*, and some specifically make *mens rea* irrelevant.[34]

Among the aggravating factors is the "relevant conduct" rule, requiring punishment for uncharged, dismissed and acquitted offenses of the defendant and others in jointly undertaken activity at the same rate as convicted offenses,[35] a rule invented by the first Commission that is contrary to the SRA's most basic directives,[36] that no other sentencing commission in the nation has adopted,[37] and that comes as a shock to ordinary citizens and most lawyers.[38]

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[32] 28 U.S.C. § 994(c), (d).

[33] *See* USSG, Chapters, Two, Three, Four.

[34] *See. e.g.*, USSG § 2B1.1, comment. (n.3(A)(v)(III)) ("actual loss" in computer fraud cases includes certain "pecuniary harm, regardless of whether such pecuniary harm was reasonably foreseeable"); §2K2.1(b)(4) & comment. (n.8(B)) (enhancement "applies regardless of whether the defendant knew or had reason to believe that the firearm was stolen or had an obliterated serial number"); § 2D1.1(b)(1) & comment. (n.3) (enhancement if a firearm "was possessed" applies "unless it is clearly improbable that the weapon was connected with the offense"); *United States v. Napier*, slip op., 2011 WL 1682906 (6th Cir. May 5, 2011) (affirming 2-level increase under § 2D1.1(b)(1) when government conceded there was no evidence the defendant ever possessed a firearm himself or knew that his co-conspirator father had firearms because it was "reasonably foreseeable" that his father would possess firearms); *United States v. Pham*, 463 F.3d 1239, 1246 (11th Cir. 2006) (upholding 2-level increase under § 2D1.1(b)(1) where no evidence defendant possessed a firearm or knew that co-conspirators possessed any firearms, and where firearm was not found at location where charged conduct occurred, because it was reasonably foreseeable that a firearm would be possessed by a co-conspirator "in light of the vastness of the conspiracy and the large amount of drugs and money being exchanged in this case").

[35] USSG § 1B1.3.

[36] The Commission was instructed to avoid unwarranted disparities among defendants "who have been *found guilty* of similar criminal conduct," 28 U.S.C. § 991(b)(1)(B), and to take into account "the circumstances under which *the offense* was committed," and the "nature and degree of the harm caused by *the offense*." 28 U.S.C. § 994(c)(2), (3).

[37] *See* Phyllis J. Newton, Staff Director, U.S. Sent'g Comm'n, *Building Bridges Between the Federal and State Sentencing Commissions*, 8 Fed. Sent'g Rep. 68, 1995 WL 843512 *3 (1995).

Against the guidelines' many aggravating factors, the original Commission included two generally applicable mitigating factors with relatively little weight in the guidelines. These were mitigating role in the offense (only if there was more than one participant in the offense and other conditions were met),[39] and acceptance of responsibility (primarily by pleading guilty),[40] each of which is small in extent and dwarfed by the impact of aggravating factors like drug quantity, loss, and relevant conduct. In addition, the original firearms guideline provided for a decrease if the defendant obtained or possessed a firearm solely for sport or recreation.[41] A handful of mitigating offense circumstances for drug and immigration offenses were added later.[42]

At the same time, the Commission not only omitted from the guidelines all of the mitigating offender characteristics that Congress directed the Commission to consider for inclusion in the guidelines,[43] but used policy statements to prohibit and discourage those and many other factors as grounds for downward departure.[44] (The history of the Commission's treatment of mitigating offender characteristics is discussed further in Part III.)

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[38] *See* David N. Yellen, *Is "Relevant Conduct" Relevant? Reconsidering the Guidelines' Approach to Real Offense Sentencing*, 44 St. Louis L.J. 409, 409-10 (2000) ("Lay people and lawyers who do not practice in the area continue to be amazed when they find out just the rough contours of how relevant conduct works. . . . These rules shock many people."); Jim McElhatton, A $600 drug deal, 40 years in prison, Washington Times, June 29, 2008 (described by one attorney as "a sentencing scheme straight from the mind of Lewis Carroll"); Letter from Juror # 6 in *United States v. Ball*, No. 05-cr-100 (D.D.C.) ("It seems to me a tragedy that one is asked to serve on a jury, serves, but then finds their work may not be given the credit it deserves. We, the jury, all took our charge seriously. We virtually gave up our private lives to devote our time to the cause of justice, and it is a very noble cause as you know, sir. . . . What does it say to our contribution as jurors when we see our verdicts, in my personal view, not given their proper weight. It appears to me that the defendants are being sentenced not on the charges for which they have been found guilty but in the charges for which the [prosecutor's] office would have liked them to have been found guilty. Had they shown us hard evidence, that might have been the outcome, but that was not the case."), *quoted in United States v. Canania*, 532 F.3d 764, 778 (8th Cir. 2008) (Bright, J., concurring).

[39] USSG § 3B1.2.

[40] USSG § 3E1.1.

[41] USSG § 2K2.1(b)(2) (1987). This mitigating factor still exists, though in more limited form and is rarely applied, applying in only 0.8% of sentences imposed under the guideline in 2010. USSC, *Use of Guidelines and Specific Offense Characteristics* 45 (2010)

[42] *See* USSG §§ 2D1.1(b)(11) (2-level decrease if defendant meets safety valve criteria), 2D1.11(a) (if defendant convicted of trafficking in listed chemical, decrease by 2, 3 or 4 levels if receives mitigating role adjustment), 2L1.1(b)(1) (3-level decrease if alien smuggling offense involved only defendant's spouse or child), 2L2.1(b)(1) (same for immigration document offense).

[43] 28 U.S.C. § 994(d).

[44] *See* USSG, Chapter 5, Parts H and K.

Further, though one of the primary goals of the SRA was to reduce reliance on imprisonment and to make alternatives to prison more available,[45] the guidelines recommend prison in nearly every case, and judges continue to follow this recommendation, as shown in Figure 1 in our main letter. The original Commission disregarded congressional directives to ensure that the guidelines reflect the "generally appropriateness" of a non-prison sentence in "cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense,"[46] and to promulgate a guideline for the "determination *whether* to impose a sentence of probation . . . *or* a term of imprisonment."[47] Instead, probation and intermediate sanctions were virtually eliminated. Today, 43.9% of defendants are in the lowest criminal history category, and at least 75% were convicted of non-violent offenses.[48] Yet, 87.4% receive straight prison, while only 7.3% receive probation, 2.5% receive a prison/community split, and 2.8% receive probation and confinement.[49]

The guidelines were amended over the years in a "one-way upward ratchet increasingly divorced from considerations of sound public policy and even from the commonsense judgments of frontline sentencing professionals who apply the rules."[50] At the same time, the Commission stamped out most grounds for downward departure.

B. The guidelines do not make relevant distinctions based on culpability, or the need to deter, incapacitate or rehabilitate.

It would not be possible to make all relevant distinctions in generally applicable rules, which is why, as Congress recognized, there was a need for departures.[51] The Commission omitted many relevant circumstances from the guidelines, prohibited and discouraged departures on many individual grounds, and created a departure standard more restrictive than that set forth in the statute. The statute permitted departure based on a factor not "adequately taken into account" in the guideline range,[52] but the Commission prohibited departure in the absence of a factor that was "atypical" compared to other cases sentenced under guidelines that excluded

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[45] S. Rep. No. 98-225, at 39, 50, 59 (1983).

[46] 28 U.S.C. § 994(j).

[47] 28 U.S.C. § 994(a)(1)(A).

[48] USSC, 2010 Sourcebook of Federal Sentencing Statistics, tbls. 3, 21.

[49] *Id.*, tbl. 12.

[50] Frank O. Bowman III, *The Failure of the Federal Sentencing Guidelines: A Structural Analysis*, 105 Colum. L. Rev. 1315, 1319-20 (2005).

[51] 28 U.S.C. § 991(b)(1)(B); S. Rep. No. 98-225, at 150.

[52] 18 U.S.C. § 3553(b).

many typical but highly relevant mitigating factors.[53] When the rules do not include relevant factors and also prevent departures based on relevant factors, the result is injustice and unnecessarily long prison terms, as shown by a few examples from the mandatory guideline era:

- The unjustified disparity caused by the powder/crack quantity ratio was not a permissible ground for departure because that circumstance was "typical" of all crack cocaine cases under the guidelines and thus did not distinguish the case from the "heartland."[54]

- A departure was impermissible for a young man who pled guilty to being a felon in possession for his brief possession of an unloaded handgun lawfully owned by his father solely to temporarily pawn it in order to pay child support because, although these relatively innocent circumstances were not taken into account in the guideline range, the defendant was motivated by financial difficulties, a factor the Commission prohibited as a ground for departure.[55]

- There was "nothing about" an eighteen-year-old girl's age "that removes her situation from the heartland of cases involving comparable drug crimes," since drug importers often use "young, naive men and women without extensive criminal experience."[56]

- Departure was impermissible because lack of knowledge of the amount or type of contraband was not "unusual" in cases involving drug couriers, even though the court believed the guideline range driven by drug type and quantity was "too harsh," especially when the defendant was a first offender from a "depressed area" with a continuous work history and a wife and two children with whom he lived and whom he supported, also impermissible reasons for departure.[57]

- A case was not "extraordinary" and so a departure was impermissible for a young woman with no prior arrests and a consistent work history ("it does not appear to be exceptional for someone her age"), who during a deep depression and after a chance meeting with a man on the street who was able to quickly exploit her, agreed to be a drug courier in order to repay overdue student loans so she could complete college, though she quickly turned herself in, had "accomplished much in her life" before and after her arrest, and a non-prison sentence would have permitted her to continue her successful rehabilitation.[58]

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[53] USSG § 5K2.0, comment. (backg'd.) (1994).

[54] *See In re Sealed Case*, 292 F.3d 913, 916 (D.C. Cir. 2002); *United States v. Canales*, 91 F.3d 363, 369-70 (2d Cir. 1996); *United States v. Fike*, 82 F.3d 1315, 1326 (5th Cir. 1996); *United States v. Tucker*, 386 F.3d 273, 277 (D.C. Cir. 2004).

[55] *United States v. Bristow*, 110 F.3d 754, 755, 757-58 (11th Cir. 1997).

[56] *United States v. Rodriguez*, 107 Fed. App'x 295, 298 (3d Cir. 2004).

[57] *United States v. Dias-Ramos*, 384 F.3d 1240, 1241-42 (10th Cir. 2004).

[58] *United States v. Dickerson*, 381 F.3d 251 (3d Cir. 2004).

- A departure was impermissible for a young single mother convicted of distributing two grams of cocaine because, although she was attempting to remain employed and to be a good mother, and though separating her from her children would have a "devastating effect" on her children, "[a] sole, custodial parent is not a rarity in today's society, and imprisoning such a parent will by definition separate the parent from the children," and "in many cases the other parent may be unable or unwilling to care for the children, and the children will have to live with relatives, friends, or even in foster homes."[59]

Under § 3553(a) and the Supreme Court's decisions, the question is not whether a factor is "atypical" as compared to other cases sentenced under guidelines that do not take account of the factor, but whether the circumstances are relevant to need for the sentence imposed to achieve just punishment, to provide adequate deterrence, to protect the public, and to provide rehabilitation in the most effective manner. This standard permits judges to impose sentences that fit the offense and the offender to best achieve the purposes of sentencing. For example:

- It was highly relevant to the need for deterrence, incapacitation and rehabilitation (though prohibited by the guidelines) that Jason Pepper had been an unemployed drug addict estranged from his family at the time he sold methamphetamine, but then completed a residential drug treatment program, attended college and achieved high grades, was a top employee at his job and slated for promotion, had re-established a relationship with his father, had gotten married and was supporting his wife's young daughter.[60] After a complicated procedural history including a trip to the Supreme Court, the judge finally sentenced Mr. Pepper to time served of 37 months, a reduction from 65 months. The government said that it saw no merit to sending him back to prison after the progress he had made, nor did the judge or the probation officer.

- It was highly significant to the need for deterrence and incapacitation (though deemed "not ordinarily relevant" by the guidelines) that Brian Gall, before he was under any investigation, withdrew from a drug conspiracy and abstained from drugs, completed college, was steadily employed, and ran a business in which he employed others.[61] The Court upheld the sentence of probation with conditions imposed by the judge, a variance from the guideline range of 33 months.

There are many lesser known examples in which judges have imposed reduced sentences based on individualized circumstances that are not recognized by, or omitted from, or prohibited or discouraged by the guidelines, to better achieve the purposes of sentencing. For example:

- In *United States v. Briggs*, the court appropriately considered that the defendant was convicted of a "reverse sting operation" in which government agents fabricated a non-

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[59] *United States v. Brand*, 907 F.2d 31, 33 (4th Cir. 1990).

[60] 131 S. Ct. at 1242-43.

[61] 552 U.S. at 53-59.

existent drug "stash house" with large, but non-existent, drug quantities so that the recommended guideline range of 235-293 months for conspiracy to rob the house was driven exclusively by the fabricated drug quantity. The court of appeals recognized that such reverse sting operations "may risk overstating a defendant's culpability," and by varying downward from a range of 235-293 months to a 132 months (still 12 months higher than the applicable 10-year mandatory minimum), "the district court's sentence took such concerns into account."[62]

- In *United States v. Handy*, the court considered that the 2-level enhancement in the firearms guideline applies whenever it is found that the firearm was stolen, regardless whether the defendant knew or had reason to know that it was stolen, a provision contrary to the historical treatment of *mens rea* and a directly related statute,[63] varying downward from a range of 46-57 months to impose a sentence of 30 months' imprisonment because Handy, a young man "raised in a poverty-stricken environment," found the gun on the street, had no idea it was stolen, had not had it for long, was hoping to sell it, and there was no evidence he intended to use it. The court found that a sentence of 30 months in prison would serve the purpose of specific deterrence and incapacitation, but that Handy's need for educational and vocational training in the most effective manner would be best provided outside prison because "[k]eeping him in prison would result in further hardening of him as a criminal and increase his danger to the community upon release." Instead, "[c]lose supervision by this court's probation services with re-incarceration if necessary provides adequate protection to the public."[64]

- In *United States v. Shull*, the judge varied downward from a range of 78-97 months to 60 months' imprisonment, taking into account that Shull, "another drug user without an education or a job who started selling drugs," completed a drug education program, obtained his GED, completed courses and obtained certifications in refrigeration, electrical, EPA and OSHA safety standards, and was currently enrolled in college taking business classes.[65]

- In *United States v. McMannus*, the judge varied downward from a range of 57-71 months to 24 months' imprisonment, appropriately considering that while on pretrial release, McMannus put himself through community college, was employed and highly commended by his employer, and was a model citizen in his community.[66]

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[62] *United States v. Briggs*, 397 Fed. App'x 329, 333 (9th Cir. 2010).

[63] *United States v. Handy*, 570 F. Supp. 2d 437 (E.D.N.Y. 2008).

[64] *United States v. Handy*, 2008 WL 3049899 (E.D.N.Y. Aug. 4, 2008).

[65] *United States v. Shull*, __ F. Supp. 2d __, 2011 WL 2559426 at *13 (S.D. Ohio June 29, 2011).

[66] *United States v. McMannus*, 262 Fed. App'x 732 (8th Cir. 2008).

- In *United States v. Hernandez*, the judge sentenced Hernandez to 405 months' imprisonment, but should have considered that Hernandez was once a young drug addict who had had a difficult childhood, but that during his twenty years of imprisonment since he was first sentenced, had succeeded at numerous vocational and educational efforts, including earning an associate degree with honors and a diploma for financial planning, had tutored other inmates, and received positive performance reports for work in a variety of prison jobs.[67] Considering these factors on remand, the judge resentenced Hernandez to 384 months' imprisonment.[68]

- In *United States v. Munoz-Nava*, the judge varied downward from a range of 46-57 months to one year and a day in prison, appropriately considering that Munoz-Nava had a long and consistent work history, and was the primary caretaker and sole support of his eight-year old son, as well as the sole support of his ailing, elderly parents, and that his brief stint smuggling drugs in the soles of his boots was "highly out of character," and he was "committed to supporting his family by returning to his pattern of working hard at a legitimate job."[69]

- In *United States v. Davis*, the court varied downward from a range of 18-24 months' imprisonment to time served, 200 hours of community service, and three years' supervised release, appropriately considering that further imprisonment would be "disastrous" to his six young children and wife of fifteen years, who had together "worked night and day" to provide for their family and move them out of a homeless shelter, and who, though unemployed after suffering an injury that required surgery and regular physical therapy, still did what he could to supplement the family's public assistance funds while devoting himself to the health and education of his children and working toward a college degree in radiology when he made the "foolish mistake" of selling a gun due to financial hardship.[70]

- In *United States v. Lupoe*, the court appropriately considered the much lower guideline range that would have been recommended had the government charged Lupoe with a drug offense rather than a gun offense, where the very same facts resulted in a higher guideline range for the gun offense, finding that the higher range was "excessive" in relation to the actual seriousness of the offense.[71] The court varied downward to 18 months' imprisonment, which was still higher than the range recommended by the drug guideline.

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[67] *United States v. Hernandez*, 604 F.3d 48, 53-54 (2d Cir. 2010).

[68] *United States v. Hernandez*, No. 89-cr-229 (E.D.N.Y. Sept. 16, 2010).

[69] *United States v. Munoz-Nava*, 524 F.3d 1137 (10th Cir. 2008).

[70] *United States v. Davis*, slip. op., 2008 WL 2329290 (S.D.N.Y. June 6, 2008).

[71] *United States v. Lupoe*, 2011 WL 5024008 (6th Cir. Oct. 20, 2011).

These defendants and others like them represent all races and socioeconomic backgrounds. They were all punished, but less than they would have been under the guidelines. Mr. Otis appears to recognize the need to distinguish among defendants based on culpability and dangerousness, at least for some people.[72] Fortunately, judges are neutral and able to take into account individualized circumstances in all kinds of cases and for all kinds of people.

C. Empirical research demonstrates that consideration of the factors the guidelines exclude and disfavor protects the public and saves resources.

The Bureau of Prisons is 35% overcapacity, resulting in extreme overcrowding, unsafe conditions, and reduced capacity to provide treatment and training shown to reduce recidivism,[73] at a cost to the taxpayers of well over $6 billion a year.[74] Some credit high incarceration rates for the drop in the crime rate, but "[m]ost scientific evidence suggests that there is little if any relationship between fluctuations in crime rates and incarceration rates."[75] The former Director of the Bureau of Prisons testified earlier this year that 52% of federal inmates are serving "extremely long" sentences for drug related offenses.[76] It is clear that many of these defendants do not need to be sentenced to such long terms of imprisonment in order to protect the public.

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[72] William Otis, *Justice in the Libby Case Lies in a Third Option*, Wash. Post, June 7, 2007 (arguing that Scooter Libby's 30-month prison sentence was "excessive" for a first offender who did not act out of greed or personal malice, had contributed to his community, and was not a danger to the public).

[73] Tr. of Public Hearing Before the U.S. Sent'g Comm'n at 10, 15-16, 49-50, 52 (Mar. 17, 2011) (testimony of Harley G. Lappin, Director Federal Bureau of Prisons).

[74] The annual cost of imprisonment per inmate in 2010 was $28,284.16. *See* U.S. Courts, News, *Newly Available: Costs of Incarceration and Supervision in 2010*, http://www.uscourts.gov/News/NewsView/11-06-23/Newly_Available_Costs_of_Incarceration_and_Supervision_in_FY_2010.aspx. As of October 20, 2011, the prison population was 217,908. *See* Federal Bureau of Prisons, Weekly Population Report, http://www.bop.gov/locations/weekly_report.jsp.

[75] The JFA Institute, *Unlocking America: Why and How to Reduce America's Prison Population* 8 (2007), available at http://www.countthecosts.org/sites/default/files/Unlocking-America.pdf. This report, authored by eight criminologists from major public universities, surveyed the studies on the impact of incarceration on crime rates, concluded that "the bulk of the evidence" suggests that the effect of imprisonment on crime rates, if any, is "small," and "diminishes as prison populations expand," and that "[t]he overwhelming and undisputed negative side effects of incarceration far outweigh its potential, unproven benefits." *Id.* at 9. One researcher who argues that "the crime rate today would be 25% higher were it not for the large increases in imprisonment from 1970 to 1990" based his analysis on national trends and "does not explain why some states and counties that lowered their incarceration rates experienced the same crime reductions as states that increased incarceration." *Id.* Professor Franklin Zimring, a leading scholar on criminal justice issues, will soon publish research suggesting that the major factor underlying reductions in crime rates is better policing, not mass incarceration. Ted Gest, *Cops and Crime*, The Crime Report (Aug. 2, 2011), http://www.thecrimereport.org/archive/2011-08-cops-and-crime.

[76] Tr. of Public Hearing Before the U.S. Sent'g Comm'n at 9-10, 55 (Mar. 17, 2011) (testimony of Harley G. Lappin, Director Federal Bureau of Prisons).

For example, in 2010, over half of all drug offenders were in the lowest criminal history category (with 0 or 1 point), 83.6% had no weapon involvement, 94% played a mitigating or no aggravating role, and 94.5% accepted responsibility.[77] Nearly 75% were racial minorities.[78]

A wealth of research, including the Commission's own research, demonstrates that the mitigating factors the Commission disapproves are highly relevant to the purposes of sentencing. When judges take these factors into account, prison resources and taxpayer dollars are used more efficiently and effectively.

Recidivism declines markedly with age.[79] The young are less culpable than the average offender,[80] and reform in a short period of time.[81] The Commission's own research and substantial other research demonstrates that employment, education, abstinence from alcohol and drugs, and family ties and responsibilities all predict reduced recidivism.[82] Conversely, the Commission's research and other research shows that unnecessarily lengthy imprisonment increases the risk of recidivism by disrupting employment, reducing prospects of future employment, weakening family ties, and exposing less serious offenders to more serious offenders.[83] A significant Bureau of Prisons study found that "[s]table employment or student

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[77] USSC, 2010 Sourcebook of Federal Sentencing Statistics, tbls. 37, 39, 40, 41.

[78] *Id.*, tbl. 34.

[79] U.S. Sent'g Comm'n, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* 12 & Ex. 9. (2004).

[80] *See, e.g.*, Federal Advisory Committee on Juvenile Justice, U.S. Dep't of Justice, Office of Juvenile and Delinquency Prevention, *Annual Report* 8 (2005), www.ncjrs.gov/pdffiles1/ojjdp /212757.pdf; Jay N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, 1021 Annals N.Y. Acad. Science 105-09 (2004); Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preferences and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 Developmental Psych. 625, 632 (2005).

[81] *See, e.g.*, Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1011-14 (2003); Robert J. Sampson & John H. Laub, *Crime in the Making: Pathways and Turning Points Through Life*, 39 Crime & Delinq. 396 (1993).

[82] U.S. Sent'g Comm'n, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* 12-13 & Ex. 10 (2004); U.S. Sent'g Comm'n, *Recidivism and the "First Offender"* 8 (2004); Miles D. Harer, Federal Bureau of Prisons, Office of Research and Evaluation, *Recidivism Among Federal Prisoners Released in 1987*, at 5-6, 54 (1994), http://www.bop.gov/news/research_projects/published_reports/recidivism/orepprecid87.pdf; Correctional Service Canada, *Does Getting Married Reduce the Likelihood of Criminality*, Forum on Corrections Research, Vol. 7, No. 2 (2005) (citing Robert J. Sampson & John H. Laub, *Crime and Deviance Over Life Course: The Salience of Adult Social Bonds*, 55 Am. Soc. Rev. 609 (1990)); Robert J. Sampson, John H. Laub, & Christopher Winer, *Does Marriage Reduce Crime? A Counterfactual Approach to Within-Individual Causal Effects*, 44 Criminology 465, 497-500 (2006); Shirley R. Klein *et al.*, *Inmate Family Functioning*, 46 Int'l J. Offender Therapy & Comp. Criminology 95, 99-100 (2002).

status . . . prior to confinement is strongly related to a lower likelihood of recidivating."[84] Offenders who found employment after their release recidivated at about half the rate of those who did not.[85]

"The relationship between family ties and lower recidivism has been consistent across study populations, different periods, and different methodological procedures."[86] The Bureau of Prisons study found that the recidivism rate among offenders who live with a spouse after release is less than half that of those who have other living arrangements.[87] The Commission has acknowledged that "the better family ties are maintained[,] the lower the recidivism rate," and that "children left without parents burden society," but that "creative alternatives to imprisonment for first-time, non-violent offenders with parental responsibilities are not generally available under the guidelines."[88] In light of social science research, one appellate judge

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[83] *See* Lynne M. Vieraitis *et al.*, *The Criminogenic Effects of Imprisonment: Evidence from State Panel Data 1974-2002*, 6 Criminology & Pub. Pol'y 589, 591-93 (2007) ("imprisonment causes harm to prisoners," isolating them from families and friends, making it difficult to successfully reenter society, and "reinforc[ing] criminal identities" through contacts with other criminals); U.S. Sent'g Comm'n, Staff Discussion Paper, *Sentencing Options Under the Guidelines* 18-19 (Nov. 1996) (finding that "[m]any federal offenders who do not currently qualify for alternatives have relatively low risks of recidivism compared to offenders in state systems and to federal offenders on supervised release," and "alternatives divert offenders from the criminogenic effects of imprisonment which include contact with more serious offenders, disruption of legal employment, and weakening of family ties."); Miles D. Harer, *Do Guideline Sentences for Low-Risk Drug Traffickers Achieve Their Stated Purposes?*, 7 Fed. Sent'g Rep. 22 (1994) ("[T]he alienation, deteriorated family relations, and reduced employment prospects resulting from the extremely long removal from family and regular employment may well increase recidivism."); USSC, *Alternative Sentencing in the Federal Criminal Justice System*, at 2-3 (2009) ("alternatives to incarceration can provide a substitute for costly incarceration," and "also provide those offenders opportunities by diverting them from prison (or reducing time spent in prison) and into programs providing the life skills and treatment necessary to become law-abiding and productive members of society."); Laura Baber, *Results-based Framework for Post-conviction Supervision Recidivism Analysis*, Fed. Probation, Volume 74, Number 3 (2010) (study of 150,000 federal offenders showed 85% of people on probation and 77% of people on supervised release after a prison term remained arrest-free within the first three years of their term), http://www.uscourts.gov/viewer.aspx?doc=/uscourts/FederalCourts/PPS/Fedprob/2010-12/index.html; Alfred Blumstein & Kiminori Nakamura, Nat'l Inst. of Justice, *'Redemption' in an Era of Widespread Criminal Background Checks*, NIJ Journal, Issue No. 263, June 2009, at 10, 12-14 (risk of re-arrest for 18-20 year old offenders convicted of street crime in state court is the same as that of the general population after four to seven years of remaining arrest-free), http://www.ncjrs.gov/pdffiles1/nij/226870.pdf.

[84] Harer, *Recidivism*, *supra* note 82, at 54.

[85] *Id.* at 4-5.

[86] Shirley R. Klein *et al.*, *Inmate Family Functioning*, 46 Int'l J. Offender Therapy & Comp. Criminology 95, 99-100 (2002).

[87] *See* Harer, *Recidivism*, *supra* note 82, at 5-6.

wondered, "What principle of equity, uniformity, or just deserts blocks any consideration of society's interests in avoiding the risk of producing a next generation of unloved, unnourished, sociopathic criminals?"[89]

For many offenders, drug treatment, mental health treatment, and educational and vocational training are more effective in reducing recidivism than lengthy incarceration.[90] According to the National Institute on Drug Abuse, "Effective treatment decreases future drug use and drug-related criminal behavior, can improve the individual's relationships with his or her family, and may improve prospects for employment."[91] Rehabilitation after arrest or after a previous sentencing is highly relevant to the purposes of sentencing,[92] and the Commission's policy statement prohibiting the latter (but not the former) "rests on wholly unconvincing policy rationales not reflected in the sentencing statutes Congress enacted."[93]

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[88] Phyllis J. Newton, Jill Glazer, & Kevin Blackwell, *Gender, Individuality and the Federal Sentencing Guidelines*, 8 Fed. Sent'g Rep. 148 (1995).

[89] Patricia M. Wald, *"What About the Kids?": Parenting Issues in Sentencing*, 10 Fed. Sent'g Rep. 34 (1997).

[90] *See, e.g.*, Nat'l Inst. on Drug Abuse, Nat'l Insts. of Health, *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide* 12 (2007); Susan L. Ettner *et al.*, *Benefit-Cost in the California Treatment Outcome Project: Does Substance Abuse Treatment "Pay for Itself?"*, 41 Health Services Res. 192-213 (2006); Doug McVay *et al.*, Justice Policy Institute, *Treatment or Incarceration: National and State Findings on the Efficacy of Cost Savings of Drug Treatment Versus Imprisonment* 5-6, 18 (2004); Dale E. McNiel & Renée L. Binder, *Effectiveness of a Mental Health Court in Reducing Criminal Recidivism and Violence*, 16 Am. J. Psychiatry 1395-1403 (2007); Ohio Office of Criminal Justice Services, *Research Briefing 7: Recidivism of Successful Mental Health Court Participants* (2007), www.publicsafety.ohio.gov/links/ocjs_researchbriefing7.pdf; Washington Institute for Public Policy, *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates* 9, Ex. 4 (2006) (comprehensive review of programs with demonstrated effect on reducing recidivism, including prison- and community-based educational programs), www.wsipp.wa.gov/rptfiles/06-10-1201.pdf, *updated* by Washington Institute for Public Policy, *Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State* 190-91, tbl.1 (2009), www.wsipp.wa.gov/rptfiles/09-00-1201.pdf; U.S. Sent'g Comm'n, *Symposium on Alternatives to Incarceration* 22-24 (testimony of Chief Probation Officer Doug Burris, E.D. Mo.); *see also id.* at 238-39 (testimony of Judge Jackson, E.D. Mo.).

[91] Nat'l Inst. on Drug Abuse, Nat'l Insts. of Health, *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide* 12 (2007).

[92] *See Gall v. United States*, 552 U.S. 38, 59 (2007); *Pepper v. United States*, 131 S. Ct. 1229, 1242-43 (2011).

[93] *Pepper*, 131 S. Ct. at 1247.

III. Congress Should Reject the Commission's Request to Amend the Sentencing Reform Act to Reflect the Commission's View, Inconsistent with the Act, that Courts Should Be Prohibited and Discouraged from Considering Mitigating Offender Characteristics.

The Commission Chair testified that Congress directed the Commission "not to incorporate certain offender characteristics into the guidelines," and that such factors "shouldn't generally be considered" at sentencing. In fact, Congress directed the Commission to consider including mitigating offender characteristics, as well as mitigating offense circumstances, in the guidelines, and also to maintain sufficient flexibility for individualized sentencing based on any mitigating factors not included in the guidelines. At the same time, Congress directed courts to consider the history and characteristics of the defendant, and provided that no limitation was to be placed on such information. Since its inception, the Commission has failed to comply with these directives to the Commission and thwarted these directives to the courts.

The Commission's written and oral testimony is vague as to what it now seeks.[94] It asks Congress to rewrite the statutes it enacted in 1984 to either: (1) generally discourage judges from considering mitigating factors in sentencing outside the guidelines, or (2) permit the Commission to allow departures based on mitigating factors. The first would undo what Congress has already directed the Commission to do and validate the Commission's failure to do so, and also undo what the statutes direct the courts to do. The second is unnecessary because nothing in the SRA directs the Commission to prevent departures based on mitigating factors, and the Commission is free to abandon its policy statements that prevent and discourage departures.

A. What the statutes say.

Congress directed the Commission to establish "categories of offenses" and "categories of offenders . . . for use in the guidelines and policy statements governing . . . the nature, extent, place of service, or other incidents of an appropriate sentence."[95] In establishing categories of offenses, the Commission was directed by 28 U.S.C. § 994(c) to consider the relevance, among other things, of "the circumstances under which the offense was committed which *mitigate* or aggravate the seriousness of the offense."[96]

In establishing categories of offenders, the Commission was directed by 28 U.S.C. § 994(d) to consider the relevance of eleven offender characteristics, "among others": (1) age, (2) education, (3) vocational skills, (4) mental and emotional conditions, (5) physical condition, including drug dependence, (6) employment record, (7) family ties and responsibilities, (8) community ties, (9) role in the offense, (10) criminal history, and (11) degree of dependence on

[94] Commission Testimony at 57.

[95] 28 U.S.C. § 994(c) and (d).

[96] 28 U.S.C. § 994(c)(2).

criminal activity for a livelihood. The purpose of § 994(d) was to ensure that warranted differences among offenders were reflected in the guidelines.[97]

Congress considered all eleven offender characteristics to be relevant to all aspects of the sentencing decision, with one narrow exception. Congress directed the Commission in 28 U.S.C. § 994(e) to "assure that the guidelines and policy statements, *in recommending a term of imprisonment or length of a term of imprisonment*, reflect the general inappropriateness of considering" five of those factors: "the education, vocational skills, employment record, family ties and responsibilities, and community ties of the defendant." The Senate Report stated: "The purpose of the subsection is, of course, to guard against the inappropriate use of incarceration for those defendants who lack education, employment, and stabilizing ties."[98]

Section 994(e) was one of three provisions of the SRA reflecting Congress's judgment that prison was not an effective means of rehabilitation and that the disadvantaged should not be warehoused in prison on the theory that prison might be rehabilitative.[99] The Supreme Court recently stated in interpreting the other two provisions: "Section 994(k) bars the Commission from recommending a 'term of imprisonment'—a phrase that again refers both to the fact and to the length of incarceration—based on a defendant's rehabilitative needs. And § 3582(a) prohibits a court from considering those needs to impose or lengthen a period of confinement when selecting a sentence from within, or choosing to depart from, the Guidelines range."[100]

Thus, the Commission was not to recommend imprisonment over probation or a longer prison term based on the defendant's lack of education, vocational skills, employment, or stabilizing ties. And rather than counseling that these factors not be considered at sentencing, Congress said that "each of these factors may play other roles in the sentencing decision."[101] For example, "they may, in an appropriate case, call for the use of a term of probation instead of imprisonment."[102] The Senate Report gave several specific examples suggesting how the

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[97] "The key word in discussing unwarranted disparities is 'unwarranted.' . . . The Commission is, in fact, required to consider a number of factors in promulgating sentencing guidelines to determine what impact, if any, would be warranted by differences among defendants with respect to those factors." S. Rep. No. 98-225, at 161 (1983) (citing 28 U.S.C. § 994(d)).

[98] S. Rep. No. 98-225, at 175 (1983).

[99] *See* 28 U.S.C. § 994(k) ("The Commission shall insure that the guidelines reflect the inappropriateness of imposing a sentence to a term of imprisonment for the purpose of rehabilitating the defendant or providing the defendant with needed educational or vocational training, medical care, or other correctional treatment."); 18 U.S.C. § 3582(a) ("The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation."); S. Rep. No. 98-225, at 31, 38, 40, 67 n.262, 76-77, 95, 119, 171 & n.531 (1983).

[100] *Tapia v. United States*, 131 S. Ct. 2382, 2390 (2011).

[101] S. Rep. No. 98-225, at 174 (1983).

[102] *Id.* at 174-75.

Commission might include these and other characteristics in the guidelines to mitigate sentences.[103]

Congress "encourage[d] the Sentencing Commission to explore the relevancy to the purposes of sentencing of all kinds of factors, whether they are obviously pertinent or not; to subject those factors to intelligent and dispassionate analysis; and on this basis to recommend, with supporting reasons, the fairest and most effective guidelines it can devise."[104]

Therefore, far from "direct[ing] the Commission not to incorporate certain offender characteristics into the guidelines," as the Chair testified, Congress in fact directed the Commission to consider and include any and all factors it found relevant to the sentencing decision when it formulated the guidelines.

Congress also recognized that it was not possible to write all relevant factors into general rules. It therefore directed the Commission to "maintain[] sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors *not* taken into account" in the guidelines.[105] The Senate Report stated:

> [E]ach offender stands before the court as an individual, different in some ways from other offenders. The offense, too, may have been committed under highly individual circumstances. Even the fullest consideration and the most subtle appreciation of the pertinent factors – the facts in the case; the mitigating or aggravating circumstances; the offender's characteristics and criminal history; and the appropriate purposes of the sentence to be imposed in the case – cannot invariably result in a predictable sentence being imposed. Some variation is not only inevitable but desirable.[106]

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[103] *See id.* at 172-73 ("need for an educational program might call for a sentence to probation" with a program to provide for rehabilitative needs if imprisonment was not necessary for some other purpose of sentencing); *id.* at 173 (same regarding vocational skills); *id.* (same regarding employment); *id.* at 171 n. 531 ("if an offense does not warrant imprisonment for some other purpose of sentencing, the committee would expect that such a defendant would be placed on probation with appropriate conditions to provide needed education or vocational training"); *id.* at 173 n.532 ("a defendant's education or vocation would, of course, be highly pertinent in determining the nature of community service he might be ordered to perform as a condition of probation or supervised release"); *id.* at 174 (family ties and responsibilities may indicate, for example, that the defendant "should be allowed to work during the day, while spending evenings and weekends in prison, in order to be able to continue to support his family"); *id.* at 173 (mental or emotional conditions might "call[] for probation with a condition of psychiatric treatment, rather than imprisonment"); *id.* ("drug dependence" might cause the Commission to "recommend that the defendant be placed on probation in order to participate in a community drug treatment program, possibly after a brief stay in prison, for 'drying out,' as a condition of probation").

[104] *Id.* at 175.

[105] 28 U.S.C. § 991(b)(1)(B) (emphasis added).

[106] S. Rep. No. 98-225, at 150 (1983).

Congress directed judges to depart when they found an aggravating or mitigating factor not "adequately taken into account" in the guidelines, *see* 18 U.S.C. § 3553(b), a determination that would be informed by the purposes and factors set forth in 18 U.S.C. § 3553(a).[107] Referring specifically to § 3553(a)(1), which requires judge to consider "the nature and circumstances of the offense and the history and characteristics of the defendant," the Senate Report stated: "All of these considerations and others the judge believed to be appropriate would . . . help the judge to determine whether there were circumstances or factors that were not taken into account in the sentencing guidelines and that call for the imposition of a sentence outside the applicable guideline."[108]

Thus, contrary to the Chair's testimony that individual offender characteristics "shouldn't generally be considered" at sentencing, Congress clearly directed the courts to consider a wide range of factors, including "the history and characteristics of the defendant," and further directed: "No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence."[109]

Thus, even when the guidelines were to be mandatory, Congress did "not intend that the guidelines be imposed in a mechanistic fashion."[110] To the contrary, it believed "that the sentencing judge has an obligation to consider all the relevant factors in a case and to impose a sentence outside the guidelines in an appropriate case."[111] The purpose of the guidelines was "not to eliminate the thoughtful imposition of individualized sentences," but would "enhance the individualization of sentences."[112] Judges would "impose sentence after a comprehensive examination of the characteristics of the particular offense and the particular offender."[113]

B. What the Commission did.

Other than role in the offense and the aggravating factor of criminal history, the

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[107] "The bill requires the judge, before imposing sentence, to consider the history and characteristics of the offender, the nature and circumstances of the offense, and the purposes of sentencing. He is then to determine which guidelines and policy statements apply. Either he may decide that the guideline recommendation appropriately reflects the offense and offender characteristics or he may conclude that the guidelines fail to reflect adequately a pertinent aggravating or mitigating circumstance." *Id.* at 52.

[108] *Id.* at 75.

[109] 18 U.S.C. § 3661.

[110] S. Rep. No. 98-225, at 52 (1983).

[111] *Id.*

[112] *Id.* at 52-53.

[113] *Id.* at 53.

Commission excluded all of the factors listed in § 994(d) from the guideline rules, and went further, deeming most of them (*i.e.*, age, education, vocational skills, mental and emotional condition, physical condition, employment record, family ties and responsibilities, and community ties) to be "not ordinarily relevant" in departing from the guidelines,[114] and drug and alcohol dependence or abuse to be "not relevant" in departing from the guidelines.[115] Personal financial difficulties and economic pressure on a trade or business were prohibited.[116] Over the ensuing years, the Commission added numerous further restrictions on downward departures, not because Congress told it to, but to prevent courts' attempts to depart from guidelines that did not adequately consider, among other things, individual offender characteristics.[117]

None of the policy statements forbidding or discouraging departures was ever accompanied by any "analysis" or "supporting reasons."[118] Then-Commissioner Breyer unofficially explained that the Commission had omitted from the guidelines most of the factors "which Congress

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[114] USSG §§ 5H1.1 (age), 5H1.2 (education and vocational skills), 5H1.3 (mental and emotional conditions), 5H1.4 (physical condition, drug dependence), 5H1.5 (employment record), 5H1.6 (family ties and responsibilities), p.s. (1987); *see also* USSG ch. 5, pt. H, intro. comment.

[115] USSG §§ 5H1.4, 5K2.12, p.s. (Nov. 1, 1987).

[116] USSG § 5K2.13, p.s. (Nov. 1, 1987).

[117] For example, when a court of appeals upheld a departure based on the defendant's "diminutive size and immature appearance," after he had been sexually victimized and placed in solitary confinement for his protection, *United States v. Lara*, 905 F.2d 599 (2d Cir. 1990), the Commission immediately issued an amended policy statement asserting that physical "appearance, including physique," is not ordinarily relevant in deciding whether to depart. USSG § 5H1.4 p.s.; USSG App. C, amend. 386 (Nov. 1, 1991). Similarly, in response to a court of appeals' holding that a disadvantaged childhood could justify downward departure, the Commission issued a policy statement asserting that a defendant's "lack of guidance as a youth and similar circumstances indicating a disadvantaged upbringing" are "not relevant" grounds for departure. USSG § 5H1.12 p.s.; USSG App. C, amend. 466 (Nov. 1, 1992). Military, civic, charitable and public service, employment-related contributions, and prior good works were all likewise deemed not ordinarily relevant, USSG § 5H1.11, p.s.; USSG App. C, amend. 386 (Nov. 1. 1991), "in response to court decisions." USSC, *Simplification Draft Paper, Departures and Offender Characteristics*, Part II(B)(3). The Commission also prohibited departure based on post-sentencing rehabilitation "even if exceptional." USSG § 5K2.19, p.s.; USSG App. C, amend. 602 (Nov. 1, 2000).

[118] S. Rep. No. 98-225, at 175 (1983). *See, e.g.*, USSG App. C, amend. 386 (Nov. 1, 1991) (amending § 5H1.4 to provide that physical "appearance, including physique" is not "ordinarily relevant in determining whether a sentence should be outside the applicable guideline range," stating as the reason that it "sets forth the Commission's position that physical appearance, including physique, is not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range"); USSG App. C, amend. 466 (Nov. 1, 1992) (adding § 5H1.12 to provide that "[l]ack of guidance as a youth and similar circumstances indicating a disadvantaged upbringing are not relevant grounds in determining whether a departure is warranted," stating as the reason that "[t]his amendment provides that the factors specified are not appropriate grounds for departure"); USSG App. C, amend. 651 (Oct. 27, 2003) (amending § 5H1.4 to provide that addiction to gambling is not a reason for a downward departure in any case, stating as the reason that "addiction to gambling is never a relevant ground for departure").

suggested that the Commission should, but was not required to, consider" as one of several "'trade-offs' among Commissioners with different viewpoints."[119] Much later, Justice Breyer said that the decision to omit mitigating offender characteristics was "intended to be provisional and [] subject to revision in light of Guideline implementation experience."[120] That revision did not materialize; instead, further restrictions were added.

The original Commission did not attempt to justify the policy statements deeming education, vocational skills, employment record, family ties and responsibilities, and community ties to be "not ordinarily relevant" with reference to § 994(e). Later, the Commission went so far as to amend its commentary to "clarify" that the policy statements were "required" by § 994(e).[121] Despite the Commission's contention that it was required by § 994(e) to prevent departures based on the five factors listed there, its disfavored list of grounds for departure included not only those five factors, but all of the other mitigating factors listed in § 994(d) (except role), and others added over the years. The Commission's many restrictions on departure cannot be explained by a fair reading of the Sentencing Reform Act. The only "tension" has been created by the Commission itself.

C. The Commission's 2010 amendments.

Before *Booker*, district court and appellate judges reported that restrictions on mitigating offender characteristics were a primary failing of the guidelines.[122] After *Booker*, countless witnesses advised the Commission at its regional hearings in 2009 and 2010 that mitigating offender characteristics are relevant to the purposes of sentencing.[123] Large majorities of judges

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[119] Stephen Breyer, *The Federal Sentencing Guidelines and the Key Compromises Upon Which They Rest*, 17 Hofstra L. Rev. 1, 19-20 & n.98 (1988).

[120] Justice Stephen Breyer, *Federal Sentencing Guidelines Revisited*, 11 Fed. Sent'g Rep. 180, 1999 WL 730985, at *5 (Jan./Feb. 1999).

[121] USSG ch. 5, pt. H, intro. comment. (Nov. 1, 1990); USSG, App. C, amend. 357 (Nov. 1, 1990) ("clarify[ing] the relationship of 28 U.S.C. § 994(e) to certain of the policy statements" and describing the directive as "requir[ing]" the Commission to assure that the guidelines and policy statements reflected the "general inappropriateness" of considering these characteristics "in determining whether a term of imprisonment should be imposed or the length of a term of imprisonment"). *Compare* 28 U.S.C. § 994(e) (Commission "shall assure that the guidelines and policy statements, in recommending a term of imprisonment or length of a term of imprisonment, reflect the general inappropriateness of considering" the five factors).

[122] USSC, *Final Report: Survey of Article III Judges on the Federal Sentencing Guidelines*, Executive Summary (2003) ("Both district and circuit court judges were most likely to indicate" that "fewer" of the guidelines "maintain[ed] sufficient flexibility to permit individualized sentences," or "provid[ed] defendants with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner where rehabilitation is appropriate.").

[123] *See, e.g.*, Tr. of Hearing Before the U.S. Sent'g Comm'n, Denver, Colo., at 281-82, 301-02 (Oct. 20, 2009) (remarks of Hon. Joan Ericksen); *id.* at 289-90, 295-96 (remarks of Hon. Robert Pratt); *id.* at 91-92 (remarks of Hon. Thomas Marten); *id.* at 107-08 (remarks of Kevin Lowry, Chief U.S. Probation Officer); *id.* at 318-20 (remarks of Raymond Moore); Statement of Alan Dubois and Nicole Kaplan,

informed the Commission in a 2010 survey that the mitigating factors its policy statements deem never or "not ordinarily relevant" are in fact "ordinarily relevant,"[124] and that its policy statements are inadequate, too restrictive, and inconsistent with § 3553(a).[125]

In 2010, the Commission amended some of its policy statements to say that age, mental and emotional conditions, physical condition, and military service, rather than "not ordinarily relevant," now "may be relevant," but only if "present to an unusual degree and distinguish the case from the typical cases covered by the guidelines." The Commission also amended certain provisions so that drug or alcohol dependence or abuse, rather than "not relevant," is now "ordinarily not" relevant, and invited a small downward departure for a very narrow class of defendants to receive drug treatment.[126] The change was based on "public comment, testimony, and research suggest[ing] that successful completion of treatment programs may reduce recidivism rates and that, for some defendants, confinement at home or in the community instead of imprisonment may better address both the defendant's need for treatment and the need to protect the public."[127] Congress suggested twenty-six years ago that the Commission "recommend that [a drug-dependent] defendant be placed on probation in order to participate in a community drug treatment program, possibly after a brief stay in prison, for 'drying out,' as a condition of probation."[128] (Mr. Otis's description of this amendment is overwrought and uninformed.)

Hearing Before the U.S. Sent'g Comm'n, at 44-45, 47-50 (Feb. 10, 2009); Tr. of Hearing Before the U.S. Sent'g Comm'n, Atlanta, Ga., at 53-54 (Feb. 10, 2009) (remarks of Thomas Bishop, Chief U.S. Probation Officer); Statement of Thomas W. Hiller, II and Davina Chen, Hearing Before the U.S. Sent'g Comm'n, at 35-37 (May 27, 2009); Tr. of Hearing Before the U.S. Sent'g Comm'n, Stanford, Calif., at 284-86, 357-59 (May 27-28, 2009) (remarks of Thomas W. Hillier II); *id.* at 360-62 (remarks of Davina Chen); *id.* at 168 (remarks of Chris Hansen, Chief U.S. Probation Officer); Tr. of Hearing Before the U.S. Sent'g Comm'n, New York, N.Y., at 331 (July 10, 2009) (remarks of Hon. Donetta W. Ambrose); Statement of Michael Nachmanoff Before the U.S. Sent'g Comm'n, New York, N.Y., at 22-25 (July 9, 2009); Tr. of Hearing Before the U.S. Sent'g Comm'n, Chicago, Ill., at 104-05 (Sept. 9, 2009) (remarks of Hon. Philip Simon); Statement of Carol Brook Before the U.S. Sent'g Comm'n, at 26-33 (Sept. 10, 2009); Statement of Julia O'Connell Before the U.S. Sent'g Comm'n, Austin, Tex., at 4-10 (Nov. 19, 2009); Statement of Heather Williams Before the U.S. Sent'g Comm'n, Phoenix, Ariz., at 35, 39-40 (Jan. 21, 2010).

[124] USSC, *Results of Survey of United States District Judges January 2010 through March 2010*, tbl.13 (education (48%), vocational skills (41%), employment record (65%), family ties and responsibilities (62%), community ties (49%), employment-related contributions (47%), post-sentencing rehabilitative efforts (57%), post-offense rehabilitative efforts (70%), lack of guidance as a youth (49%), disadvantaged upbringing (50%)).

[125] *Id.*, tbl. 14.

[126] USSG § 5H1.4, p.s.; USSG § 5C1.1, comment. (n.6).

[127] *See* USSG § 5C1.1, comment. (n.6); USSG App. C, amend. 738 (Nov. 1, 2010) (Reason for Amendment).

[128] *See* S. Rep. No. 98-225, at 173 (1983).

The net result of these small changes is unclear, since the Commission also amended the introductory commentary to generally disapprove of all offender characteristics, stating that their "most appropriate use" is not for imposing a sentence outside the guideline range but for sentencing within the guideline range,[129] even though the guidelines do not include these factors and a wealth of empirical research shows them to be highly relevant.

The policy statements continue to deem the § 994(e) factors (and others) to be "not ordinarily relevant to the determination of whether a sentence should be outside the guideline range," except perhaps in "exceptional cases."[130] The Commission need not appeal to Congress, because it is free to discard this "heartland" standard and amend the policy statements regarding the § 994(e) factors to comport with the statutes and Supreme Court law.[131]

D. The Commission's present request.

The Commission writes that "28 U.S.C. § 994(e) directs the Commission to 'assure' that the guidelines reflect the 'general inappropriateness of considering the education, vocational skills, employment record, family ties and responsibilities, and community ties of the defendant' *in determining the length of imprisonment*."[132] But the italicized language does not appear in the statute. The statute directs the Commission to "assure that the guidelines and policy statements, *in recommending a term of imprisonment or length of a term of imprisonment*, reflect the general inappropriateness of considering the education, vocational skills, employment record, family ties and responsibilities, and community ties of the defendant." "[D]etermining the particular sentence to be imposed" is what the court does. *See* 18 U.S.C. § 3553(a). "[R]ecommending a term of imprisonment or its length" is what the Commission does, and it may not recommend a prison term or a lengthier prison term based on the factors listed in § 994(e). *See* 28 U.S.C. § 994(e); S. Rep. No. 98-225, at 175 (1983). The Commission's contention that Congress required it to prevent courts from considering these factors in departing downward *from* the guidelines' recommendation of a term of imprisonment is wrong.

We are also concerned about the inaccuracy in the characterization of the data the Commission submits in support of this request. It states that courts consider "those very factors [listed in § 994(e)] under § 3553(a) and often arrive at sentences below the guidelines range as a result of such consideration in almost 14 percent of all . . . cases," and "[d]epartures are followed in only about 3.4 percent of these cases because courts prefer to vary when they consider offender characteristics like family history, for example."[133]

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[129] USSG ch. 5, pt. H, intro. comment.

[130] *Id.*

[131] *See* 28 U.S.C. § 994(e); 29 U.S.C. § 994(k); 18 U.S.C. § 3553(a); 18 U.S.C. § 3582(a); *Pepper v. United States*, 131 S. Ct. 1229, 1242-43 (2011); *Gall v. United States*, 552 U.S. 38, 53-60 (2007); *Tapia*, 131 S. Ct. at 2390.

[132] Commission Testimony at 57.

[133] *Id.*

The Commission cites nothing in support of these numbers, but investigation reveals that it is referring to its data showing that judges imposed below-guideline sentences in 13.8% of cases thus far in 2011 that were not categorized as being based in whole or in part on a "departure," while 3.4% were categorized as being based in whole or in part on a "departure."[134] To say that all of the former ("almost 14 percent") were based on the factors listed in § 994(e) is entirely incorrect. Factors listed in § 994(e) comprised less than 6% of all reasons given for below-range sentences not called "departures."[135] That is to say, judges relied in whole or in part on a reason listed in § 994(e) in less than 1% of all below-range sentences not called "departures."

The Commission either made an error, or it seeks to give the impression that judges cite the § 994(e) offender characteristics far more often than they do, or it is suggesting that Congress directed it in § 994(e) to discourage downward departures for *any* reason, a position even broader than its previous (and also incorrect) position that Congress directed it in § 994(e) to discourage downward departures based on the factors listed therein.

IV. Since *Booker*, the Commission Has Relied on Judicial Feedback to Improve the Guidelines in Important Ways, as Congress Intended.

Representative Deutch asked how the Commission takes into account feedback from judges. Representative Adams was concerned at the description of judicial feedback regarding the child pornography guideline as "sentiment."

A. Feedback from real cases leads to gradual change informed by experience, research, and cooperation among all branches.

Judge Saris answered Mr. Deutch's question with an example of variances in straw purchaser cases where a girlfriend buys a gun for her boyfriend. There are other important examples.

The most important and well-known example is the reduction of the crack guidelines, where the Judiciary, Congress, the Department of Justice, and the Commission came together to achieve greater justice and greater consistency. After *Booker* was decided on January 12, 2005, judges began to impose reduced sentences to correct the unfairness reported by the Commission since 1995. Some courts of appeals held that this was impermissible, creating a circuit split, and the Supreme Court granted certiorari. On January 22, 2007, two of the original sponsors of the SRA, Senators Kennedy and Hatch, along with Senator Feinstein, filed an *amicus* brief in the Supreme Court, arguing that judges should be permitted to disagree with unsound policies

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[134] USSC, Preliminary Quarterly Data Report, Third Quarter, tbl. 1 (2011).

[135] USSC, 2010 Sourcebook of Federal Sentencing Statistics, tbl. 25B. Of the 40,076 reasons reported to the Commission, just 2,397 were reasons listed in § 994(e), *i.e.*, family ties and responsibilities, employment record, educational and vocational skills, community ties.

reflected in the guidelines, such as the crack/powder disparity.[136] The Commission took the next step.[137] On May 21, 2007, it voted to reduce the crack guidelines by 2 levels, and urged Congress to take further action as this was not a complete solution to an urgent and compelling problem.[138] The Supreme Court then held in a series of cases that, in order to avoid a constitutional violation, courts must be permitted to vary from guideline ranges based on the principles of sentencing and not only facts, and may disagree with unsound guidelines, and in particular the crack guideline.[139] The rate at which judges sentenced outside the guideline range in crack cases gradually increased.[140] In 2009, the President and the Attorney General announced support for a change in law that would eliminate the crack/powder disparity.[141] On Aug. 3, 2010, Congress enacted the Fair Sentencing Act of 2010, reducing the mandatory minimums for crack and directing the Commission to reduce the guidelines. The amendment took effect November 1, 2010, and the overall below-range rate (not limited to crack cases) dropped concurrently, from 18.7% during the quarter ending September 30, 2010, to 16.9% during the quarter ending June 30, 2011.

The Commission has also made a small but important change to the criminal history rules in response to reasons for below-range sentences and empirical research regarding recidivism.[142] As another example, in response to appellate caselaw finding that a 16-level enhancement based

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[136] Brief of *Amici Curiae* Senators Edward M. Kennedy, Orrin G. Hatch, and Dianne Feinstein in Support of Affirmance, *Claiborne v. United States* (No. 06-5618), Jan. 22, 2007. The *Claiborne* case was later replaced by *Kimbrough* when Mario Claiborne died.

[137] USSC, *Report to Congress: Cocaine and Federal Sentencing Policy*, Chapter 6 (May 2007) (discussing pre-*Booker* law under which all attempts to "depart" based on the crack disparity were rebuffed, the circuit split after *Booker* on whether courts could disagree with the crack guidelines, the pending *Claiborne* case, and the arguments made by the Senators).

[138] 72 Fed. Reg. 28558, 28573 (May 21, 2007).

[139] *See Cunningham v. California*, 549 U.S. 270 (2007); *Rita v. United States*, 551 U.S. 338 (2007); *Kimbrough v. United States*, 552 U.S. 85 (2007).

[140] *See* Paul J. Hofer, *Has Booker Restored Balance? A Look at Data on Plea Bargaining and Sentencing*, 5 Fed. Sent'g Rep. 326, 331 (in FY 2009, among crack defendants without trumping mandatory minimums, 57.9% were sentenced below the guideline range); Commission Testimony at 35 (stating that judges sentenced below the crack guideline in only 21.2% of all cases from FY 2008 through FY 2010).

[141] Statement of Lanny A. Breuer, Assistant Attorney General, Criminal Division, Department of Justice, Before the United States Senate Committee on the Judiciary, Subcommittee on Crime and Drugs (Apr. 29, 2009), http://judiciary.senate.gov/pdf/09-04-29BreuerTestimony.pdf; Attorney General Eric Holder, Remarks for the Charles Hamilton Houston Institute for Race and Justice and Congressional Black Caucus Symposium, *Rethinking Federal Sentencing Policy 25th Anniversary of the Sentencing Reform Act*, Washington, D.C. (June 24, 2009), http://www.justice.gov/ag/speeches/2009/ag-speech-0906241.html.

[142] USSG App. C, amend. 742 (Nov. 1, 2010) (Reason for Amendment).

on a 30-year-old conviction created unwarranted uniformity, the Commission sent an amendment to Congress proposing to reduce by 4 levels the 16- and 12-level increases in illegal re-entry cases based on a prior conviction when the conviction is too old to count under the criminal history rules.[143] This change will ameliorate an extreme increase the Commission initially adopted with no research, supporting data, or explanation.[144]

Finally, the Commission is conducting a review of the guideline for possession of child pornography, prompted by a high rate of variances and numerous written opinions by judges and courts of appeals explaining flaws in that guideline, which the Commission will report to Congress.[145] Representative Adams expressed concern at the hearing that Judge Saris stated in a recent interview that a "recent [survey] of federal district judges found that seventy percent felt that penalties for receipt and possession of child pornography were too high—a sentiment likely responsible for a more than forty percent variance rate." This is not mere sentiment, however. As explained in scores of written opinions by district judges and courts of appeals, there are real problems with the severity of this guideline as applied to offenders who possess this material but do not produce it and have never touched a child. The guideline recommends punishment near or exceeding the statutory maximum in the ordinary case, not the aggravated case, and can exceed the punishment for actually engaging in sex with a child. Prosecutors, too, seek below-range sentences in these cases at an unusually high rate, and the Department of Justice has asked the Commission to review the guideline.

B. This is what Congress intended.

Congress directed the Commission in the SRA to measure whether the guidelines were effective in meeting the purposes of sentencing,[146] and to ensure that the guidelines reflected advancement in knowledge of human behavior.[147] The Commission was to "review and revise" the guidelines "in consideration of data and comments coming to its attention," and after consultation with the frontline participants in the criminal justice system.[148] Congress expected that data and reasons from departures would alert the Commission to problems with the

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[143] 76 Fed. Reg. 24960, 24969 (May 3, 2011).

[144] "The Commission did no study to determine if such sentences were necessary—or desirable from any penal theory. Indeed, no research supports such a drastic upheaval. No Commission studies recommended such a high level, nor did any other known grounds warrant it. Commissioner Michael Gelacak suggested the 16-level increase and the Commission passed it with relatively little discussion." Robert J. McWhirter & Jon M. Sands, *A Defense Perspective on Sentencing in Aggravated Felon Re-entry Cases*, 8 Fed. Sent'g Rep. 275 (1996); *see* U.S. Sent'g Comm'n, Minutes of Meeting (Apr. 2, 1991).

[145] USSC, *The History of the Child Pornography Guidelines* at 1 n.4, 8 (October 2009); U.S. Sent'g Comm'n, Notice of Final Priorities, 75 Fed. Reg. 54,699, 54,699-700 (Sept. 8, 2010).

[146] 28 U.S.C. § 991(b)(2).

[147] 28 U.S.C. § 991(b)(1)(C).

[148] 28 U.S.C. § 994(o).

guidelines in operation.[149] District courts would state their reasons,[150] appellate courts would uphold "reasonable" departures,[151] and the Commission would collect and study the resulting data and reasons, their relationship to the factors set forth in § 3553(a), and their effectiveness in meeting the purposes of sentencing.[152] The Commission would revise the guidelines based on what it learned.[153]

The Supreme Court's decisions have revived this important mechanism.[154] As the Commission "perform[s] its function of revising the Guidelines to reflect the desirable sentencing practices of the district courts . . . district courts will have less reason to depart from the Commission's recommendations."[155]

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[149] *See* Stephen Breyer, *The Federal Sentencing Guidelines and the Key Compromises Upon Which They Rest*, 17 Hofstra L. Rev. 1, 8 (1988) ("[T]he system is 'evolutionary' – the Commission issues Guidelines, gathers data from actual practice, analyzes the data, and revises the Guidelines over time."); Edward M. Kennedy, Sentencing Reform—An Evolutionary Process, 3 Fed. Sent'g Rep. 271 (1991) ("[T]he structure of the guidelines system draws upon the expertise of the judiciary in addressing [key] issues," departures "will lead to a common law of sentencing," and "the guideline system [will] be evolutionary in nature."); *United States v. Rivera*, 994 F.2d 942, 949-50 (1st Cir. 1993) (Breyer, C.J.) ("[T]he very theory of the guidelines system is that when courts, drawing upon experience and informed judgment in cases, decide to depart, they will explain their departures," the "courts of appeals and the Sentencing Commission, will examine, and learn from, those reasons," and "the resulting knowledge will help the Commission to change, to refine, and to improve, the Guidelines themselves.").

[150] 18 U.S.C. § 3553(c).

[151] 18 U.S.C. § 3742(e) (1990).

[152] 28 U.S.C. § 995(a)(13)-(16).

[153] *See* S. Rep. No. 98-225, at 80 (1983) ("The statement of reasons . . . assists the Sentencing Commission in its continuous reexamination of its guidelines and policy statements."); *id.* at 151 ("Appellate review of sentences is essential . . . to provide case law development of the appropriate reasons for sentencing outside the guidelines," which "will assist the Sentencing Commission in refining the sentencing guidelines."); *id.* at 182 ("research and data collection . . . functions are essential to the ability of the Sentencing Commission to carry out two of its purposes: the development of a means of measuring the degree to which various sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing set forth in . . . 18 U.S.C. § 3553(a)(2), and the establishment (and refinement) of sentencing guidelines and policy statements that reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process.").

[154] *See Booker*, 543 U.S. at 264 ("[T]he Sentencing Commission remains in place, writing Guidelines, collecting information about actual district court sentencing decisions, undertaking research, and revising the Guidelines accordingly."); *Rita*, 551 U.S. at 358 (The courts' "reasoned sentencing judgment[s], resting upon an effort to filter the Guidelines' general advice through § 3553(a)'s list of factors . . . should help the Guidelines constructively evolve over time, as both Congress and the Commission foresaw.").

[155] *Id.* at 382-83 (Scalia, J., concurring in part and concurring in the judgment).

V. Available Evidence Shows That the Public Does Not Support the Punishment Levels Recommended by the Guidelines.

There was a suggestion at the hearing that the public supports the punishment recommended by the guidelines. Available evidence indicates that this is not so.

Federal judges in the Midwest polled jurors in twenty-two criminal cases after they had issued a verdict of guilt. The cases involved common federal crimes, including drug trafficking, firearms and child pornography offenses. The jurors represented a fair cross section of the community in Ohio, Iowa and Illinois. After the verdict, the jurors were given a questionnaire with a listing of the defendant's past convictions, and were asked one question: "State what you believe an appropriate sentence is, in months." The median sentence jurors would have imposed was just one-third the sentence required by the bottom of the applicable sentencing range. Of 261 jurors, 229 (88%) recommended a sentence below the low end of the guideline range, and 200 (77%) recommended a sentence below that actually imposed by the judge.[156]

In *United States v. Angelos*, Judge Paul Cassell was required by mandatory firearm sentence enhancements to impose a sentence of 55 years on a marijuana dealer with no previous convictions, a job, and a family. Jurors were asked what they would recommend as a sentence, and the mean juror recommendation was 18 years.[157] In a case before Judge Jack Weinstein, where the five-year mandatory minimum for receipt of child pornography applied, most of the jurors believed that this particular defendant should receive treatment and not be imprisoned at all, and three jurors would have acquitted had they known of the five-year mandatory minimum.[158]

VI. The Current Standard of Review Is the Same Standard Congress Enacted in the SRA But More "Robust" Than That Standard, and the Evidence Shows That No Change is Justified.

The Commission's summary description of the state of appellate review is that the Supreme Court "has taken some of the 'teeth' from appellate review of federal sentencing decisions."[159] That was the point. Appellate review before *Booker* was designed to substitute the judgment of the Commission and the courts of appeals for that of the district court judge. That is "no longer

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[156] *See* Judge James S. Gwin, *Juror Sentiment on Just Punishment: Do the Federal Sentencing Guidelines Reflect Community Values?*, 4 Harv. L. & Pol'y Rev. 173, 174-76, 185-88 (2010).

[157] *United States v. Angelos*, 345 F. Supp. 2d 1227, 1242 (D. Utah 2004), *aff'd*, 433 F.3d 738 (10th Cir. 2006)

[158] *United States v. Polizzi*, 549 F. Supp. 2d 308, 339-41 (E.D.N.Y. 2008), *rev'd*, 564 F.3d 142 (2d Cir. 2009).

[159] Commission Testimony at 12.

an open choice."[160] Rather than "invalidat[e] the entire Act, including its appellate provisions," the Court adopted the reasonableness standard of review.[161]

Even if the Commission's proposals were constitutional, and they are not, the Commission provides an inaccurate and incomplete account of how the appellate review standard evolved and how it is actually working. This section demonstrates that:

- The current "reasonableness" standard of review originated in the Sentencing Reform Act itself, and is more "robust" than that standard. The "reasonableness" standard enacted by Congress in 1984 was replaced by the courts, and then by Congress itself in 2003, with a standard that required courts of appeals to enforce the guidelines and to substitute their own judgments for that of the district court judge. Those standards are unconstitutional.

- Contrary to the Commission's suggestion that the government can't win under the current standard of review, the data show that the government (1) asks for or agrees with the vast majority of sentences imposed, including at least half of below-range sentences sought by defendants, (2) appeals as many sentences as it did before *Booker*, and (3) has a high success rate on appeal.

- Data of actual appellate decisions show that the courts of appeals have all the tools they need to reverse sentences as procedurally or substantively unreasonable. Further, when sentences are reversed for inadequate explanation, district courts impose a different sentence more than half the time.

- Examples of decisions given by Mr. Miner, in which sentences were reversed as too low, demonstrate that no statutory change is warranted.

- Appellate judges recognize that a standard designed to more strictly enforce the guidelines would be unconstitutional and is not warranted.

- The Commission's account of Supreme Court and appellate decisions regarding "policy disagreements" is not accurate and therefore not helpful.

A. The current standard of review originated in the SRA, is more "robust" than that standard, gives proper deference to the sentencing judge, and is thus constitutional.

The Commission asks Congress to enact a more "robust" standard of review. At the hearing, the Commission Chair suggested that this is needed to bring the sentencing system closer to what Congress envisioned in the SRA. However, a brief history of the current standard

[160] *Booker*, 543 U.S. at 263.

[161] *Id.*

of review demonstrates that the current standard is the same standard Congress enacted in the SRA, but more "robust," while remaining constitutional.

Standard of Review 1984-2003. When Congress enacted the SRA, it intended that appellate review would "preserve the concept that the discretion of a sentencing judge has a proper place in sentencing and should not be displaced by the discretion of an appellate court."[162] Thus, from 1984 to 2003, courts of appeals were directed by statute to determine whether a sentence outside the guideline range "is unreasonable, having regard for the factors to be considered in imposing a sentence, as set forth in [§ 3553(a)]," and "the reasons . . . stated by the district court pursuant to the provisions of section 3553(c)."[163] For a sentence within the guideline range, the court of appeals was to determine only whether it "was imposed as a result of an incorrect application of the sentencing guidelines."[164] The court of appeals was to "give due regard to the opportunity of the district court to judge the credibility of the witnesses," "accept the findings of fact of the district court unless they are clearly erroneous," and "give due deference to the district court's application of the guidelines to the facts."[165]

For the first few years, courts of appeals applied the reasonableness standard with deference to the sentencing judge's determination under § 3553(b) that a ground for departure was not adequately taken into consideration, in kind or degree, in the guidelines, having regard for the factors set forth in § 3553(a) and the reasons stated by the judge. However, in 1992, the Supreme Court held in *Williams v. United States* (over vigorous dissent) that a departure prohibited by the Commission's policy statements was reversible as "an incorrect application of the sentencing guidelines," and that a court of appeals may not uphold such a departure on the basis that it was reasonable.[166] And in 1996, in *Koon v. United States*, the Court adopted, as the sole framework for review of departures, the Commission's policy statements and commentary setting forth its "heartland" departure standard and restricting departures on various grounds.[167] While the Court said that departures were subject to "abuse-of-discretion" review, the district courts' discretion was strictly limited by the Commission's policy statements and commentary,[168] and the courts of appeals reviewed district courts' interpretation of those provisions *de novo*.[169] *Koon* made no mention of the statutory unreasonableness standard.

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[162] S. Rep. No. 98-225 at 150 (1983) (emphasis supplied).

[163] *See* 18 U.S.C. § 3742(c)(3) (2002); 18 U.S.C. § 3742(d)(3) (1984); Pub. L. No. 98-473, § 213(a) (Oct. 12, 1984).

[164] *See* 18 U.S.C. § 3742(c)(2) (2002); 18 U.S.C. § 3742(d)(2) (1984); Pub. L. No. 98-473, § 213(a) (Oct. 12, 1984).

[165] *Ibid.*

[166] *Williams v. United* States, 503 U.S. 193, 200-01 & n.2, 202 (1992).

[167] *Koon v. United States*, 518 U.S. 81, 92-95 (1996).

[168] If a factor was forbidden by the Commission, the court "cannot use it." If a factor was "encouraged," the court could depart but only "if the applicable Guideline does not already take it into account,"

While *Williams* and *Koon* thus encouraged courts of appeals to reverse departures unless clearly permitted by the Commission, regardless of whether the departure was reasonable with regard to § 3553(a), both decisions did make clear that courts of appeals were not to substitute their own judgments for those of sentencing courts as to factual determinations and the limited discretionary judgments left open by the Commission.[170]

Standard of Review 2003-2005. In 2003, Congress, in the mistaken belief that there had been an increase in departures because of *Koon*,[171] enacted a new standard of review for departures. It retained vestiges of the SRA's unreasonableness standard, requiring courts of appeals to determine whether the basis for departure "advance[s] the objectives set forth in § 3553(a)(2)," and whether the sentence "departs to an unreasonable degree" with regard to the factors set forth § 3553(a). But, like *Williams* and *Koon*, the new standard gave the Commission's departure provisions overriding effect by requiring courts of appeals to set aside the sentence if the basis for departure "is not authorized by § 3553(b)." In addition, the courts of appeals were directed to substitute their own judgments for those of sentencing courts, setting aside the sentence if the departure "is not justified by the facts of the case," and applying *de novo* review to the district court's application of the guidelines to the facts with respect to all determinations except whether a departure was unreasonable in degree.[172]

Standard of Review After *Booker*. The Court in *Booker* held that the availability of departures "does not avoid the constitutional issue" because departures were not permitted in every case, were unavailable in most cases, and were limited to specified circumstances.[173] The Court excised § 3553(b) and § 3742(e) in their entirety, and re-instated the reasonableness standard for sentences outside the guideline range as originally enacted in the Sentencing Reform Act of 1984, and made it applicable to all sentences, inside and outside the guideline range.[174]

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explicitly or implicitly. As to "discouraged" factors or "encouraged" factors already taken into account explicitly or implicitly, the court conld depart if the factor was "present to an exceptional degree or in some other way makes the case different from the ordinary case where the factor is present." Departure based on an "unmentioned" factor was permissible only if, after considering the "structure and theory of both the relevant individual guidelines and the Guidelines taken as a whole" -- which were unstated by the Commission -- the factor is "sufficient to take the case out of the Guideline's heartland." *Koon*, 518 U.S. at 95-96.

[169] *See, e.g.*, *United States v. Roberts*, 313 F.3d 1050, 1053 (8th Cir. 2002); *United States v. Bayles*, 310 F.3d 1302, 1314 (10th Cir. 2002); *United States v. Harris*, 293 F.3d 863, 871 (5th Cir. 2002).

[170] *Koon*, 518 U.S. at 97; *Williams*, 503 U.S. at 205.

[171] USSC, *Report to Congress: Downward Departures from the Federal Sentencing Guidelines* 54-60 (2003).

[172] Pub. L. No. 108-21, § 401(d) (Apr. 30, 2003) (amending 18 U.S.C. § 3742(e)).

[173] *Booker*, 543 U.S. at 234-35.

[174] *See Booker*, 543 U.S. at 259 (excising § 3553(b) and § 3742(e)); *id.* at 261-62 (adopting the "pre-2003 text" telling courts of appeals "to determine whether the sentence 'is nnreasonable' with regard to § 3553(a)," and applying it to all sentences "across the board.").

Courts of appeals must review "all sentences—whether inside, just outside, or significantly outside the Guidelines range—under a deferential abuse-of-discretion standard."[175]

There are two components of reasonableness review, procedural and substantive. The court of appeals "must first ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guideline range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain--including an explanation for any deviation from the Guidelines range."[176]

If the sentence "is procedurally sound, the appellate court should then consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard."[177] Under that standard, the court of appeals reviews the fact-dependent legal determination of the district court,[178] based on its consideration of the factors set forth at § 3553(a) and in light of the evidence and arguments presented, that the sentence imposed is "sufficient but not greater than necessary" to serve the statutory purposes of sentencing.[179] If the sentence is within the guideline range, the court of appeals "may, but is not required to, apply a presumption of reasonableness."[180] This rebuttable presumption is "not binding," does not reflect greater deference to the Commission than to a district judge, and has no "independent legal effect."[181] "[I]f the sentence is outside the Guidelines range, the court of appeals may not apply a presumption of unreasonableness. It may consider the extent of the deviation, but must give due deference to the district court's decision that the § 3553(a) factors, on a whole, justify the extent of the variance."[182] The court of appeals may not substitute its own judgment for that of the

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[175] *Gall*, 552 U.S. at 41; *see also id.* at 46, 49, 51 ("appellate review of sentencing decisions is limited to determining whether they are 'reasonable'" under "a deferential abuse-of-discretion standard," "whether inside or outside the Guidelines range."); *Rita*, 552 U.S. at 351 ("appellate 'reasonableness' review merely asks whether the trial court abused its discretion").

[176] *Gall*, 552 U.S. at 51.

[177] *Id.*

[178] *Booker*, 543 U.S. at 260 (citing *Pierce v. Underwood*, 487 U.S. 552, 558-62 (1988) (applying abuse-of-discretion standard when district court resolves "fact-dependent legal" questions involving "multifarious, fleeting, special, narrow facts that utterly resist generalization."); *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 401, 403 (1990) (applying abuse-of-discretion standard when district court applies a "fact-dependent legal standard" regarding issues "rooted in factual determinations.")); *see also Koon v United States*, 518 U.S. 81, 99 (1996) (citing *Pierce* and *Cooter & Gell* with approval).

[179] 18 U.S.C. § 3553(a)(2).

[180] *Id.*

[181] *Rita*, 551 U.S. at 347, 350.

[182] *Gall*, 552 U.S. at 51.

district court.[183] The court of appeals may not apply "heightened review" to sentences outside the guideline range, such as requiring "'proportional' justifications" the greater the variance, or requiring that a circumstance be "extraordinary," "exceptional," or "unique."[184] Nor may a court of appeals apply "closer review" to a district court's determination that a guideline that was not developed based on empirical data and national experience yields a sentence greater or less than necessary to achieve § 3553(a)'s objectives.[185]

Thus, contrary to the Commission's suggestion that the courts of appeals' power has somehow been reduced or is less robust than what Congress envisioned in 1984, it has been expanded as compared to the standard Congress originally enacted. It now includes determining the procedural and substantive unreasonableness of sentences within the guideline range. While the Commission claims that it seeks more "robust" review, what it seeks is greater deference to the guidelines.[186] The Commission's proposals are not only contrary to Supreme Court law, but as set forth below, are unnecessary and counterproductive.

B. The government asks for or agrees with the vast majority of sentences imposed including at least half of below-range sentences sought by the defendant, appeals as many sentences as it did before *Booker*, and has a high success rate on appeal.

The Commission gives the impression that the government can't win on appeal, complaining that "the Government initiates only a small portion of" appeals,[187] and that "some prosecutors" say this is because "there is little meaningful appellate review of sentences."[188]

The evidence is otherwise. In fiscal year 2010, the government raised 156 issues on appeal; thirty of those issues involved § 3553(a), and the government won 60% of the time.[189] When the guidelines were mandatory in 1998, the government raised 122 issues on appeal; 41 of those issues related to departures, and it won 61% of the time. In 1999, the government raised 54 issues on appeal; 25 were related to departures, and it won 33% of the time. In 2003, under

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[183] *Id.*

[184] *Gall*, 552 U.S. at 45-46, 47, 49, 52.

[185] *Kimbrough*, 552 U.S. 109-10; *Spears*, 129 S. Ct. at 843.

[186] The Commission asks Congress to order courts of appeals to presume all guideline sentences to be reasonable, to require proportional justifications for variances from the guidelines, and to apply "heightened review" to a sentencing court's determination that a guideline fails to achieve § 3553(a)'s objectives.

[187] Commission Testimony at 12.

[188] *Id.* at 14.

[189] USSC, 2010 Sourcebook of Federal Sentencing Statistics, tbls.56A, 58.

the PROTECT Act standard, the government raised 173 issues on appeal; 63 related to departures, and it won 73% of the time.[190]

Since *Gall* was decided, the government has won reversal of sentences as "too low" at a far greater rate than defendants have won reversal of a sentence as "too high." While, as the Commission says, "thousands [of sentences] are appealed [by defendants] as being too high,"[191] only 11 have been reversed as unreasonably high since *Gall* was decided. In contrast, "only a small percentage of sentences are challenged [by the government] as being too low,"[192] but 18 of those sentences have been reversed as unreasonably low. *See* Appendix (Appellate Decisions After *Gall*).

The government does not initiate more appeals because it asks for or agrees with the vast majority of sentences imposed. In fiscal year 2010, 56.8% of sentences fell within or above the guideline range, and the government sought and received below-guideline sentences in another 25.4% of cases.[193] The government agreed to or did not oppose more than half of the sentences classified by the Commission as "non-government sponsored below range."[194]

In sum, the government does not appeal more often because it agrees with the vast majority of sentences imposed, and when it appeals, it usually wins.

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[190] *See* USSC, 1998 Sourcebook of Federal Sentencing Statistics, tbl. 56 (5K2.0, 5H1.6, 5H1.4 and 5K2.13 are departure issues); USSC, 1999 Sourcebook of Federal Sentencing Statistics, tbl. 58 (5K2.0, 4A1.3, 5H1.6, and 5H1.12 are departure issues); USSC, 2003 Sourcebook of Federal Sentencing Statistics, tbl. 58 (5K2.0, 4A1.3, 5H1.6, 5K2.13, 5H1.4, 5H1.10, and 5H1.11 are departure issues).

[191] Commission Testimony at 13.

[192] *Id.*

[193] USSC, 2010 Sourcebook of Federal Sentencing Statistics, tbl.N.

[194] First, the government did not object to 46% (3,332 of 7,266) defense motions for a below range sentence classified as "non-government sponsored" in 2010. USSC, 2010 Sourcebook of Federal Sentencing Statistics, tbl.28A. Second, because the statement of reasons form does not provide a checkbox for the court to indicate the government's position regarding reasons not addressed in a plea agreement or motion by a party, there is no information on the government's position in 4,773 such instances, all of which are classified as "non-government sponsored." *Id.* Since defense attorneys generally raise all non-frivolous grounds for below range sentences and judges do not raise meritless grounds *sua sponte*, it is likely that the government did not object to a significant portion of these sentences. Third, in 3,246 cases classified as "non-government sponsored" below range, the Commission did not receive sufficient information to determine the government's position or whether the source was a plea agreement, a motion by a party, or something else. *Id.* Since a large majority of cases for which information was available were government sponsored, it is reasonable to assume that the government sponsored or acquiesced in a large portion of cases where information was not available.

C. The data show that courts of appeals have all the tools they need to reverse sentences as procedurally or substantively unreasonable, and that courts impose a different sentence on remand over half the time when reversed for procedural unreasonableness.

The operation of the current standard further demonstrates it enables the courts of appeals to engage in meaningful review. The Appendix lists the appellate decisions after *Gall* that we have been able to identify in which sentences have been reversed for procedural error based on inadequate explanation or failure to address a party's nonfrivolous arguments for a different sentence, or for substantive unreasonableness as too high or too low. We use *Gall* as the starting date because that decision clarified that the courts of appeals may not enforce the guidelines by applying heightened standards of review to non-guideline sentences, and described procedural and substantive review in detail.

Procedural Unreasonableness. Nearly fifty sentences outside the guideline range (above or below) and over sixty sentences within the guideline range have been reversed as procedurally unreasonable where the judge failed to adequately explain the sentence in light of the purposes and factors set forth in § 3553(a) and/or the evidence and arguments presented by the parties. The Commission states that two appellate judges thought that reversal based on procedural error is a "waste of time" because the district court would impose the same sentence on remand.[195] This perception is not accurate. Reversal for failure to adequately explain the sentence, to address a party's nonfrivolous argument for a different sentence, or explain why that argument was rejected leads to a different sentence on remand more than half the time.[196]

Substantive Unreasonableness. Courts of appeals have reversed eighteen sentences as unreasonably low, and eleven sentences as unreasonably high. Only four sentences within the guideline range have been reversed as unreasonably high, one from a circuit that has adopted a rebuttable presumption of reasonableness, and three from circuits that have not. Two of those decisions, *United States v. Dorvee*, 616 F.3d 174 (2d Cir. 2010), and *United States v. Amezcua-Vasquez*, 567 F.3d 1050 (9th Cir. 2009), have contributed information to the Commission regarding problematic guidelines, and the Commission specifically relied on *Amezcua-Vasquez* in amending § 2L1.2. Congress expected that the "case law that is developed from . . . appeals" would be "used" by the Commission "to further refine the guidelines."[197] Echoing Congress, the Supreme Court encouraged the Commission to "modify its Guidelines in light of what it learns" from "appellate court decision-making."[198] The Commission's criticism of these decisions is puzzling.[199]

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[195] Commission Testimony at 16.

[196] *See* Jennifer Niles Coffin, *Where Procedure Meets Substance: Making the Most of the Need for Adequate Explanation* (Oct. 2011), http://www.fd.org/pdf_lib/Procedure_Substance.pdf.

[197] S. Rep. No. 98-225, at 52 (1983).

[198] *Booker*, 543 U.S. at 263.

[199] Commission Testimony at 13, 15-16.

D. Examples given in support of the claim that change is needed support the opposite conclusion.

Mr. Miner has cited two decisions, both of which were reversed as too low, as examples of a need for change in the appellate standard. But those decisions demonstrate that appeals courts have all the tools they need to reverse sentences as too low or too high.

In *United States v. Christman*, the defendant was first sentenced to a 57-month guideline sentence. That sentence was reversed because the judge properly informed the parties, after sentencing and while the appeal was pending, that she had imposed a higher sentence than she otherwise would have because she improperly considered a probation officer's "feelings" about Mr. Christman, feelings that were unsubstantiated by evidence, relayed to her off the record, and contrary to all evidence in the record.[200] In vacating the sentence, the court of appeals invited the judge to reconsider Mr. Christman's arguments for a lower sentence.[201] By the time Mr. Christman was re-sentenced, he had been on supervised release and electronic monitoring for over four years without incident. He was also the sole caretaker for his very ill, elderly mother.[202] The judge imposed a prison sentence of five days. The court of appeals then reversed the five-day sentence as unreasonably low.[203] Mr. Christman now awaits re-sentencing by a different judge.

In the case involving the sentence of Jose Padilla, the guideline range was 360 months to life. The judge imposed a sentence of 208 months, based on the conditions of his pre-trial confinement (uncontested evidence he was held for four years in isolation and subjected to cruel and inhumane treatment), his low risk of recidivism due to his age upon release (mid-fifties when the risk of recidivism is low), and comparable sentences imposed in other terrorist cases (imposing a harsher sentence than less serious terrorism offenders had received but a less severe sentence than more serious terrorist offenders had received). The court of appeals reversed, concluding that the judge had attached too little weight to Padilla's criminal history, gave no weight to his future dangerousness due to his al-Qaeda training, compared him to others who were not similarly situated, and gave too much weight to the conditions of his pre-trial confinement.[204]

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[200] *United States v. Christman*, 509 F.3d 299, 311 (6th Cir. 2007).

[201] *Id.*

[202] *United States v. Christman*, No. 1:04-cr-00127 (S.D. Ohio). Documents and transcripts available on PACER.

[203] *United States v. Christman*, 607 F.3d 1110 (6th Cir. 2010).

[204] *United States v. Jayyousi [Padilla]*, __ F.3d __, 2011 WL 4346322, *28-30 (11th Cir. Sept. 19, 2011); *id.* at **41-46 (Barkett, J., dissenting in part).

Mr. Miner's complaint appears to be that one judge on the panel dissented, suggesting a need for a more "well-defined standard of appellate review."[205] Three-judge panels resolve close cases like this one, and a 2-1 decision resolves them no less than a 3-0 decision. Appellate decisions are not always unanimous, and many appellate decisions, regarding both guideline interpretations and departures, were not unanimous when the guidelines were mandatory. This hardly supports a change in the standard of review.

E. Contrary to the Commission's suggestion, appellate judges do not support a standard of review to more strictly enforce the guidelines.

The Commission says that some appellate judges who testified at its regional hearings expressed concern about a lack of clarity regarding the standard for reviewing a sentence for substantive unreasonableness, and that two appellate judges expressed concern about deference to district courts.[206] But the appellate judges did not describe a problem they were unable to correct, recognized that the current standard is necessary if the guidelines are to remain constitutional, did not support statutory change when pressed, recognized that sentencing judges most often get it right, and urged the Commission to better explain and justify its guidelines.

The appellate judges recognized that if the guidelines are advisory—as the Supreme Court has said they must be—appellate review must be truly deferential.[207] Several expressed

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[205] Testimony of Matthew S. Miner, Esq., U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, Hearing on Uncertain Justice: The Status of Federal Sentencing and the U.S. Sentencing Commission Six Years After U.S. v. Booker, at 9 (Oct. 12, 2011).

[206] Commission Testimony at 15.

[207] Tr. of Hearing Before the U.S. Sent'g Comm'n, New York, N.Y., at 65 (July 9, 2009) (Judge Fisher) ("[W]here a district court adheres to the correct processes for imposing a sentence and fully explains its reasoning, it is unlikely that the resulting sentences will be found substantively unreasonable."); *id.* at 35-36 (Judge Kavanaugh) ("[T]he guidelines are advisory, and therefore the appellate role with respect to substantive review is going to be very, very limited.); *id.* at 50-53 (Judge Howard) (explaining that even when he disagreed with a below-guideline sentence after *Booker*, where the district court provided an explanation for the sentence, "it was very hard for us to say that a reasonable person could not accept that explanation"); Tr. of Hearing Before the U.S. Sent'g Comm'n, Denver, Colo., at 27 (Oct. 20, 2009) (Judge Hartz) ("[N]ow that appellate courts review the length of the sentences only for substantive reasonableness, appellate review will rarely result in setting aside the sentence below."); *id.* 40 (Judge Tacha) ("[N]ow on appellate review, what we're really looking at is did the district judge look at the 3553(a) factors. . . . [I]t pretty much boils down to did they look at 3553(a) and do it right."); Tr. of Hearing Before the U.S. Sent'g Comm'n, Stanford, Calif., at 54-55 (May 27, 2009) (Judge Tallman) ("I think it's very difficult for the court of appeals to declare it substantively unreasonable."); Tr. of Hearing Before the U.S. Sent'g Comm'n, Chicago, Ill., at 211 (Sept. 9, 2009) (Judge Sutton) ("We're essentially engaged in abuse-of-discretion review. We can't treat it as a math problem, *Gall* reminds us."); *id.* at 213 (Judge Boggs) ("We're starting over again with something of a mandate for leniency, . . . [and] judges are trying to conscientiously apply this reasonableness standard that the Supreme Court has given us."); Tr. of Hearing Before the U.S. Sent'g Comm'u, Austin, Tex., at 227 (Nov. 20, 2009) (Judge Benavides) ("[T]here's got to be room for discretion.").

great respect for district judges, recognizing that they *should* have the discretion now afforded them because they take their sentencing responsibility very seriously and most often get it right.[208] Judge Jones, cited by the Commission as one expressing concern about lack of clarity,[209] stated that "the basic responsibility in sentencing is with the district judge" and emphasized that it is the district judge who "sees the defendant, . . . see[s] the family, . . . [the] body language, all sorts of background events about the defendant that people on an appellate court simply can't. So there's no question in my mind that the sentencing judge is the ultimate repository of power here."[210]

Appellate judges who were asked if there was a need for statutory reform said that there was no such need,[211] even when pressed to agree that a stricter standard is needed because district courts may now disagree with the guidelines.[212] Others, rather than agreeing that a stricter standard should be imposed, urged the Commission to provide justifications for its guidelines, both to assist district judges in determining whether or not to follow them and to assist the courts of appeals in reviewing sentences.[213] Others urged the Commission to provide

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[208] Tr. of Hearing Before the U.S. Sent'g Comm'n, Chicago, Ill., at 211, 237 (Sept. 9, 2009) (Judge Sutton) (emphasizing that "it's very difficult to draw distinctions between and among defendants, particularly when we're not the ones who eye-balled the defendant. We're not the ones who were at the hearing. We're not the ones who heard the allocution. We're not the ones that heard any other evidence" and "most judges in our circuit [are] paying a lot of attention to the guideline recommendations and when they're not following them, they're thinking pretty hard about it"); Tr. of Hearing Before the U.S. Sent'g Comm'n, Austin, Tex., at 226, 240 (Nov. 20, 2009) (Judge Benavides) ("I think it's a healthy thing to give discretion to the district courts because they are judges . . . . [Y]ou've got the best of both worlds."); Tr. of Hearing Before the U.S. Sent'g Comm'n, Denver, Colo., at 55 (Oct. 20, 2009) (Judge Tacha) (expressing confidence that judges conscientiously exercise their discretion); Tr. of Hearing Before the U.S. Sent'g Comm'n, Austin, Tex., at 230 (Nov. 20, 2009) (Judge Jones) ("[T]he basic responsibility in sentencing is with the district judge."); Tr. of Hearing Before the U.S. Sent'g Comm'n, New York, N.Y., at 53 (July 9, 2009) (Judge Howard) ("I have had a chance to review a lot of sentences, even since *Gall*, and we can understand what the district court is thinking.").

[209] Tr. of Hearing Before the U.S. Sent'g Comm'n, Austin, Tex., at 249 (Nov. 20, 2009) (Judge Jones) ("[I]t is very difficult to find a principle[d] basis, after *Gall* and *Kimbrough*, for saying that a sentence is unreasonable.").

[210] Tr. of Hearing Before the U.S. Sent'g Comm'n, Austin, Tex., at 230 (Nov. 20, 2009) (Judge Jones).

[211] Tr. of Hearing Before the U.S. Sent'g Comm'n, Chicago, Ill., at 214 (Sept. 9, 2009) (Judge Boggs); Tr. of Hearing Before the U.S. Sent'g Comm'n, Denver, Colo., at 54, 55 (Oct. 20, 2009) (Judge Tacha).

[212] Tr. of Hearing Before the U.S. Sent'g Comm'n, Denver, Colo., at 55 (Oct. 20, 2009) (Judge Tacha).

[213] Tr. of Hearing Before the U.S. Sent'g Comm'n, Atlanta, Ga., at 24-25 (Feb. 10, 2009) (Judge Tjoflat) ("[T]he Commission ought to tell judges, out to tell the world when they set the norm, here is why we are setting the norm and tie the setting to one of the sentencing factors in 3553(a)."); Tr. of Hearing Before the U.S. Sent'g Comm'n, Denver, Colo., at 27 (Oct. 20, 2009) (Judge Hartz) ("What I would recommend for consideration is an expansion of the guidelines manual to include additional commentary providing the rationale for various provisions. . . . [N]ow that the guidelines are only advisory, they must not only be understandable, but also persuasive.").

better data regarding the rates of, and reasons for, variances in certain cases.[214] Judge Sutton emphasized that, while it would be helpful to have more detailed statistics from the Commission, the current system "as a matter of policy seems to be a positive one in many respects," particularly its recognition of "individualized sentencing."[215] Others supported the most deferential review possible and recommended against detailed appellate involvement.[216] Judge Loken made several recommendations to *reduce* the appellate courts' involvement in sentencing appeals, not to provide stricter review authority.[217]

A number of appellate judges, now two years ago, may still have been unsure how to apply substantive reasonableness review.[218] It should not be surprising that it would take some time to adjust to the reasonableness standard, after enforcing the guidelines for many years and substituting their own judgment for at least two years. Those standards were deemed unconstitutional in *Booker*.[219] As such, even the lone appellate judge who clearly wished for greater power to reverse sentences acknowledged that his wish was unconstitutional.[220]

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[214] Tr. of Hearing Before the U.S. Sent'g Comm'n, Chicago, Ill., at 210, 233-34 (Sept. 9, 2009) (Judge Sutton) (suggesting that the Commission might provide statistics showing that there are a large number of significant downward variances for certain offenses, which "would give appellate judges more comfort in continuing to affirm them or primarily affirming them," and suggesting that appellate judges could use that information to "justify significant variances"); Tr. of Hearing Before the U.S. Sent'g Comm'n, Austin, Tex., at 220 (Nov. 20, 2009) (Judge Jones) (suggesting that the Commission could go "into deeper analysis when variances occur" or categorize and explain the "underlying factors that cause an enhancement or a downward departure or variance").

[215] Tr. of Hearing Before the U.S. Sent'g Comm'n, Chicago, Ill., at 235 (Sept. 9, 2009) (Judge Sutton).

[216] Tr. of Hearing Before the U.S. Sent'g Comm'n, Atlanta, Ga., at 19-20 (Feb. 10, 2009) (Judge Shedd) (stating that he would prefer "the *most deferential* standard of review" possible, even no review at all). Judge Loken said that the mandatory guidelines had resulted in a "great deal of appellate work for a very modest benefit," had hoped that this would end with advisory guidelines, and was sorry that it hadn't. Tr. of Hearing Before the U.S. Sent'g Comm'n, Denver, Colo., at 34 (Oct. 20, 2009).

[217] *Id.* at 37-38, 47.

[218] Tr. of Hearing Before the U.S. Sent'g Comm'n, Stanford, Calif., at 46 (May 27, 2009) (Judge Kozinski); Tr. of Hearing Before the U.S. Sent'g Comm'n, Chicago, Ill., at 208-210 (Sept. 9, 2009) (Judge Sutton); *id.* at 214 (Judge Boggs); *id.* at 237 (Judge Easterbrook); Tr. of Hearing Before the U.S. Sent'g Comm'n, Denver, Colo., at 53 (Oct. 20, 2009) (Judge Tacha); Tr. of Hearing Before the U.S. Sent'g Comm'n, Austin, Tex., at 219 (Nov. 20, 2009) (Judge Jones).

[219] *United States v. Booker*, 543 U.S. 220, 234-35, 245, 259 (2005) (excising § 3553(b) and § 3742(e)).

[220] Tr. of Hearing Before the U.S. Sent'g Comm'n , Stanford, Calif., at 46 (May 27, 2009) (Judge Kozinski) ("Any sort of attempt to try to deduct a good formula, that's exactly the sort of thing we're not supposed to do on the book, and just provide some hard constraints, because at that point those things become mandatory and they become [un]constitutional."); *id.* at 78 ("If the Sentencing Commission can't solve the problem, Congress can't solve the problem either because the problem then winds up being

In any event, the courts of appeals have now found their bearings. For example, Judge Tjoflat wondered at the regional hearing "how [] you cabin the district court,"[221] but the Eleventh Circuit has now vacated thirteen sentences as substantively or procedurally unreasonable, including the sentence of Jose Padilla.[222] Similarly, Judges Sutton and Boggs expressed some "concern" that the reasonableness standard does not provide enough guidance,[223] but the Sixth Circuit has now vacated thirty-one sentences as substantively or procedurally unreasonable, including the sentence of Richard Christman.[224]

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unconstitutional."); *see also* Tr. of Hearing Before the U.S. Sent'g Comm'n , Chicago, Ill., at 237 (Sept. 9, 2009) (Judge Easterbrook) ("I wonder whether after *Booker* it's feasible.").

[221] Tr. of Hearing Before the Sent'g Comm'n, Atlanta, Ga., at 31 (Feb. 10, 2009).

[222] *United States v. Jayyousi [Padilla]*, __ F.3d ___, 2011 WL 4346322 (11th Cir. Sept. 19, 2011); *United States v. Luster*, 388 Fed. App'x 936 (11th Cir. 2010); *United States v. Kirschner*, 397 Fed. App'x 514 (11th Cir. 2010); *United States v. Mattox*, 402 Fed. App'x 507 (11th Cir. 2010); *United States v. Lopez*, 343 Fed. App'x 484 (11th Cir. 2009); *United States v. Irey*, 612 F3d 1160 (11th Cir. 2010); *United States v. Livesay*, 587 F.3d 1274 (11th Cir. 2009); *United States v. McVay*, 294 Fed. App'x 488 (11th Cir. 2008); *United States v. Pugh*, 515 F.3d 1179 (11th Cir. 2008); *United States v. Narvaez*, 285 Fed. App'x 720 (11th Cir. 2008); *United States v. [Julio] Magana*, 279 Fed. App'x 756 (11th Cir. 2008); *United States v. Livesay*, 525 F.3d 1081 (11th Cir. 2008); *United States v. Prather*, 279 Fed. App'x 761 (11th Cir. 2008).

[223] Tr. of Hearing Before the U.S. Sent'g Comm'n, Chicago, Ill., at 205-11, 214 (Sept. 9, 2009).

[224] *United States v. Wright*, 426 Fed. App'x 412 (6th Cir. 2011); *United States v. Davy*, 2011 WL 2711045 (6th Cir. July 12, 2011); *United States v. Taylor*, 648 F.3d 417 (6th Cir. 2011); *United States v. Pizzino*, 419 Fed. App'x 579 (6th Cir. 2011); *United States v. Goff*, 400 Fed App'x 1 (6th Cir. 2010); *United States v. Wallace*, 597 F.3d 794 (6th Cir. 2010); *United States v. Rhodes*, 410 Fed. App'x 856 (6th Cir. 2010); *United States v. Temple*, 404 Fed. App'x 15 (6th Cir. 2010); *United States v. Pritchard*, 392 Fed. App'x 433 (6th Cir. 2010); *United States v. Ross*, 375 Fed. App'x 502 (6th Cir. 2010); *United States v. Worex*, 420 Fed. App'x 546 (6th Cir. 2011); *United States v. Camiscione*, 591 F.3d 823 (6th Cir. 2010); *United States v. Christman*, 607 F.3d 1110 (6th Cir. 2010); *United States v. Fenderson*, 354 Fed. App'x 236 (6th Cir. 2009); *United States v. Howell*, 352 Fed. App'x 55 (6th Cir. 2009); *United States v. Delgadillo*, 318 Fed. App'x 380 (6th Cir. 2009); *United States v. Robertson*, 309 Fed. App'x 918 (6th Cir. 2009); *United States v. Recla*, 560 F.3d 539 (6th Cir. 2009); *United States v. Penson*, 526 F.3d 331 (6th Cir. 2008); *United States v. Stephens*, 549 F.3d 459 (6th Cir. 2008); *United States v. Peters*, 512 F.3d 787 (6th Cir. 2008); *United States v. Ortega-Rogel*, 281 Fed. App'x 471 (6th Cir. 2008); *United States v. Harris*, 339 Fed. App'x 533 (6th Cir. 2009); *United States v. Hunt*, 521 F.3d 636, 650 (6th Cir. 2008); *United States v. Hughes*, 283 Fed. App'x 345 (6th Cir. 2008); *United States v. Barahona-Montenegro*, 565 F.3d 980 (6th Cir. 2009); *United States v. Grams*, 566 F.3d 683 (6th Cir. 2009); *United States v. Gapinksi*, 561 F.3d 467 (6th Cir. 2009); *United States v. Blackie*, 548 F.3d 395 (6th Cir. 2008); *United States v. Harris*, 339 Fed. App'x 533 (6th Cir. 2009); *United States v. Henry*, 545 F.3d 367 (6th Cir. 2008).

F. The Commission's account of Supreme Court and appellate decisions regarding "policy disagreements" is not accurate.

The Commission has accurately described the Supreme Court's decisions regarding "policy disagreements" elsewhere,[225] but paints a misleading picture of those decisions here. Without citing any decision, because there is none, the Commission states that "the Court has increasingly encouraged the lower courts to examine federal sentencing guidelines developed as a result of 'congressional directives,'" and that the "Court suggests this 'policy disagreement' analysis is appropriate because guidelines that result from congressional directive, particularly specific directives, 'do not exemplify the Commission's exercise of its characteristic institutional role.'"[226]

The Court has said no such thing. The point of these decisions is that a sentencing judge may vary from a guideline because the guideline itself, apart from case specific facts, fails to satisfy § 3553(a)'s objectives. *See Kimbrough v. United States*, 552 U.S. 85 (2007); *Spears v. United States*, 129 S. Ct. 840 (2009); *see also Rita v. United States*, 551 U.S. 338, 351, 357 (2007). The Court read the plain language of the statutes Congress enacted and concluded that Congress did not require the courts, or the Commission, to comply with the 100:1 powder to crack ratio except at the mandatory minimum penalty levels.[227] The Court also recognized that the Commission's "characteristic institutional role" was to "base its determinations on empirical data and national experience,"[228] just as the SRA says. The Court relied heavily on the Commission's own reports to conclude that the Commission had not acted in that role when it incorporated the 100:1 ratio into the guidelines. The Court held that when a sentencing court concludes that a guideline itself fails to achieve § 3553(a)'s purposes, that decision is subject to abuse-of-discretion review, and that the court's conclusion that the crack guideline failed to achieve those purposes was not an abuse of discretion.[229]

Senators Kennedy, Hatch and Feinstein specifically encouraged the Court to adopt this type of variance in an *amicus* brief they filed in *United States v. Claiborne*, a case later replaced by *Kimbrough*.[230] They said that the crack-powder disparity is "completely contrary to the goals of the Sentencing Reform Act, and § 3553(a) enables courts to consider this impact as they develop principled rules on sentencing."[231] They urged reversal of the variance in Claiborne's

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[225] *See* U.S. Sentencing Commission, Selected Supreme Court Cases on Sentencing Issues, at 10-11, 20-21 (July 2011), http://www.ussc.gov/Legal/Court_Decisions/Supreme_Court_Cases.pdf.

[226] Commission Testimony at 17.

[227] *Kimbrough*, 552 U.S. at 102-05.

[228] *Id.*

[229] *Id.* at 109-10; *see also Spears*, 129 S. Ct. at 843 (such a variance "is not suspect").

[230] *Claiborne* was dismissed as moot when Mario Claiborne died, and was replaced with *Kimbrough*.

[231] Brief of *Amici Curiae* Senators Edward M. Kennedy, Orrin G. Hatch, and Dianne Feinstein in Support of Affirmance at 30, *Claiborne v. United States* (No. 06-5618), Jan. 22, 2007.

case in part because the judge did *not* cite the crack-powder disparity, though defense counsel raised it.[232] They emphasized that "Congress intended the Commission to establish sentencing policies based on objective data and sound public policy, not prejudice or politics, and courts should respect that institutional role,"[233] but they recognized that "the guidelines do not always reflect objective data or good policy," as the Commission's own findings regarding the crack guidelines demonstrated.[234] The Senators urged the Court to require district courts to "articulate reasons for a sentence that not only are applicable to the particular facts before them, but that also cite or establish principles of general applicability."[235] Articulation of broader principles "promotes transparency," "facilitates the work of the Commission [in] refin[ing] the guidelines," and provides principles "that can be followed or distinguished by other district courts in other cases."[236]

The Commission also inaccurately describes the appellate case law. It states, for example, that the argument has been made "that a guideline is not an appropriate benchmark or starting point if the guideline is based on a congressional directive rather than on the Commission's review of empirical data or national experience," citing *United States v. Mondragon-Santiago*, 564 F.3d 357 (5th Cir. 2009), and that the Fifth Circuit held "that any lack of empirical basis underlying the illegal reentry guideline renders the sentence substantively unreasonable."[237] The guideline involved in that case was the illegal re-entry guideline, a guideline that is not based on a congressional directive. The defendant did not argue that the guideline should not be the starting point and initial benchmark, which would be contrary to clear Supreme Court law,[238] but that the circuit's presumption of reasonableness should not apply because the Commission added a 16-level enhancement to this guideline without any study or empirical basis.[239] In response, the Fifth Circuit said that "district courts certainly may disagree

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[232] *Id.* at 27-28.

[233] *Id.* at 4.

[234] *Id.* at 21.

[235] *Id.* at 23 & n.5 (disagreeing with *United States v. Pho*, 433 F.3d 53 (1st Cir. 2006)).

[236] *Id.* at 23.

[237] Commission Testimony at 17 & n.115.

[238] *See Kimbrough*, 552 U.S. at 109 ("district courts must treat the Guidelines as the 'starting point and the initial benchmark'"); *Gall*, 552 U.S. at 49 (same).

[239] *See* Robert J. McWhirter & Jon M. Sands, *A Defense Perspective on Sentencing in Aggravated Felon Re-entry Cases*, 8 Fed. Sent'g Rep. 275 (1996) ("The Commission did no study to determine if such sentences were necessary--or desirable from any penal theory. Indeed, no research supports such a drastic upheaval. No Commission studies recommended such a high level, nor did any other known grounds warrant it. Commissioner Michael Gelacak suggested the 16-level increase and the Commission passed it with relatively little discussion."); U.S. Sent'g Comm'n, Minutes of Meeting (Apr. 2, 1991).

with the Guidelines for policy reasons and may adjust a sentence accordingly," but that it would "not second-guess" the district court's decision not to do so.[240]

The Commission further asserts that the courts of appeals "are divided on the question whether guidelines promulgated in response to a congressional directive are entitled to less deference than guidelines promulgated pursuant to the Commission's 'characteristic institutional role.'"[241] This is not correct. Every guideline, whether based on a congressional directive or not, must be calculated correctly and treated as the starting point and the initial benchmark. There is no circuit split over whether any guideline is due less "deference" if it is based on a congressional directive. There is one (and only one) circuit split, and it concerns whether judges may vary from the illegal re-entry guideline to correct the disparity created by the existence of fast-track programs in some jurisdictions, but not others,[242] a disparity identified by the Commission itself.[243] Like any other circuit split, this one will likely be resolved by the Supreme Court in due course.

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[240] 564 F.3d at 367.

[241] Commission Testimony at 18.

[242] Six circuits permit such a variance. *United States v. Reyes-Hernandez*, 624 F.3d 405 (7th Cir. 2010); *United States v. Camacho-Arellano*, 614 F.3d 244 (6th Cir. 2010); *United States v. Arrelucea-Zamudio*, 581 F.3d 142 (3d Cir. 2009); *United States v. Rodriguez*, 527 F.3d 221, 228 (1st Cir. 2008); *United States v. Seval*, slip op., 2008 WL 4376826 (2d Cir. Sept. 25, 2008); *see also United States v. Hernandez-Lopez*, 2009 WL 921121, *5 (10th Cir. Apr. 7, 2009) (noting without discussion district court's statement that it had previously granted variances based on the disparity between sentences in fast track and other districts). Three do not. *See United States v. Gonzalez-Zotelo*, 556 F.3d 736, 740 (9th Cir. 2009); *United States v. Vega-Castillo*, 540 F.3d 1235, 1239 (11th Cir. 2009); *United States v. Gomez-Herrera*, 523 F.3d 554, 563 (5th Cir. 2008). Eleventh Circuit Judge Carnes concurred separately in the denial of rehearing in *Vega-Castillo* to say that the issue is "potentially meritorious," and that he may vote for reconsideration in a case "where there is no apparent reason why the defendant would not have been offered the benefits of an early disposition program if he had been in a district with that kind of program."

[243] USSC, *Report to the Congress: Downward Departures from the Federal Sentencing Guidelines* 66-67 (2003).

APPENDIX: APPELLATE DECISIONS AFTER *GALL*

Sentences within the guideline range reversed as substantively unreasonable

United States v. Dorvee, 616 F.3d 174 (2d Cir. 2010)
United States v. Amezcua-Vasquez, 567 F.3d 1050 (9th Cir. 2009)
United States v. Paul, 561 F.3d 970 (9th Cir. 2009)
United States v. Wright, 426 Fed. App'x 412 (6th Cir. 2011)

Sentences within the guideline range reversed for procedural error where court failed to adequately explain sentence or to address non-frivolous argument or explain reason for rejecting such an argument

United States v. Tutty, 612 F.3d 128 (2d Cir. 2010)
United States v. Hernandez, 604 F.3d 48 (2d Cir. 2010)
United States v. Johnson, 273 Fed. App'x 95 (2d Cir. 2008)
United States v. Friedman, __ F.3d __, 2011 WL 4470674 (3d Cir. Sept. 28, 2011)
United States v. Byrd, 415 Fed. App'x 437 (3d Cir. 2011)
United States v. Carver, 347 Fed. App'x 830 (3d Cir. 2009)
United States v. Sevilla, 541 F.3d 226 (3d Cir. 2008)
United States v. Medel-Moran, 422 Fed. App'x 262 (4th Cir. 2011)
United States v. Gonzalez-Villatoro, 417 Fed. App'x 297 (4th Cir. 2011)
United States v. Leech, 409 Fed. App'x 633 (4th Cir. 2011)
United States v. Taylor, 371 Fed. App'x 375 (4th Cir. 2010)
United States v. Walker, 403 Fed. App'x 803 (4th Cir. 2010)
United States v. Martinez-Martinez, 378 Fed. App'x 302 (4th Cir. 2010)
United States v. Jackson, 397 Fed. App'x 924 (4th Cir. 2010)
United States v. Hardee, 396 Fed. App'x 17 (4th Cir. 2010)
United States v. Ricketts, 395 Fed. App'x 69 (4th Cir. 2010)
United States v. Cornette, 396 Fed. App'x 8 (4th Cir. 2010)
United States v. Black, 389 Fed. App'x 256 (4th Cir. 2010)
United States v. Lynn, 592 F.3d 572, 581 (4th Cir. 2010)
United States v. Pacheco Mayen, 383 Fed. App'x 352 (4th Cir. 2010)
United States v. Clark, 383 Fed. App'x 310 (4th Cir. 2010)
United States v. Olislager, 383 Fed. App'x 314 (4th Cir. 2010)
United States v. Murphy, 380 Fed. App'x 344 (4th Cir. 2010)
United States v. Dury, 336 Fed. App'x 371 (4th Cir. 2009)
United States v. Shambry, 343 Fed. App'x 941 (4th Cir. 2009)
United States v. Harris, 337 Fed. App'x 371 (4th Cir. 2009)
United States v. Sanders, 340 Fed. App'x 162 (4th Cir. 2009)
United States v. Tisdale, 264 Fed. App'x 403 (5th Cir. 2008)
United States v. Davy, 2011 WL 2711045 (6th Cir. July 12, 2011)
United States v. Taylor, 648 F.3d 417 (6th Cir. 2011)
United States v. Pizzino, 419 Fed. App'x 579 (6th Cir. 2011)
United States v. Goff, 400 Fed App'x 1 (6th Cir. 2010)
United States v. Wallace, 597 F.3d 794 (6th Cir. 2010)

United States v. Rhodes, 410 Fed. App'x 856 (6th Cir. 2010)
United States v. Temple, 404 Fed. App'x 15 (6th Cir. 2010)
United States v. Pritchard, 392 Fed. App'x 433 (6th Cir. 2010)
United States v. Ross, 375 Fed. App'x 502 (6th Cir. 2010)
United States v. Fenderson, 354 Fed. App'x 236 (6th Cir. 2009)
United States v. Howell, 352 Fed. App'x 55 (6th Cir. 2009)
United States v. Delgadillo, 318 Fed. App'x 380 (6th Cir. 2009)
United States v. Robertson, 309 Fed. App'x 918 (6th Cir. 2009)
United States v. Recla, 560 F.3d 539 (6th Cir. 2009)
United States v. Penson, 526 F.3d 331 (6th Cir. 2008)
United States v. Stephens, 549 F.3d 459 (6th Cir. 2008)
United States v. Peters, 512 F.3d 787 (6th Cir. 2008)
United States v. Garcia-Oliveros, 639 F.3d 380 (7th Cir. 2011)
United States v. Johnson, 635 F.3d 983 (7th Cir. 2011)
United States v. Figueroa, 622 F.3d 739 (7th Cir. 2010)
United States v. Panice, 598 F.3d 426 (7th Cir. 2010)
United States v. Harris, 567 F.3d 846 (7th Cir. 2009)
United States v. Steward, 339 Fed. App'x 650 (7th Cir. 2009)
United States v. [Clinton] Williams, 553 F.3d 1073 (7th Cir. 2009)
United States v. Villegas-Miranda, 579 F.3d 798 (7th Cir. 2009)
United States v. Jackson, 546 F.3d 465 (7th Cir. 2008)
United States v. Skinner, 303 Fed. App'x 369 (7th Cir. 2008)
United States v. Mota, 2011 WL 2003433 (9th Cir. May 24, 2011)
Untied States v. Ferguson, 412 Fed. App'x 974 (9th Cir. 2011)
United States v. Waknine, 543 F.3d 546 (9th Cir. 2008)
United States v. Santillanes, 274 Fed. App'x 718 (10th Cir. 2008)
United States v. Cerno, 529 F.3d 926 (10th Cir. 2008)
United States v. Luster, 388 Fed. App'x 936 (11th Cir. 2010)
United States v. Narvaez, 285 Fed. App'x 720 (11th Cir. 2008)
United States v. Hall, 610 F.3d 727 (D.C. Cir. 2010)

Sentences outside the guideline range reversed as substantively unreasonable – Defendant's appeal

United States v. Ofray-Campos, 534 F.3d 1 (1st Cir. 2008) (above)
United States v. Olhovsky, 562 F.3d 530 (3d Cir. 2009) (below)
United States v. Calderon-Minchola, 351 Fed. App'x 610 (3d Cir. 2009) (below)
United States v. Worex, 420 Fed. App'x 546 (6th Cir. 2011) (above)
United States v. Ortega-Rogel, 281 Fed. App'x 471 (6th Cir. 2008) (above)
United States v. Miller, 601 F.3d 734 (7th Cir. 2010) (above)
United States v. Lopez, 343 Fed. App'x 484 (11th Cir. 2009) (above)

Sentences outside the guideline range reversed as substantively unreasonable – Government's appeal (all below)

United States v. Cutler, 520 F.3d 136 (2d Cir. 2008)

United States v. Hayes, 383 Fed. App'x 204 (3d Cir. 2010)
United States v. Lychock, 578 F.3d 214 (3d Cir. 2009)
United States v. Engle, 592 F.3d 495 (4th Cir. 2010)
United States v. Abu Ali, 528 F.3d 210 (4th Cir. 2008)
United States v. Camiscione, 591 F.3d 823 (6th Cir. 2010)
United States v. Christman, 607 F.3d 1110 (6th Cir. 2010)
United States v. Harris, 339 Fed. App'x 533 (6th Cir. 2009)
United States v. Hunt, 521 F.3d 636, 650 (6th Cir. 2008)
United States v. Hughes, 283 Fed. App'x 345 (6th Cir. 2008)
United States v. [Davis] Omole, 523 F.3d 691 (7th Cir. 2008)
United States v. Kane, 639 F.3d 1121 (8th Cir. 2011)
United States v. Friedman, 554 F.3d 1301 (10th Cir. 2009)
United States v. Jayyousi [Padilla], __ F.3d ___, 2011 WL 4346322 (11th Cir. Sept. 19, 2011)
United States v. Irey, 612 F3d 1160 (11th Cir. 2010)
United States v. Livesay, 587 F.3d 1274 (11th Cir. 2009)
United States v. McVay, 294 Fed. App'x 488 (11th Cir. 2008)
United States v. Pugh, 515 F.3d 1179 (11th Cir. 2008)

Sentences outside the guideline range reversed for procedural error where court failed to adequately explain sentence or to address non-frivolous argnment or explain reason for rejecting such an argnment –
Defendant's appeal

United States v. Persico, 293 Fed. App'x 24 (2d Cir. 2008) (above)
United States v. Brown, 2011 WL 2036345 (May 25, 2011) (below)
United States v. Brown, 595 F.3d 498 (3rd Cir. 2010) (below)
United States v. Brown, 578 F.3d 221 (3rd Cir. 2009) (above)
United States v. Grant, 323 Fed. App'x 189 (3d Cir. 2009) (above)
United States v. Swift, 357 Fed. App'x 489 (3d Cir. 2009) (below)
United States v. Strickland, 2010 WL 235080 (4th Cir. Jan. 21, 2010) (above)
United States v. Monroe, 396 Fed. App'x 33 (4th Cir. 2010) (above)
United States v. Cameron, 340 Fed. App'x 872 (4th Cir. 2009) (above)
United States v. Maynor, 310 Fed. App'x 595 (4th Cir. 2009) (above)
United States v. Dillon, 355 Fed. App'x 732 (4th Cir. 2009) (above)
United States v. Phillips, 415 Fed. App'x 557 (5th Cir. 2011) (above)
United States v. Aguilar-Rodriguez, 288 Fed. App'x 918 (5th Cir. 2008) (above)
United States v. Barahona-Montenegro, 565 F.3d 980 (6th Cir. 2009) (above)
United States v. Grams, 566 F.3d 683 (6th Cir. 2009) (above)
United States v. Gapinksi, 561 F.3d 467 (6th Cir. 2009) (below)
United States v. Blackie, 548 F.3d 395 (6th Cir. 2008) (above)
United States v. Hann, 407 Fed. App'x 953 (7th Cir. 2011) (above)
United States v. Kirkpatrick, 589 F.3d 414 (7th Cir. 2009) (above)
United States v. Bartlett, 567 F.3d 901 (7th Cir. 2009) (above)
United States v. Azure, 536 F.3d 922, 932 (8th Cir. 2008) (above)
United States v. Oba, 317 Fed. App'x 698 (9th Cir. 2009) (above)
United States v. Medawar, 270 Fed. App'x 488 (9th Cir. 2008) (below)

United States v. Lente, 647 F.3d 1021 (10th Cir. 2011) (above)
United States v. Kirschner, 397 Fed. App'x 514 (11th Cir. 2010) (above)
United States v. Mattox, 402 Fed. App'x 507 (11th Cir. 2010) (above)
United States v. [Julio] Magana, 279 Fed. App'x 756 (11th Cir. 2008) (above)
United States v. Akhigbe, 642 F.3d 1078 (D.C. Cir. 2011) (above)
In re Sealed Case, 527 F.3d 188 (D.C. Cir. 2008) (above)

Sentences outside the guideline range reversed for procedural error where court failed to adequately explain sentence or to address non-frivolous argument or explain reason for rejecting such an argument –
Government's appeal (all below)

United States v. DeSilva, 613 F.3d 352 (2d Cir. 2010)
United States v. Negroni, 638 F.3d 434 (3d Cir. 2011)
United States v. Merced, 603 F.3d 203 (3d Cir. 2010)
United States v. Levinson, 543 F.3d 190 (3d Cir. 2008)
United States v. Moolenaar, 259 Fed. App'x 433 (3d Cir. 2007)
United States v. Morace, 594 F.3d 340 (4th Cir. 2010)
United States v. Gaskill, 318 Fed. App'x 251 (4th Cir. 2009)
United States v. Carter, 564 F.3d 325 (4th Cir. 2009)
United States v. Harris, 339 Fed. App'x 533 (6th Cir. 2009)
United States v. Henry, 545 F.3d 367 (6th Cir. 2008)
United States v. Brown, 610 F.3d 395 (7th Cir. 2010)
United States v. Kane, 552 F.3d 748 (8th Cir. 2009)
United States v. Shy, 538 F.3d 933 (8th Cir. 2008)
United States v. Bragg, 582 F.3d 965 (9th Cir. 2009)
United States v. Pena-Hermosillo, 522 F.3d 1108 (10th Cir. 2008)
United States v. Livesay, 525 F.3d 1081 (11th Cir. 2008)
United States v. Prather, 279 Fed. App'x 761 (11th Cir. 2008)

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October 11, 2011

The Honorable James Sensenbrenner, Chairman
U.S. House of Representatives
Subcommittee on Crime, Terrorism, and Homeland Security
B-370B Rayburn House Office Building
Washington, DC 20515

The Honorable Robert Scott, Ranking Member
U.S. House of Representatives
Subcommittee on Crime, Terrorism, and Homeland Security
111 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Sensenbrenner and Congressman Scott:

I write in anticipation of your upcoming hearing on October 12th to consider the role of the United States Sentencing Commission (USSC) and the operation of the federal sentencing guidelines six years after *United States v. Booker*. Recently, some commentators and policymakers have recommended abolishing or reducing the role of the USSC. I urge Congress to resist calls to abolish the USSC and to avoid taking steps to curtail its jurisdiction. Furthermore, regarding the functioning of the current federal sentencing guidelines system, I urge you to oppose any law that would increase undue rigidity in federal sentencing.

I serve as President of The Constitution Project (TCP), a bipartisan organization that seeks consensus-based solutions to difficult legal and constitutional issues. Several years ago, TCP established a Sentencing Initiative in response to the U.S. Supreme Court's decisions in *Blakely v. Washington* and *United States v. Booker*. The Sentencing Initiative brought together a group representing a broad cross-section of institutional interests and political views. Each member had significant experience in the American criminal justice and special expertise in the challenges facing federal and state criminal sentencing systems.

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The Sentencing Initiative's 2005 report, *Principles for the Design and Reform of Sentencing Systems*, states that Congress, as an institution, is "ill-suited" to at the task of developing, drafting, studying, and amending detailed federal sentencing guidelines.[1] Rather, it is properly the role and responsibility of the USSC to develop federal sentencing guidelines (regardless of whether those guidelines are mandatory or advisory). Although the changing role of the USSC and the impact of advisory guidelines merit continued study, Congress should not take drastic, far-reaching action to abolish or dramatically change the role of the USSC at this time.

I also urge Congress not respond to the advisory guidelines in such a way that dramatically increases their rigidity. The 2005 report also noted that the federal guidelines, at least as they existed before *Booker* and its progeny, are overly complex and rigid.[2] They "place undue emphasis on quantifiable factors" like monetary loss and not enough on other important measures of culpability.[3] Although sentencing guidelines represent one of the great advancements in criminal justice in the past several decades, the federal guidelines have not heen nearly as successful as many state guidelines systems for these reasons. Similarly, while our Sentencing Initiative certainly recognized the legislative authority of Congress to enact mandatory minimums, they concluded that mandatory minimums are "generally incompatible with the operation of a guidelines system and thus should be enacted only in the most extraordinary circumstances."[4] I recommend that Congress exercise caution in enacting new mandatory minimum sentences.

Finally, I hope you will carefully consider and study the meaning behind the rate of departures from the guidelines and not automatically accept the premise that an increased rate of downward departures is problematic. The Sentencing Initiative's 2005 report was followed in 2006 by *Recommendations for Federal Criminal Sentencing in a Post*-Booker *World*, in which our Sentencing Initiative recommended that any Congressional response to *Booker* be cautious and well-informed. Specifically, that report noted that sentencing judges—who have direct knowledge of the case before them and extensive experience applying the Guidelines—are the actors best situated to determine occasional exceptions to general rules.[5] Further, "[d]eparture patterns provide important evidence on the question of whether those most familiar with the federal sentencing system feel that particular guidelines are properly calibrated for most cases."[6] For example, departures can be an appropriate remedy for the Guidelines' overreliance on quantitative factors, such as monetary loss or drug quantity, for determination of offense levels.[7] It is too early to conclude that any increased rates of departures and variances since *Booker* are symptoms of a problem with advisory guidelines, rather than indications of appropriately reduced Guideline rigidity.

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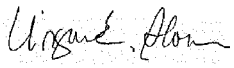
[1] SENTENCING COMMITTEE OF THE CONSTITUTION PROJECT, PRINCIPLES FOR THE DESIGN AND REFORM OF SENTENCING: A BACKGROUND REPORT (Frank O. Bowman and David Yellen reporters, The Constitution Project 2000), at 32, *available at* http://www.constitutionproject.org/pdf/34.pdf.
[2] *Id.* at 32.
[3] *Id.*
[4] *Id.* at 27.
[5] SENTENCING COMMITTEE OF THE CONSTITUTION PROJECT, RECOMMENDATIONS FOR FEDERAL SENTENCING IN A POST-*BOOKER* WORLD. REPORT (Frank O. Bowman and David Yellen reporters, The Constitution Project 2006), at 18, *available at* http://www.constitutionproject.org/pdf/33.pdf.
[6] *Id.*
[7] *Id.* at 10.

I respectfully urge caution in deciding whether to amend the federal sentencing guidelines and hope that Congress will resist calls to abolish the United States Sentencing Commission. Careful study and deliberation, rather than drastic legislative action, is most likely to lead to a stable, just, and effective federal sentencing system.

Respectfully,



Virginia E. Sloan

cc: Members, Subcommittee on Crime, Terrorism, and Homeland Security

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Mr. SENSENBRENNER. There will be no further business to come before the Subcommittee and by unanimous consent the Subcommittee stands adjourned.

[Whereupon, at 11:43 a.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Written Statement of the
American Civil Liberties Union

Submitted to the House of Representatives
Committee on the Judiciary
Subcommittee on Crime, Terrorism and Homeland Security

Hearing on "Uncertain Justice: The Status of Federal Sentencing and the U.S. Sentencing Commission Six Years after U.S. v. Booker"

Wednesday, October 12, 2011

Martin Luther King noted that "law and order exist for the purpose of establishing justice and . . . when they fail in this purpose they become the dangerously structured dams that block the flow of social progress."[1] His words ring true in the ears of those who have tried to balance the sometimes contradictory notions of punishment and progress in this country. We all believe that law and order must be consistent and, indeed, just. The question of equality of punishment has long plagued the country and thus, it is not surprising that the question comes up in the context of the criminal justice system. The Sentencing Reform Act of 1984 (SRA)[2] tried to respond to this issue with an answer of its own.

This House Judiciary's Subcommittee on Crime, Terrorism and Homeland Security hearing entitled "Uncertain Justice: The status of the Sentencing Commission and Federal Sentencing Six Years after U.S. v. *Booker*" will presumably examine whether the objectives of the SRA such as to reduce unwarranted disparities and increase certainty and fairness in sentencing are being achieved by this current federal Guideline system. Specifically, the hearing will explore whether the current federal advisory sentencing Guidelines are consistent with the intent of Congress when it enacted the SRA? After over a decade of federal sentencing under mandatory Guidelines that created an unnecessarily ridged sentencing scheme, the current advisory Guidelines system has resulted in judges having a limited amount of discretion to sentence people to fairer sentences which is completely consistent with the goals of the SRA.

Also, the hearing will focus on whether the U.S. Sentencing Commission has overstepped its authority by proposing that certain offender characteristics are relevant to a determination of a person's sentence and by its decision to apply the Fair Sentencing Act of 2010 Guidelines retroactively. Again, both the proposal to consider specific offender characteristics and the Commission's decision on retroactivity are consistent with the SRA's objective to create more fairness in sentencing, thus it is appropriate role for the Sentencing Commission to make these types of determinations.

I. The Sentencing Reform Act of 1984

In the 1970s, observers of the American judicial system were increasingly concerned with the widespread disparity in sentencing for crimes of a similar nature and severity. With broad discretion, judges imposed widely varying sentences for similar offenses. As a result, many pushed for more determinate sentencing, which established sentences by statute for a fixed or

[1] Martin Luther King Jr., *The Negro Is Your Brother; Letter from a Birmingham Jail,* THE ATLANTIC MONTHLY, August 1963, at 78-88.

[2] Sentencing Reform Act of 1984, Pub. L. No. 98-473 §211, 98 Stat. 1837.

minimum period and limited the range of discretion exercised by judges and parole authorities.[3] The SRA was thought to be a necessary means to two different ends for those on both sides of the political spectrum. The liberal criticism of the pre-SRA world focused on the unwarranted disparities, including alleged bias against minorities. Those on the political right condemned the perceived leniency of the sentencing structure and rehabilitation system.[4] After some haggling in the Senate and House over competing versions of the bill, which included proposed integration into a criminal code reform bill, eventually compromise legislation, the Sentencing Reform Act passed in 1984.[5]

As enacted, the SRA codified a framework for a determinate sentencing scheme under federal law.[6] Supporters of the SRA wanted to reduce unwarranted disparity among defendants having similar records or guilty of similar conduct. They also wanted to increase certainty and fairness of sentencing. The drafter of the SRA, Kenneth Feinberg, said himself that the primary motivating factor was the concern over sentencing disparities.[7] The legislation created the United States Sentencing Commission, an independent expert panel in the judiciary tasked with producing federal sentencing Guidelines and monitoring the application of the Guidelines. Parole in the federal system was abolished entirely and to provide the certainty and fairness that SRA proponents sought, sentences were to be based upon "articulate grounds."[8] Courts were directed to "impose a sentence sufficient, but not greater than necessary, to comply with the purposes of sentencing."[9] The statute enumerated four purposes of sentencing: (1) punishment; (2) deterrence; (3) incapacitation; (4) rehabilitation.[10] However, the statutory text of the Act provides no clear statement as to how these four purposes were to be reconciled with each other. Essentially, the SRA aimed to produce consistency in punishment enabled by the fairness emblematic of social progress.

II. United States v. Booker

In 2005, the Supreme Court in *United States v. Booker*[11] held that any fact that increases the penalty for a crime beyond the prescribed statutory maximum or even the ordinary sentencing range must be submitted to a jury and proved beyond a reasonable doubt. As a result,

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[3] Jeffrey S. Parker & Michael K. Block, *The Limits of Federal Criminal Sentencing Policy; or, Confessions of Two Reformed Reformers*, 9 GEO. MASON L. REV. 1001, 1006 (2001).
[4] Erik S. Seibert, *The Process is the Problem: Lessons Learned From United States Drug Sentencing Reform*, 44 U. Rich. L. Rev. 867, 888 (2010).
[5] Parker *supra* note 3.
[6] *Id.* at 1007.
[7] William K. Sessions III, *At the Crossroads of the Three Branches: The U.S. Sentencing Commission's Attempts to Achieve Sentencing Reform in the Midst of Inter-Branch Power Struggles*, 26 J.L. & Pol. 305, 314 n.45 (2011)
[8] Parker *supra* note 3 at 1007.
[9] *Id.*
[10] *Id.*
[11] 543 U.S. 220 (2005)

the Court held that the federal sentencing Guidelines violated the Sixth Amendment's right to trial by jury and declared that the sentencing Guidelines could not be mandatory.

Prior to *Booker*, the statute compelled sentencing courts to impose sentences within the Guidelines range barring exceptional circumstances specific to the individual offender.[12] Trial judges could not account for instances when the guideline sentence for a specific offense failed to effectuate the broad sentencing goals articulated by Congress.[13] *Booker* fundamentally altered the landscape of sentencing. The opinion in *Booker* struck from the federal sentencing statute the provision that mandated the imposition of sentences within Guidelines sentences.[14]

While allowing sentencing courts to continue to make factual findings, the *Booker* opinion cured the statute of constitutional infirmity by declaring the Guidelines to be merely advisory. In 2007, the Court in *Rita v. United States*[15] reiterated that sentencing courts could no longer "presume[e] that the Guidelines sentence should apply." *Rita* emphasized that district courts must take the Guidelines into account when sentencing, even if they are no longer bound by them.

The *Booker* decision was a reaction to a number of problems in the pre-*Booker* system. As a report by the Constitution Project highlights[16], the sentencing Guidelines had several deficiencies:

1. *The Guidelines were overly complex. They subdivided offense conduct into too many categories and required too many detailed factual findings.*
2. *The Guidelines were overly rigid*
3. *The Guidelines placed excessive emphasis on quantifiable factors such as monetary loss and drug quantity and not enough emphasis on other considerations, such as the defendant's role in the criminal conduct.*
4. *The basic design of the Guidelines contributed to a growing imbalance among the institutions that create and enforce federal sentencing law and has inhibited the development of more just, effective and efficient federal sentencing system.* [17]

Noticeably, the pre-*Booker* world still encompassed many of the same problems the SRA set out to remedy – imbalance, consistency and unfairness. While attempting to resolve inconsistency in sentencing, the SRA became too rigid. With respect to offender characteristics,

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[12] *Id.* at 223-24.
[13] 18 U.S.C. Sec. 3553(a)
[14] *Id.* at 259-260.
[15] 551 U.S. 338 (2007)
[16] The Constitution Project, *Principles for the design and Reform of Sentencing Systems: A Background Report*. at 13, available at http://www.constitutionproject.org/pdf/34.pdf
[17] *Id.*

the Guidelines significantly restricted judges' ability to consider many aspects, such as a defendant's age and family circumstances, and instead focused on a defendant's criminal record as the most important offender characteristic.[18] As former Chair of the U.S. Sentencing Commission Judge William K. Sessions argued, the Guidelines turned judges into computers, thereby taking away their humanity and reason.[19]

III. A Post-*Booker* Advisory Guideline World

With the *Booker* decision, federal courts now apply advisory sentencing Guidelines to reduce some of the rigidity about which some judges complained. However, judges are only able to sentence offenders below statutory mandatory minimum sentences, in limited circumstances.[20] In the wake of *Booker*, the Sentencing Commission continues to fulfill its role in developing Guidelines, but judges no longer are required to follow the Guidelines. Under the advisory Guidelines system, sentencing courts are still tasked with consulting the Guidelines, but are not bound by them. The Guidelines still provide federal judges with fair and consistent sentencing ranges to consult at sentencing. The advisory Guidelines take into account, both the seriousness of the criminal conduct and the defendant's criminal record. Certain characteristics (including age and mental condition) now "may be relevant" in granting a departure from the Guidelines range if "present to an unusual degree."[21] The Commission has also taken steps to encourage judges to consider human characteristics in sentencing.[22]

In testimony before the House Judiciary Committee, Subcommittee on Crime, Terrorism, and Homeland Security, James Felman of Kynes, Markman & Felman, P.A, one expert suggested that the post-*Booker advisory Guidelines* may, indeed, be the best option. "The mix of information presented by offenses and offenders is frequently so rich that it simply cannot all be predicted, written down, and appropriately weighed in advance with unfailing success."[23] He notes that the mandatory Guidelines actually contradict the very purposes under which they were commissioned – yielding undue uniformity, treating unlike offenses and offenders in a like manner. Felman argues that an advisory system that permits consideration of other relevant factors is a good solution to the Guidelines undue rigidity.

The post-*Booker* system still accomplishes the task of giving trial judges flexibility, yet not allowing them unbridled discretion. As a result of what Judge Sessions terms a "Guidelines culture," judges actually are supportive of this system that allows for limited discretion.

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[18] Sessions *supra* note 7 at 315.
[19] *Id.*
[20] i.e. if an offender qualifies for the "safety valve" or is granted a government sponsored downward departure.
[21] Sessions *supra note* 7 at 337.
[22] *Id.*
[23] *United States v. Booker: One Year Later- Chaos or Status Quo?: Hearing Before the Subcomm. On Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary, 109th Cong. 155 (2006)* (statement of James E. Felman, Partner, Kynes, Markman, and Felman, P.A.).

Seventy-five percent of judges surveyed preferred the *Booker* "advisory" system to the "mandatory" system.[24] Seventy-eight percent opined that the advisory Guidelines reduced disparity, and 67% felt the advisory Guidelines increased fairness.[25]

Despite the optimism surrounding the advisory system, the ultimate test of its effectiveness will be in the overall fairness in sentencing those results from its use. In March 2010, the Commission issued a report concluding that after the enactment of the PROTECT Act of 2003, federal legislation that created a *de novo* standard of appellate review for federal sentences,[26] black male offenders received longer sentences than white male offenders. More notably, the report also found that these differences in sentences between black and white male offenders increased after *Booker* and again after the *Gall v. U.S.*[27] In spite of this finding, the Commissions' report conceded that under a more expansive analysis spanning between 1999 through 2009 the greatest difference in the length of sentences between black and white offenders occurred in 1999, when the Guidelines were mandatory.[28] The Commission's study also found that black females received shorter sentences than males of any race and other females except Native American, Asian, Alaskan Native, and Pacific Islander women.[29]

Some are using this analysis to suggest [30]that there is growing racial bias among federal judges, even though the study does not include many legally relevant factors that legitimately affect sentencing decisions. These factors include an offenders' employment background, history of violence, family responsibilities, mental illness, substance abuse or abstinence among other factors.

After the Commission released its report, researchers at Pennsylvania State University using the Commission's data sets to release a study, but reached a different conclusion. The Penn State study found "[p]ut simply, racial and gender sentence length disparities are less today, under advisory Guidelines, than they were when the Guidelines were arguably their most rigid

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[24] Sessions *supra* note 7 at 328.
[25] *Id.*
[26] The Protect Act's appellate standard of review was later stricken from the statute by *Booker*
[27] USSC, *Demographic Differences in Federal Sentencing Practices: An Update of the* Booker Report's *Multivariate Regression Analysis* 2, 22-23 (2010).See also 552 U.S. 38 (2007), the United States Supreme Court held that the federal appeals courts may not presume that a sentence falling outside the range recommended by the Federal Sentencing Guidelines is unreasonable.
[28] Id. at 14.
[29] *Id.* at 4, 22, 23. "Other" includes Native American, Asian, Alaskan Native, and Pacific Islander.
[30] Otis, William, The Slow, Sad Swoon of the Sentencing Suggestions, Criminal Law and Procedure, Volume 12, Issue 1, pgs. 28-33.

and constraining."[31] The Commission and Penn State studies reach different results because they use different methodologies.[32]

The Penn State study also looked at government sponsored departures or departures that result from prosecutors agreeing to a sentence below the Guidelines because a defendant has cooperated in the case versus a judge initiated downward departure which results from a judge sentencing below the advisory Guidelines. As a result, the research concluded that government sponsored below guideline sentences create more racial disparity than judge initiated deviations.[33] The analysis also suggests that Hispanic males do not benefit as much from prosecutorial sponsored substantial assistance departures since the *Gall* decision[34]

Unfortunately, multivariate analyses that attempt to examine whether there are unwarranted disparities at sentencing, such as the Commission's research and the Penn State study, cannot measure the effects of the *sentencing and other law enforcement policies* on racial unfairness. For example, these studies do not assess the demonstrated adverse effect of criminal justice policies that result in unnecessarily harsh sentences that disproportionately punish people of color, such as the crack/powder cocaine disparity or the impact of selective law enforcement scrutiny, arrests, and charging and plea bargaining decisions.[35] Often these criminal justice policies contribute as much or more to unwarranted disparities as the sentence hand down by a judge.

IV. Post-*Booker* Advisory Guidelines Reflect the Congressional Intent of the SRA

1. Efficiency is Flexible

In the SRA, Congress adopted a "just punishment" framework, placing importance on minimizing the social harms associated with both crime and punishment.[36] The "just

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[31] Jeffery T. Ulmer, Michael T. Light, & John H. Kramer, *Racial Disparity In the Wake of the Booker/Fanfan Decision: An Alternative Analysis to the USSC's 2010 Report*, 10 Criminology & Pub. Pol'y __ (forthcoming) ["Penn State Study – Alternative Analysis"] (manuscript at 31-32), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1675117 (updated manuscript on file with authors).

[32] These choices explain differences between the Commission and Penn State studies. Researchers have a choice to model the sentencing decision as either (1) a single decision (How long to imprison?) or (2) a series of decisions (First, *whether* to imprison, and second, for those offenders for whom imprisonment is necessary, *for how long*?). These kinds of considerations led the Penn State team to prefer the second approach.[32] The Commission chose the first approach, studying all types of sentences together and treating probationary sentences as zero months of imprisonment. The Penn State researchers found that what appeared to be lengthier prison sentences for black male offenders under the advisory Guidelines was, in fact, an increased difference in the portion of black and white male offenders who received probation after *Gall*.

[33] Penn State Study – Alternative Analysis (manuscript at 2, 34-35, 39).

[34] *Id.* at 34.

[35] *Fifteen Year Review* at 89-92, 133-35.

[36] *Id.* at 302-3.

punishment" in the context of the Guidelines should reflect the seriousness of the offense, promotion of respect for the law, and providing just punishment for the offense. [37]

Society is harmed by rigid sentencing, which puts 2.3 million people behind bars, [38] 591,000 of those in prison are African American.[39] We cannot continue to disproportionately incarcerate certain ethnic groups and profile target groups and simultaneously promote a system that "respects the law" and "reflects the seriousness of the offense." Criminal justice policies that contribute to the over incarceration in this country such as racial profiling and law enforcement targeting particular communities (often communities of color) for arrest and prosecution actually contradict the above defined congressional intent. The advisory nature of the Guidelines gives judges a *guideline range* in which to consider sentencing, allowing for both flexibility that both respects a judge's competence and respects the law as Congress intended.

2. *Best Available Knowledge*

Creating Guidelines that embody both certainty and fairness *in accordance with the best available knowledge* is one of the major responsibilities of the Sentencing Commission.[40] Further, the Sentencing Reform Act directed the Commission to "develop means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in the Act.[41] This function of the Commission goes right to the heart of the intent of the SRA. The SRA requires the Commission to develop the expertise needed to measure the effectiveness of criminal sentences.[42] The Commission has assumed the responsibility of educating judges and practitioners on social science research that pertains to the relevance of particular offender characteristics in sentencing.[43] It is vital that the Commission maintain this expert role in the criminal justice community in order to carry out the goals of the SRA.

3. *Determinate Sentencing*

Legislative history of the SRA is replete with references to "determinate sentencing" and the concept is still held up by some as an example of a flaw in the current system. But, determinate sentencing is not wholly without benefit. It is entirely appropriate for the Guidelines to seek to reduce the amount of unwarranted variation in federal sentencing outcomes and advisory

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[37] *Id.* at 303.
[38] Pew Center on the States, *One in 100: Behind Bars in America 2008,* (Washington, DC: The Pew Charitable Trusts, April 2011).
[39] *Prisoners in 2009*, BUREAU OF JUSTICE STATISTICS BULLETIN (U.S. Dept. of Justice, Office of Justice Programs), Dec. 2010, at 27 *available at http://bjs.ojp.usdoj.gov/content/pub/pdf/p09.pdf.*
[40] Parker *supra* note 3 at 1011.
[41] *Id.*
[42] *Id.*
[43] *Id.*

Guidelines can achieve this objective. Judicial discretion still fits within in a range of options based on principled reasoning, due in part, to the expert role of the Commission. Publishing and updating the Sentencing Guidelines Manual, which is a publication of the Sentencing Commission that includes the Federal Sentencing Guidelines, is another example of the important role that the Commission plays in accomplishing the objectives of the SRA. The Guidelines manual establishes the sentencing Guidelines and is the authoritative resource of the determinate sentencing system in federal criminal courts for Congress', judges, prosecutors and defense counsel.

The introductory commentary of the Guidelines Manual notes that "in determining the type of sentence to impose, the sentencing judge should consider the nature and seriousness of the conduct, the statutory purposes of sentencing, and the pertinent offender characteristics." The manual quotes *Booker*, which emphasizes that the advisory guideline system should "continue to move sentencing in Congress' preferred direction, helping to avoid excessive sentencing disparities while maintaining flexibility sufficient to individualize sentences where necessary."[44] This is exactly what the advisory Guidelines have accomplished by providing a framework for judges to sentence offenders while also allowing the flexibility to consider that specific facts of that person's case.

The Guideline Manual affirms the Congressional intent behind the SRA is not inconsistent with the advisory Guidelines, but noting "the Commission will continue to provide information to the courts on the relevance of specific offender characteristics in sentencing, as the Sentencing Reform Act contemplates."[45] The intent behind "providing information" does not contradict the reasoning in *Booker* behind a purely "advisory" role.

4. Guided Discretion

The reasoning behind SRA, as alluded to above, was to provide certainty in sentencing and to reduce unwarranted disparities in sentencing by judges. The advisory Guidelines simply do not threaten this fundamental mission. In fact, they give judges greater license to implement equitable discretion and fairer sentencing overall. Because the Commission is tasked with the research component and in educating judges on issues of sentencing conduct that they otherwise might not have, it does not depart from either the overall efficiency responsibility with which it was tasked nor the advisory responsibility for which it is currently tasked. Further, the Court still requires sentencing judges to consider the Guidelines as a benchmark for appropriate sentencing.[46] In Fiscal Year 2009, 56.8% of federal sentences were imposed with the applicable Guidelines range; another 25.3% were the result of a government-sponsored downward

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[44] UNITED STATES SENTENCING COMMISSION, 2010 FEDERAL SENTENCING GUIDELINES MANUAL & SUPPLEMENT 448 (2010).
[45] *Id.* at 51.
[46] Sessions *supra* note 7 at 316.

departure.[47] Any notion of departure from the Guidelines and judges running rampant with unfettered opinions is exaggerated.

5. Consistent, but Fair

One of the goals of the SRA was to provide consistency in sentencing, but in so doing it did not make other goals inaccessible, including the primary goal of "fairness." To be too consistent is to be unfair as mandatory Guidelines might disregard the particular circumstances of a case or a person or the circumstances therein or the judges own knowledge beyond that of a simple algorithm. The nature, extent, and significance of specific offender characteristics can involve a range of considerations.[48] The Commission is still responsible for providing a foundation for that range of considerations in a reasoned, well-articulated, researched way, which is exactly the process with which it was tasked.

The fact is that determinate sentencing and mandatory Guidelines ultimately contradict Congressional intent of SRA in a way that the post-*Booker* understanding seeks to remedy. Determinate sentencing provides consistency, but to a fault. It renders judges ultimately useless and as a result the respect for law and order, the respect for justice and the respect for equity is diminished.

V. Post *Booker* Appellate Standard of Review for "Unreasonableness"?

In addition to declaring the Sentencing Guidelines advisory in *Booker*, the Supreme Court also considered the appropriate standard of appellate review in light of the now advisory nature of the Guidelines, noting that excision of 18 U.S.C. § 3553(b)(1), which rendered the Guidelines mandatory, also required the excision of 18 U.S.C. § 3742(e), the corresponding section of the Act addressing appeals.[49]

Ultimately, the Court determined that, going forward, federal appeals [50]courts must apply the familiar abuse-of-discretion standard to determine the reasonableness of a given sentence. In its decision in *Gall v. United States* two years later, the Court stated explicitly that "while the extent of the difference between a particular sentence and the recommended Guidelines range is surely relevant, courts of appeals must review all sentences whether inside, just outside, or significantly outside the Guidelines range under a deferential abuse-of-discretion standard."[51] The Court went on to provide precise guidance to appellate courts, adding:

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[47] *Id.* at 316 n.59.
[48] 2010 FEDERAL SENTENCING GUIDELINES MANUAL & SUPPLEMENT *supra* note 21.
[49] 543 U.S. at 260.
[50] *Id.* at 260-261.
[51] 552 U.S. 38, 41 (2007).

> Regardless of whether the sentence imposed is inside or outside the Guidelines range, the appellate court must review the sentence under an abuse-of-discretion standard. It must first ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence including an explanation for any deviation from the Guidelines range. Assuming that the district court's sentencing decision is procedurally sound; the appellate court should then consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard. When conducting this review, the court will, of course, take into account the totality of the circumstances, including the extent of any variance from the Guidelines range. If the sentence is within the Guidelines range, the appellate court may, but is not required to, apply a presumption of reasonableness.[52]

The Court based its decision regarding the appropriateness of the abuse-of-discretion standard, quite logically, on "related statutory language, the structure of the statute, and the 'sound administration of justice,'" as well as "the past two decades of appellate practice in cases involving departures."[53]

While critics have complained that the review standard announced by the Court in *Booker* and *Gall* has "severely degrade[d] [courts of appeals'] ability to correct even gross outlier sentences,"[54] a careful review of the Court's rationale in reaching its decision, as well as the historical context in which the decision was made, reveals the appropriateness and ultimate workability of the abuse-of-discretion standard. Despite some commentators' lamentations that *Booker* "stripped the courts of appeals of the power of de novo sentencing review," the fact is that the de novo standard was not inserted into 18 U.S.C. § 3742(e) until 2003, just two years before *Booker* was decided. In the two decades prior to that, under the mandatory regime, appellate courts were directed to determine whether a sentence was "unreasonable" in light of the factors articulated in 18 U.S.C. § 3553(a)—an inquiry entirely consistent with the abuse-of-discretion standard the Court found implicit in the Act, even after the removal of § 3553(b)(1).

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[52] *Gall*, 552 U.S. at 597.
[53] *Booker*, 543 U.S. at 260-261.
[54] Otis, p. 30

"Two basic principles underlie the application of the abuse-of-discretion standard."[55] The first is that, where a court's ruling is based, in large part, on the judge's unique perspective as the finder of fact, due deference should be given to the court's decision on appeal.[56] Hence, the Supreme Court has recognized that "deference was owed to the 'judicial actor...better positioned than another to decide the issue in question.'"[57]In the sentencing context, the abuse-of-discretion standard and the attendant level of deference to the district court are particularly appropriate. In addition to being more intimately familiar with the facts of the case simply by virtue of presiding over the proceedings, the sentencing judge has the opportunity to assess the credibility of witnesses, both at trial and during the sentencing phase, and to observe and interact directly with the defendant. As such, it makes perfect sense for appellate courts to extend significant deference to the district court's decision.

The second justification for the use of the abuse-of-discretion standard is "the sheer impracticability of formulating a rule of decision for the matter in issue."[58] That is, because of the fact-specific nature of any given case, the district court is better positioned to come to a reasoned decision, including in the sentencing context, than is the appellate court.[59] It is no surprise then that the Supreme Court has found, even prior to *Booker*, that "[a] district court's decision to depart from the [mandatory] Guidelines...will in most cases be due substantial deference, for it embodies the traditional exercise of discretion by a sentencing court."[60] The Court in *Koon* went on to add that deference to the district court stems from that court's "refined assessment of the many facts bearing on the outcome, informed by its vantage point and day-to-day experience in criminal sentencing."[61] Moreover, "a district court's departure decision involves the consideration of unique factors that are little susceptible...of useful generalization, and as a consequence, *de novo* review is unlikely to establish clear Guidelines for lower courts."[62]

For these same reasons, the Court, in light of *Booker*, has determined that the abuse-of-discretion standard continues to be the most appropriate in the sentencing context, notwithstanding the fact that the Guidelines are no longer mandatory. The Court has made clear that "[t]he sentencing judge is in a superior position to find facts and judge their import under 18

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[55] *United States v. Tomko*, 562 F.3d 558, 565 (3d Cir. 2009).
[56] See *Id. (noting that "deferential review is used when the matter under review was decided by someone who is thought to have a better vantage point than we on the Court of Appeals to assess the matter.") (internal citation omitted).*
[57] *Koon v. United States*, 518 U.S. 81, 98, 99 (1996) (quoting *Pierce v. Underwood*, 487 U.S. 552, 559-560 (1988).
[58] *Pierce*, 487 U.S. at 561-562.
[59] *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990) ("'Fact-bound resolutions cannot be made uniform through appellate review, *de novo* or otherwise.'") (quoting *Mars Steel Corp. v. Cont'l Bank N.A.*, 880 F.2d 928, 936 (7th Cir. 1989)).
[60] *Koon*, 518 U.S. at 98.
[61] *Id.*
[62] *Id.* at 99 (internal citations omitted).

U.S.C§3553(a) in the individual case. The judge sees and hears the evidence, makes credibility determinations, has full knowledge of the facts and gains insights not conveyed by the record."[63] In addition, "district courts have an institutional advantage over appellate courts in making these sorts of determinations, especially as they see so many more Guidelines sentences than appellate courts do."[64] The fact that appellate courts relied on a reasonableness inquiry prior to *Booker*, with the exception of the short timeframe between passage of the Feeney Amendment in 2003 (establishing a *de novo* review standard) and the Court's decision in 2005, is particularly important given that, even according to some observers, "compliance [with the mandatory Guidelines] was still above seventy percent as late as 1995."[65] Indeed, the Sentencing Reform Act, introduced in 1984, both created the Guidelines and "provided for robust appellate enforcement."[66] While rates of compliance with the Guidelines may have decreased in recent years, there is nothing to suggest that the decrease was driven by the standard of review employed by appellate courts.

It also should be noted here that the abuse-of-discretion standard applies with equal force whether the court sentences a defendant above, below, or within the guideline range. As such, to the extent that this standard of review renders the court's sentencing decision difficult to overturn on appeal, all parties are on equal ground. In addition, despite complaints that increased judicial discretion post-*Booker* favors defendants by encouraging downward departures, the fact is that the overwhelming majority of sentences—nearly sixty percent—still fall within or above the now-advisory guideline range.[67]

Some may argue, and the Court acknowledges, that the "reasonableness" standard will not necessarily lead to the kind of uniformity in sentencing that Congress sought in enacting the SRA. However, "Congress wrote the language of the appellate provisions to correspond with the mandatory system it intended to create."[68] As such, and given that the Guidelines have been deemed advisory, the question becomes "which alternative adheres more closely to Congress' original objective: (1) retention of sentencing appeals, or (2) invalidation of the entire Act, including its appellate provisions?"[69] Although the former will not guarantee absolute uniformity in sentencing, appellate courts' reasonableness determination, based on an abuse-of-discretion standard, "would tend to iron out sentencing differences," while the latter would leave parties with no opportunity to appeal at all. Additionally, appellate review under the current standard

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[63] *Gall*, 552 U.S. at 51
[64] *Id.* at 52. *See also Rita v. United States*, 551 U.S. 338, 357-358 (2007).
[65] (Otis, p. 28).
[66] *Id.*
[67] As Otis acknowledges, a significant portion of the below-Guideline sentences that are doled out result, not from the whims of bleeding-heart liberal judges who refuse to crack down on offenders, but rather from substantial assistance provided by defendants to the government, pursuant to § 5K1.1 of the Sentencing Guidelines. See Otis at 30.
[68] *Booker*, 543 U.S. at 263.
[69] *Id.*

works in tandem with the continued efforts of the Sentencing Commission to collect sentencing information from around the country, research salient legal issues, and revise the Guidelines as necessary, thus encouraging uniformity in sentencing while also allowing district courts to consider the specific circumstances and characteristics surrounding individual defendants.

At the very least, the majority of defendants wishing to challenge their above- or within-Guidelines sentences continue to face very long odds on appeal given the current standard of review. Nevertheless, in light of the fact that the abuse-of-discretion standard gives significant weight to the sentencing court's decisions, encourages adherence to the Guidelines by permitting appellate courts to maintain the presumption of reasonableness with regard to within Guideline sentences, and thereby discourages frivolous appeals. It is difficult to quarrel with the Court's conclusion that the current standard is the most appropriate in this context.

Although prosecutors and others may now, post-*Booker*, find the abuse-of-discretion standard to be a frustrating impediment to successful appeals—a frustration long held by defendants—the suggestion that the standard is therefore unworkable or unfair is ironic. Indeed, the better question seems to be how a *de novo* standard of review, as proposed by some critics, could be squared with the Court's consistent and well-reasoned conclusion, as highlighted above, that sentencing courts maintain a unique and significant advantage over appellate courts in determining the appropriate sentence for criminal defendants. At best, such a standard would encourage duplicative efforts by district and appellate courts. At worst, it would allow appellate judges, far removed from the original proceedings and relying solely on a paper record, to substitute their judgment for that of the sentencing judge who had first-hand access to the proceedings, a phenomenon long frowned upon in our system of justice.

VI. The Role of the U.S. Sentencing Commission

One of the stated goals of the Sentencing Reform Act of 1984 was to assure that sentences are fair both to the offender and to society, and that such fairness is reflected both in the individual case and in the pattern of sentences in all federal criminal cases. Another stated goal was to provide a full range of sentencing options from which to choose the most appropriate sentence in a particular case in order to reduce the use of imprisonment.[70] Specifically, the SRA aimed to produce sentences that were sufficient, but not greater than necessary, to comply with the purposes of 18 U.S.C.A. § 3553(a)(2)(A). Indeed, this "parsimony principle" remains the driving force behind federal sentencing. To achieve fair sentences that were neither excessive nor the result of robotic reliance on incarceration, the SRA called for sentencing policies and practices that account for the history and characteristics of the defendant,[71] provide fairness in

[70] S. Rep. No. 98-225, at 39 (1983)
[71] See 18 U.S.C.A. § 3553(a)(1),

meeting the purposes of sentencing, and permit individualized sentences when warranted by mitigating or aggravating factors.[72]

As is well documented, for a number of reasons the mandatory Guidelines scheme that persisted for two decades frustrated Congress's goals in enacting the SRA. While the SRA was designed to eliminate *unwarranted* disparity, it was not promulgated either to dispense with *warranted* disparity or to create *unwarranted uniformity*. Yet this is exactly what the mandatory Guidelines system did, primarily by mandating excessive uniformity among defendants regardless of differences in culpability, dangerousness, risk of recidivism, or need for rehabilitation. This cookie-cutter approach, in turn, resulted in many punishments that did not fit the offender and were thus not justified by the purposes of sentencing. The quest for uniformity within the harsh mandatory scheme led to an overall increase in lengthy prison sentences, made it impossible for judges to craft reasonable sentences sufficient, but not greater than necessary, to comply with the purposes of 18 U.S.C.A. § 3553(a)(2)(A.

In addition, although not obligated to do so, the Sentencing Commission tied the drug Guidelines to mandatory minimums, and, despite Congress's authorization for judges to impose probation for any offense with a statutory maximum below 25 years unless expressly precluded for the offense, 18 U.S.C. § 3561(a), § 3559(a), the Commission made probation unavailable to many offenders.[73] Despite the fact that § 994(d) directed the Commission to consider a non-exhaustive list of eleven mitigating and aggravating factors in establishing an appropriate sentence (age, education, vocational skills, mental and emotional condition, physical condition, drug dependence, employment record, family ties and responsibilities, community ties, role in the offense, criminal history, and degree of dependence on criminal activity for a livelihood), and that of these factors Congress directed the Commission *not* to rely on the defendant's lack of education, vocational skills, employment, or stabilizing ties to recommend imprisonment over probation or a longer prison, the Commission, nonetheless, inserted numerous aggravating factors to be weighted heavily by judges while minimizing both the number and significance of mitigating factors.[74]

Factors such as age, mental or emotional conditions, physical condition, employment record, educational and vocational skills, family ties and responsibilities, and community ties were deemed "not ordinarily relevant" as grounds for downward departure (a list which had been expanded to include additional factors in the years following the passage of the SRA), while drug dependence, alcohol abuse, personal financial difficulties, and economic pressures on a trade or business were prohibited completely. Simply put, although the Congress that enacted the SRA thought there was "too much reliance on terms of imprisonment when other types of sentences

[72] 28 U.S.C. § 991(b)(1)(B).

[73] (The percentage of prisoners receiving probation has dropped from almost 35% in 1984 to less than 10% in 2010). 1984-1990 FPSSIS Data files, Administrative Office of U.S. Courts; USSC, *Sourcebook of Federal Sentencing Statistics*, tbl.12 (1991-2009); USSC, *Preliminary Quarterly Data Report, Fourth Quarter FY 2010*, tbl.18.

[74] (Though they could be considered for non-incarceratory sentences), S. Rep. No. 98-225, at 174 (1983),

would serve the purposes of sentencing equally well without the degree of restriction on liberty that results from imprisonment,"[75] the mandatory sentencing scheme struck down by *Booker* relied heavily on not only on incarceration, but lengthy incarceration.

The good news is that in recent years the Commission has learned from its mistakes, as well as from two decades of sentencing under the Guidelines regime, and sought to set federal sentencing back on the path it was originally intended for by the SRA. This path was made much more tolerable by *Booker* ending the mandatory guideline system. Through close analysis of its significant data set, the Commission has regained its footing and embraced its original purpose: serving in a vital role to improve our federal sentencing scheme in a way that makes individual sentences fairer and more rational while at the same time ensuring that sentencing practices remain within a permissible and predictable range of possibilities. In tandem with the Commission's recent work and decision, the now-advisory Guidelines system reduces both the unwarranted disparities and unwarranted uniformity created in large part by the mandatory system. In this way, the corrections that the Commission and courts have been making post-*Booker* are in no way radical; rather, they are merely bringing federal sentencing back in line with the original intent of Congress in enacting the SRA: fairer sentences, fewer unwarranted disparities, more warranted disparities based on individualized factors under § 3553(a), and less uniformity solely for uniformity's sake. The Commission also continues to perform the numerous valuable functions it was designed for as summarized by Justice Blackman in *Mistretta v. U.S.*[76]

> In addition to the duty the Commission has to promulgate determinative sentence Guidelines, it is under an obligation periodically to "review and revise" the Guidelines. § 994(o). It is to "consult with authorities on, and individual and institutional representatives of, various aspects of the Federal criminal justice system." *Ibid.* It must report to Congress "any amendments of the Guidelines." § 994(p). It is to make recommendations to Congress whether the grades or maximum penalties should be modified. § 994 (r). It must submit to Congress at least annually an analysis of the operation of the Guidelines. § 994(w). It is to issue "general policy statements" regarding their application. § 994(a)(2). And it has the power to "establish general policies ... as are necessary to carry out the purposes" of the legislation, § 995(a)(1); to "monitor the performance of probation officers" with respect to the Guidelines, § 995(a)(9); to "devise and conduct periodic training programs of instruction in sentencing techniques for judicial and probation personnel" and others, § 995(a)(18); and to "perform such other functions as are required to permit Federal courts to meet their responsibilities" as to sentencing, § 995(a)(22).

[75] S. Rep. No. 98-225, at 59 (1983).
[76] 488 U.S. 361, 370 (1989)

Moreover, as the Court stated in *Kimbrough v. United States*,[77] "[c]arrying out its charge, the Commission fills an important institutional role: It has the capacity courts lack to 'base its determinations on empirical data and national experience, guided by a professional staff with appropriate expertise.'"

The critical role played by the Commission, as well as the courts, as well as the important give-and-take relationship between them that allows the improvement of sentencing practices by examining data and practice and ensuring that sentencing remains fair and rational, is by design. As the Supreme Court stated in *Rita*:

> The Commission's work is ongoing. The statutes and the Guidelines themselves foresee continuous evolution helped by the sentencing courts and courts of appeals in that process. The sentencing courts, applying the Guidelines in individual cases may depart (either pursuant to the Guidelines or, since *Booker*, by imposing a non-Guidelines sentence). The judges will set forth their reasons. The Courts of Appeals will determine the reasonableness of the resulting sentence. The Commission will collect and examine the results. In doing so, it may obtain advice from prosecutors, defenders, law enforcement groups, civil liberties associations, experts in penology, and others. And it can revise the Guidelines accordingly. ... The result is a set of Guidelines that seek to embody the § 3553(a) considerations, both in principle and in practice.

The symbiotic relationship between the Commission and the courts is critical to Congress's original intent in enacting the SRA, and to improving sentencing practice generally across the federal courts. Indeed, the current dynamic between the Commission and the courts is exactly what the Court called for in *Rita*. Two recent examples of how the Commission continues to fulfill its critical duty to promote fairness in sentencing and rid the system of unwarranted disparities are its decisions on courts' consideration of specific offender characteristics in devising sentences consistent with the objectives of § 3553(a) and on the retroactive effect of the Fair Sentencing Act .

Specific Offender Characteristics

Section 18 U.S.C.§ 3553(a)(1) requires courts to consider "the history and characteristics of the defendant," while 18 U.S.C.§ 3661 mandates that "[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court . . . may receive and consider for the purpose of imposing an appropriate

[77] 552 U.S. 85, 108-109 (2007) (citation omitted),

sentence."[78] After all, "[t]he sentencing judge ... has 'greater familiarity with ... the individual case and the individual defendant before him than the Commission or the appeals court.' He is therefore 'in a superior position to find facts and judge their import under § 3353(a)' in each particular case." [79]

For years, however, the Guidelines' restrictions on courts' consideration of offender characteristics as mitigating factors has been one of its central failings. Thus, greater consideration of such factors is warranted to reduce unnecessarily harsh sentences often recommended by the Guidelines. Therefore, in light of the purpose behind 18 U.S.C. § 3553(a), it is very much in line with Congress's goals underpinning the SRA, not to mention necessary, though not sufficient, to address widespread unfairness wrought by mandatory sentencing pre-*Booker*, that the Commission has recognized that (1) departures from the Guidelines may be warranted in situations where an offender's criminal activity is related to a treatment issue such as drug or alcohol abuse or significant mental illness; (2) where sentencing options such as home or community confinement or intermittent confinement would serve a specific treatment purpose; and (3) that courts take into consideration the effectiveness of residential treatment programs as part of their decision to impose community confinement. In other words, it is essential to the determination of fair and effective sentences that courts be given significant latitude to consider offender characteristics.

This is not to suggest that courts cannot use certain offender characteristics to depart upwards; indeed they can, and sometimes they do. Fairness in sentencing can move in either direction: more severe or more lenient.[80] Departures do not fall on either side of the political spectrum; as a number of cases demonstrate, courts can exercise discretion in ways that increase or decrease sentences, whether they are eliminating unwarranted disparities and allowing warranted disparities. The fact that most departures post-*Booker* are in the downward direction is simply a reflection of the undue severity of much sentencing pre-*Booker*, as the system now seeks to self-correct and courts are now able to focus not only on the offense at hand, but on the individual offender before them, in addition to varying from the Guidelines on the basis of policy disagreements.

Retroactivity of the Fair Sentencing Act

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[78] *See also U.S. v. Booker*, 543 U.S. 220, 250 (2005) (discussing that the history of the SRA makes clear that judges "must conduct 'a comprehensive examination of the characteristics of the particular offense and the particular offender'")(citations omitted)

[79] *Kimbrough v. U.S.*, 552 U.S. 85, 109 (2007)(citation omitted).

[80] *See, e.g., U.S. v. Cavera*, 550 F.3d 180 (2d Cir. 2008) (upward departure sentence imposed was substantively reasonable and sufficiently justified by district court's stated ground that New York City's strict gun laws created large black market that required more severe penalties to deter selling of illegal firearms).

On June 30, 2011, the Commission voted to apply the Fair Sentencing Act retroactively to people currently serving sentences for crack-cocaine charges. In doing so, the Commission was simply carrying out one of its critical roles in federal sentencing: to ensure "fairness in meeting the purposes of sentencing, [and to] avoid[] unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct."[81] Particularly here, where the underlying concerns with racial equality and proportionality that drove Congress's enactment of fairer crack sentences going forward apply with equal force to sentences calculated under the earlier, flawed Guidelines. It would have not only been illogical and unjust, but also an abrogation of its mission, for the Commission to have merely acknowledged past unfairness and avoided future inequity while simultaneously leaving defendants whose sentences were already tainted by such unfairness without a remedy.

To question the continued viability of the Commission because it carried out one of its critical functions by ensuring that defendants who were sentenced under the earlier, flawed Guidelines have the opportunity to petition courts for sentence modifications in light of FSA's equitable changes in crack-cocaine sentencing reveals either a fundamental misunderstanding about or an unprincipled position on the central purpose of the Commission. The Commission recognized that it would fundamentally undermine Congress's goal of promoting fairness and reducing penalties to continue enforcing an unfair scheme on offenders simply because they happened to be sentenced prior to the passage of the FSA. The Commission was merely heeding Congress's recent pronouncement in favor of lower sentences for crack-cocaine while also fulfilling Congress's directive a quarter century ago to promote sentences that were sufficient, but not greater than necessary, to comply with the purposes of 18 U.S.C.A. § 3553(a)(2)(A).

[81] 18 U.S.C.A. § 3553(a)(6).

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EXECUTIVE SUMMARY

RACIAL DISPARITY IN WAKE OF THE BOOKER/FANFAN DECISION

Overview of: "Racial disparity in the wake of the *Booker/Fanfan* decision

An alternative analysis to the USSC's 2010 report"

Jeffery T. Ulmer
Michael T. Light
John H. Kramer
The Pennsylvania State University

Research Summary

The U.S. Sentencing Commission (USSC) released a report in March 2010 concluding that disparity in federal sentencing has increased in the wake of the U.S. Supreme Court decisions in **United States v. Booker** *(2005) and* **Gall v. United States** *(2007). In light of this USSC report, we provide an alternative set of analyses that we believe provides a more complete and informative picture of racial, ethnic, and gender disparity in federal sentencing outcomes post-***Booker** *and* **Gall**. *We attempt first to replicate the USSC's models. Then, making different modeling assumptions, we present alternative models of sentencing outcomes across four time periods spanning fiscal years (FY) 2000 to 2009. We find that post-***Booker/Gall***:*

1. *Race/ethnic/gender disparity in sentence length decisions is generally comparable with pre-2003 levels;*
2. *African American males' odds of imprisonment have increased significantly post-***Gall***;*
3. *Immigration cases account for a significant proportion of sentence length disparity affecting Black males;*
4. *"Government-sponsored" below* **Federal Sentencing Guidelines** *sentences are a greater source of racial disparities than judge-initiated deviations.*

Finally, because much of the debate surrounding the **Booker** *decision involves questions of whether the guidelines must be mandatory to be effective, we also present analyses of federal sentencing disparities prior to the 1996* **Koon v.**

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United States *decision, a period when the guidelines were arguably most constraining of judicial decision-making. Comparing post-***Booker** *and* **Gall** *to pre-Koon sentencing practices, we find:*

5. *With the exception of incarceration disparities for black males, all race/ethnic/gender groups are sentenced either the same or less harshly (compared to whites) under the new advisory system.*

Policy Implications

One of the chief policy aims of the sentencing guidelines, and the sentencing reform movement more generally, is the reduction of racial, ethnic, and gender disparities in punishment. In the aftermath of the **Booker** *and* **Gall** *decisions, which made the* **Federal Sentencing Guidelines** *effectively advisory, many commentators have feared that federal judges, as a result of their increased discretion, may use offender characteristics at sentencing, and thus disparities based on race, ethnicity, and gender would increase. A recent USSC report, which found that sentencing disparities have increased in the wake of* **Booker** *and* **Gall**, *suggests that such fears are warranted and has further strengthened calls for a policy fix to post-***Booker** *sentencing. One such proposed policy solution was House bill H.R. 1528 which would have, among other things, transformed the Sentencing Guidelines into a complex system of mandatory minimums in order to curb judicial discretion.*

*In response to the USSC report as well as policy solutions to introduce a more rigid sentencing system, we suggest that the federal sentencing data, as yet, provide insufficient evidence of increased post-***Booker** *disparity to warrant renewed restrictions on judicial discretion. Our analysis, generally, shows that sentencing disparities post-***Booker** *and* **Gall** *are comparable to those just prior to these decisions, and are actually considerably less than in earlier time periods when the guidelines were more rigid and constraining. This latter finding raises serious questions about whether the guidelines must be mandatory in order to limit racial/ethnic/gender disparities.*

*However, we do find that disparity in the imprisonment decision for black males increased post-***Gall**, *which is ground for concern. Yet, our results do not lend support to policy solutions that would seek to simply 're-mandatorize' the guidelines. Because our analysis shows that the bulk of extra-legal disparities are observed in the incarceration decision and not the sentence length decision (a distinction that is not made in the USSC report), reintroducing a rigid sentencing scheme may actually exacerbate incarceration disparities while having limited impact on sentence length disparities. Overall, rather than 'blanket' solutions such as broad reductions in judicial discretion, we think that any policy changes to the* **Sentencing Guidelines** *should be focused on areas that are shown to be associated with sentencing disparities. According to our results, such areas include incarceration decisions, immigration offenses, and government sponsored downward*

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departures. Ultimately, we think careful consideration of the most problematic areas of sentencing, including those decisions made by prosecutors as well as judges, will be most effective at curbing extra-legal disparities and increasing fairness at sentencing, both of which were original goals of the sentencing reform movement.

Keywords

sentencing disparity, judicial discretion, federal courts, United States v. Booker decision

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RESEARCH ARTICLE

RACIAL DISPARITY IN WAKE OF THE *BOOKER/FANFAN* DECISION

Racial disparity in the wake of the *Booker/Fanfan* decision

An alternative analysis to the USSC's 2010 report

Jeffery T. Ulmer
Michael T. Light
John H. Kramer
The Pennsylvania State University

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The U.S. Supreme Court ruled in *United States v. Booker* and a joint case *United States v. Fanfan* (2005, hereafter *Booker* and *Fanfan*, respectively) that the Federal Sentencing Guidelines (hereafter, Guidelines) would henceforth be advisory rather than presumptive in federal sentencing decisions. Many fear that the wake of *Booker/Fanfan* might have brought increased unwarranted disparity based on the social status characteristics of defendants (see reviews by Frase, 2007; Hofer, 2007). Hofer (2007) argued that if a primary goal of federal sentencing reform was a reduction of unwarranted disparity, the impact of *Booker/Fanfan* on disparity is among the most important questions facing sentencing policy makers. Chief among these concerns is the degree of disparity connected to race and ethnicity, the reduction of which was a key reason for the Guidelines' creation.

The U.S. Sentencing Commission (USSC) released a report in tMarch 2010 concluding that racial disparity in federal sentence lengths has indeed increased in the wake of the *Booker* and *Gall v. United States* (2007, hereafter *Gall*) decisions. Specifically, the report's "refined models" found that Black males had approximately 5% greater sentence lengths than White males in 2003–2004, 15% greater sentence lengths after the *Booker* decision, and approximately 21% greater sentence lengths post-*Gall*. Thus, from the report, it seems that racial disparity affecting Black males (and Black defendants in general) has become

We thank D. Wayne Osgood and Shawn Bushway for their helpful input on earlier drafts of this article. Direct correspondence to Jeffery T. Ulmer, Department of Sociology, The Pennsylvania State University, 211 Oswald Tower, University Park, PA 16802 (e-mail: jtu100@psu.edu).

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worse in the years since *Booker*, and especially since *Gall*. This is an alarming development for those who are rightly concerned with the racial fairness of federal justice.

Yet, the USSC 2010 report's analyses made some methodological choices that differ from those of several federal sentencing studies in the literature, and we detail these choices in the subsequent discussion. It is, therefore, important to examine whether the USSC 2010 racial disparity findings are apparent when different analytical and modeling choices commonly found in the sentencing literature are made. In addition, the USSC research staff was not directed in their 2010 report to present an analysis of whether disparity has increased post-*Booker* in sentences that depart/deviate from the Guidelines, and they did not compare their refined model findings with time periods earlier than the years when the PROTECT Act was in force (2003–2004). We, therefore, present such analyses because judicial discretion to deviate from the Guidelines has increased post-*Booker*, and Guidelines departures have been found to be the locus of extralegal disparity in research on pre-*Booker* sentencing (Albonetti, 1997; Hartley, Maddan, and Spohn, 2007; Johnson, Ulmer, and Kramer, 2008; Kempf-Leonard and Sample, 2001; Maxfield and Kramer, 1998; Mustard, 2001; Steffensmeier and Demuth, 2000).

Our analysis may present a fuller picture of the nature of racial disparity in the wake of the *Booker* and *Gall* decisions, as well as the relaxation of constraints on judicial discretion that they brought. According to Attorney General Holder (2009) as well as sentencing policy observers such as Paul Hofer (2007), this is one of the most pressing and timely questions faced by the federal sentencing community. If unwarranted disparity has increased in the post-*Booker/Gall* years, some argue that policy remedies are necessary to return the Guidelines somehow to a mandatory status and to attempt to roll back the judicial discretion granted by *Booker* and subsequent decisions.

In a recent essay in *Criminology & Public Policy*, Engen (2009) also noted the paucity of research on what happens in the wake of the repeal or relaxation of presumptive sentencing schemes. By examining sentencing in the aftermath of *Booker*, which loosened constraints dramatically on federal judicial discretion, we are helping to address the agenda Engen (2009) proposed. In sum, we provide a timely alternative analysis that we believe provides more specificity and guidance regarding questions vital to federal sentencing policy: (a) whether and how much racial disparity in federal sentencing has increased in the aftermath of *Booker* and *Gall*, (b) whether disparity has increased in particular kinds of sentencing decisions (i.e., sentence lengths, imprisonment, and Guidelines departures/deviations) or for particular offenses, and (c) whether the levels of racial disparity post-*Booker* are significantly greater compared with longer term federal sentencing patterns.

The Return of Federal Judicial Discretion: The *Booker* and *Gall* Decisions

From 1996 to 2005, legal developments moderately expanded judicial sentencing discretion, then sharply restricted it, and finally, culminating in *Booker*, dramatically expanded it again. From 1987 to 1996, discretion historically resting with the judiciary was tightly constrained

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and shifted to the prosecutor (Stith and Cabranes, 1998). Congress continued to restrict judges' sentencing discretion during this period, sending directives to the Commission, and passing mandatory minimums to be incorporated into the Guidelines. Then, in *Koon v. United States* (1996, hereafter *Koon*), the Supreme Court restored some discretion to judges by establishing an "abuse of discretion" standard for appellate review of departures from the Guidelines. Congress later sought to counter *Koon* with the Feeney Amendment to the PROTECT Act of 2003, which replaced the "abuse of discretion" standard for departures with a "de novo" appellate review of sentences, gave prosecutors control over the third point of the "acceptance of responsibility" Guidelines reduction, and directed the Commission to reduce departure mechanisms.

Then, the *Booker* decision in 2005 ruled that the mandatory Guidelines could not constitutionally assess "real offense" conduct that increased sentences on factors not considered at trial by a jury. The Court's solution was that the Guidelines would become *advisory*. Judges must consider the Guidelines, but their discretion was returned to at least pre-PROTECT Act, although not to pre-Guidelines, levels. Also, in the wake of *Booker*, the standard of review now relies on the "reasonableness" of the sentence and on an "abuse of discretion" standard rather than on correct application of the Guidelines. Stith (2008: 1,427) stated: "*Booker*, the Sentencing Commission and Main Justice may still be calling signals but the decision makers on the playing field—judges and prosecutors—need not follow them."

Subsequently, the Court enhanced the judges' discretion restored in *Booker* by clarifying the meaning of "advisory" in *Rita v. United States* (2007), where it ruled that federal appellate courts *may* but are not *required* to presume Guidelines sentences to be reasonable. Consequently, sentences outside the Guidelines cannot be automatically regarded as unreasonable. In *Gall*, the Court went further and held that district judges *may not* automatically presume the Guidelines range to be reasonable and must "*make an individualized assessment based on the facts presented*" (*Gall*, pp. 596–597, emphasis added). *Gall* thus implies that district courts should make an individualized assessment of whether a Guidelines sentence is reasonable or whether a sentence outside the Guidelines is more reasonable. In *Kimbrough v. United States* (2007), the Court ruled that in cases involving crack cocaine, judges could reasonably conclude that Guidelines sentences were not reasonable in an individual case.

Policy observers have had different reactions to these developments. U.S. Attorney General Eric Holder (2009: 1) noted that uniformity and the control of judicial discretion per se do not guarantee justice: "The desire to have an almost mechanical system of sentencing has led us away from individualized, fact-based determinations that I believe, within reason, should be our goal." Some, including the USSC, have adopted a "wait-and-see" approach to post-*Booker* sentencing. For example, in 2005, an American Bar Association (ABA) Task Force Report recommended that sufficient time be allowed to evaluate the efficacy of the

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new "advisory" guidelines, asserting that "the advisory remedy crafted in *Booker* may well prove as good or even better than the mandatory guidelines" (ABA, 2005: 339).

However, prominent U.S. Attorney John Richter (2008: 340), presenting a view held by many other federal prosecutors, argued that "[p]ost-*Booker* sentencing threatens equal justice under law." The dissenting opinions of Justices Stevens, Thomas, and Scalia in *Booker* each noted that Congress clearly intended to restrict judicial discretion to curb unwarranted disparity, and they argued that the Court majority's remedy of making the Guidelines advisory would jeopardize that goal.

Along these lines, then-Attorney General Alberto Gonzales (2005: 325) claimed that, since *Booker*, there has been "increasing disparity in sentences," and therefore, the federal guidelines were in need of a legislative fix. Specifically, Gonzales (along with others) supported the proposed Consumer Privacy Protection Act of 2005, which would have (a) transformed the Guidelines into a complex system of mandatory minimums (Bowman, 2005), (b) essentially forbidden the consideration of mitigating factors at sentencing (Berman, 2005), and (c) restricted severely the use of nonprosecutorial downward departures. Other sentencing scholars have proposed "hybrid" solutions. For example, legal scholar and former Special Counsel to the USSC Frank Bowman proposed simplifying the sentencing table to only 9 base offense levels (down from the current 43) where no upward departures from the base sentencing range would be permissible (so as not to run afoul with *Booker*), although downward departures based on "acceptance of responsibility," motions by the prosecutor, or other relevant mitigating factors would be allowed (Bowman, 2005).

Research on Federal Sentencing Disparity

Much scholarly research on federal courts has assessed unwarranted disparity under the pre-*Booker* Guidelines. These studies often found small-to-moderate racial and ethnic sentencing differences benefitting Whites, although Guidelines-relevant factors exert much larger effects than offender status characteristics (e.g., Albonetti, 1997, 1998; Johnson et al., 2008; Kautt, 2002; Mitchell and MacKenzie, 2004; Mustard, 2001; Steffensmeier and Demuth, 2000; USSC, 2004). Evidence also suggests that extralegal differences in punishment are tied to departure sentences (Albonetti, 1997; Hartley et al., 2007; Johnson et al., 2008; Kempf-Leonard and Sample, 2001; Maxfield and Kramer, 1998; Mustard, 2001; USSC, 2004). Research using pre-*Booker* data showed that young minority males in particular were disadvantaged in incarceration decisions and sentence lengths (Doerner and Demuth, 2009); that defendant race, age, and gender influenced prosecutorial charge reductions, which in turn influence sentencing outcomes (Shermer and Johnson, 2010); that the degree to which race/ethnicity and gender influence sentencing varies significantly by judge (Anderson and Spohn, 2010); and that Hispanic defendants are most disadvantaged in sentencing in federal districts where Hispanics are least numerous, but not at all disadvantaged in districts with large Hispanic populations (Feldmeyer and Ulmer, in press).

However, with the exception of two USSC reports published in 2006 and 2010, all the published research on federal sentencing disparity is based on pre-*Booker* data and most is based on pre-PROTECT Act data. The 2006 report showed that most federal cases continued to be sentenced in conformity with the Guidelines but that the rate of above-range, government-sponsored below-range, and other below-range sentences increased. Multivariate analyses showed that social status factors were associated moderately with sentence length but that their effects pre- and post-*Booker* were similar, and that race actually had more influence on sentence lengths in 1999–2000 than in the early post-*Booker* period (USSC, 2006). The report also examined conformity and departures by circuit and district from 2001 to January 2006 and concluded that regional sentencing differences have been relatively stable. A commentary on this report stated: "With a little over a year's experience under *Booker*'s new 'advisory' guidelines regime, the cumulative results can be summarized as 'much ado about nothing, or at least much ado about not very much'" (Thompson, 2006: 269). Overall, the 2006 report notes that disparity decreased in the PROTECT era, but after *Booker*, it returned to levels comparable with those of the pre-PROTECT act era.

However, the USSC 2010 report, which included data up to FY 2009, found that race disparity had increased in the post-*Gall* period compared with the PROTECT Act period. Their models first replicated the analyses in the 2006 report with the newer data included, and then they estimated a "refined model." Their "*Booker* report" model showed that Blacks received approximately 2% longer sentences than Whites (not significant) during the PROTECT era but that Blacks received 7% and 10% longer sentences than Whites in the post-*Booker* and post-*Gall* periods, respectively. Notably, Black–White sentence length differences ranged from a high of 14% to a low of 8% in the pre-PROTECT years FY 1999–2002, as stated in the USSC 2006 report.

Their "refined model," which did not control for criminal history, but did differentiate Black, White, and Hispanic defendants by gender, found that Black males received 5.5% longer sentences than White males in the PROTECT period, 15% longer sentences post-*Booker*, and 21% longer sentences post-*Gall*. The 2010 report also found that noncitizens were increasingly sentenced more harshly than U.S. citizens and that gender disparity fluctuated across time periods. To be clear, the USSC 2010 report did not claim that *Booker* and *Gall* caused increases in racial disparity and recognized that other factors not related to the two decisions could be driving these increases. Nonetheless, the report's findings would seem to provide support for critics of the two decisions who call for remedies to reconstrain judicial discretion.

For our purposes, the USSC 2010 report's analyses have four notable methodological features: (a) the sentence length models included nonimprisonment cases as sentence lengths of "0," thus combining the incarceration and length decision into one analysis (and used ordinary least-squares [OLS] regression, rather than tobit regression); (b) the report included immigration offenses in the analyses; (c) sentence length models equated periods of alternative confinement with periods of imprisonment; and (d) the refined

model did not control for criminal history because of concerns about multicollinearity. Yet, previously published USSC studies of disparity in federal sentencing, such as the USSC's 2004 report, along with several studies published in the criminology literature, often made methodological choices that differed from these four features. Given these differing methodological choices, it is therefore important to examine whether the USSC 2010 racial disparity findings hold in the face of different analytical and modeling choices commonly found in sentencing studies.

To begin, the USSC's 2010 sentence length models included nonimprisonment cases as sentence lengths of "0," thus combining the incarceration and length decision into one OLS analysis. This strategy is relatively uncommon in the sentencing literature because it (a) assumes that there is no selection in the imprisonment decision relative to the length decision, (b) creates problematic distributional issues for standard OLS regression, and (c) offers opaque results regarding policy recommendations for the Guidelines. Although some might argue that nonincarceration sentences should be included as zeros because these offenders' "true" sentence lengths are not unobserved or censored, but are actually 0 months, we argue that this approach would be analogous to conducting research on wage disparity and including the unemployed, claiming that unemployed people actually receive wages of $0 (see Bushway, Johnson, and Slocum, 2007). We prefer to view only those *selected for incarceration* as eligible to receive sentence lengths. In other words, we view offenders' sentence lengths as conditional on whether they were sentenced to prison (and we will consider only imprisonment cases as sentence lengths, as we explain later).

This issue also raises the problem of the potential for selection bias, which is endemic to research on criminal justice decision making, and there is no definitive "right" way to handle it (Bushway et al., 2007; Stolzenberg and Relles, 1997). Most state and federal sentencing studies treat the imprisonment decision and the length decision as two related but distinct decisions (what Bushway et al. [2007] call the "two-part model"), and then these studies consider the issue of selection by including or not including a Heckman two-step correction for selection bias stemming from the imprisonment decision in sentence length models (for some among many examples, see Anderson and Spohn, 2010; Doerner and Demuth, 2009; Johnson et al., 2008; Kautt, 2002; Peterson and Hagan, 1984; Spohn and Holleran, 2000; Steffensmeier and Demuth, 2000; Steffensmeier, Kramer, and Streifel, 1993; Ulmer, 1997; Ulmer, Eisenstein, and Johnson, 2010). The purpose of doing the Heckman correction is to generate estimates that refer to the *potential* population of everyone who could have been selected (Bushway et al., 2007). This strategy is in contrast to analyses that include only those who were sentenced to prison (i.e., second part of the two-part model) because these estimates refer only to the *actual* incarcerated population. Although the uncorrected two-part model may not capture potential selection *bias* because it focuses only on the effects on imprisonment length conditional on being imprisoned (Bushway et al., 2007), the approach used in the *Booker* reports does not assume any selection in the imprisonment decision by treating nonincarcerated offenders as incarcerated offenders for 0 months.

In other words, the latter approach assumes there is no distinction between those actually selected and those potentially selected, and it treats everyone as having a sentence length. It is for the preceding reasons that scholars attempted to use the Heckman correction; however, because the application of the selection procedure is problematic for several reasons in sentencing research, we opted to analyze sentence lengths for only those who were actually incarcerated.[1] That is, we employ a two-part model (although we do report the results of our "corrected" models in the text).

A second solution for problems with selection is the use of tobit regression (see Bushway et al., 2007), which treats the sentence length variable as an instance of censoring. Because thousands of convicted offenders do not receive prison each year, these "zeros," when left in the distribution, create a problem with left censoring (i.e., there is a large category of individuals at the bottom of the distribution, which violates OLS assumptions regarding a normally distributed dependent variable). In this case, a tobit model treats the sentence length distribution as a normal one but explicitly treats the zero sentence lengths as a point of censoring, and it assumes that the likelihood function would be normally distributed were it observed fully (for examples, see Albonetti, 1997, 1998; Bushway and Piehl, 2001; Kurlychek and Johnson, 2004). As an illustration of this censoring problem, we display the distributions of the sentence-length–dependent variables used by the USSC (panel A) and in our analysis (panel B) in Figure 1.

Both variables are displayed along a logarithmic scale. From a purely statistical standpoint, the distribution in panel A is highly problematic for an OLS regression equation. First, the variable does not approximate a normal or even near-normal distribution. Indeed, the modal category of this distribution is −4.61 [ln(0.01) = −4.61], which is the furthest left tail of the distribution.[2] As we demonstrate subsequently, this modeling choice has dramatic effects on how sentence length results are interpreted. Panel B, in contrast, displays the distribution of the dependent variable used in our analysis. By analyzing only those who

1. Rather than including "zeros" in standard OLS models, scholars have adopted several strategies to account for this possible selection bias, often using the Heckman two-step procedure, in which an individual's probability of being selected into the population of interest (in this case those receiving sentence lengths) is first calculated (using the inverse mills ratio), and then this conditional probability is entered into the OLS model. Although this selection correction may be justified theoretically, as Bushway et al. (2007) demonstrated, often its application is complicated and problematic because sentencing data usually do not include proper selection instruments that affect only an offender's likelihood of incarceration but not his or her length of imprisonment. As a result, the selection equation often includes many of the same predictors (i.e., criminal history, offense severity, race, etc.) as the substantive equation (sentence length) that introduces problems with multicollinearity, and model identification. Using similar procedures as Bushway et al. (2007), we find that using the Heckman procedure produced substantively similar results as those we present (discussed subsequently) but did in fact introduce problematic multicollinearity into our models of sentence length.

2. The USSC gave all zeros a value of 0.01 prior to logging because the log of 0 is not mathematically possible. Hence, all offenders who received probation or who were not incarcerated make up this category of −4.61 on the logarithmic scale.

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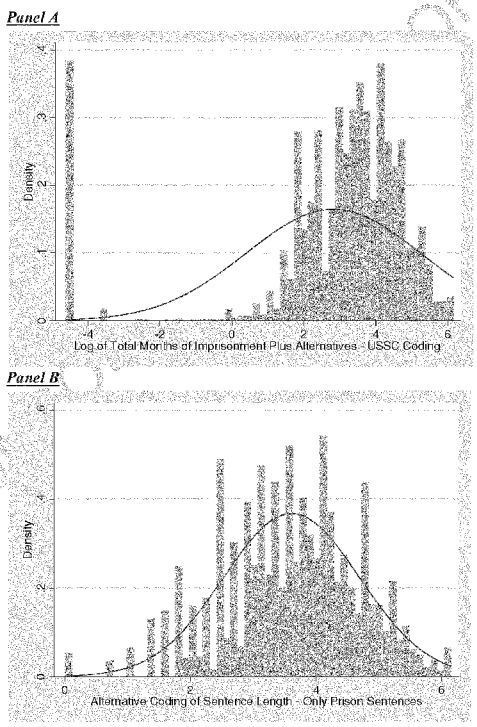
FIGURE 1

Histograms of Dependent Variables: Panel A - USSC Coding; Panel B - Authors' Alternative Coding



were actually sentenced to prison, logging approximates a normal distribution and does not require any correction for censoring. Again, although this modeling choice may be susceptible to selection bias, to ensure the robustness of our results, we also ran tobit regression models (discussed in text subsequently).

Perhaps the strongest argument against modeling sentencing decisions similar to the *Booker* report is the inability to separate out disparities occurring at either the incarceration stage or the sentence length stage. As stated, although we acknowledge that our models of sentence length may ignore potentially problematic selection bias from a policy perspective, we argue that our analytical approach is more appropriate because it does not conflate the incarceration and sentence length decisions. By combining both decisions into one model (aside from the distributional and statistical issues discussed previously), the USSC model does not allow for the possibility that predictors might have different effects on imprisonment and sentence length. However, this situation has often been found to be the case in sentencing research—and in fact, it is common to find that extralegal variables such as race/ethnicity have stronger impacts on incarceration than on sentence length in sentencing research (see reviews by Spohn, 2000; Zatz, 2000; see also Doerner and Demuth, 2009; Johnson, 2006; Kramer and Ulmer, 2009; Steffensmeier et al., 1993; Ulmer and Johnson, 2004). In fact, the strategy adopted in the 2010 report differs from modeling choices made in previous USSC publications, in which incarceration and sentence length analyses were modeled separately (see USSC, 2004: ch. 4). By combining the incarceration and length decisions into one model, the USSC report may be overstating the amount of sentence length disparity, yet failing to pinpoint disparity in the incarceration decision.

The second methodological issue is that much of the previous research on federal sentencing has either excluded immigration or noncitizen cases from the analysis (Doerner and Demuth, 2009; Steffensmeier and Demuth, 2000; Ulmer et al., 2010) or analyzed these cases separately (Feldmeyer and Ulmer, in press) for several reasons. First, often immigration offenses are handled differently than other federal crimes because of the intersection of immigration and criminal law, the possible involvement of foreign governments (Steffensmeier and Demuth, 2000), and the use of deportation as a sentencing option (only for non-U.S. citizens, who make up the overwhelming majority of immigration offenders). In fact, in the USSC's 15-year assessment of how well the guidelines have accomplished the goals set out by Congress, the Commission excluded noncitizens from their analysis of racial, ethnic, and gender disparity because "inclusion of non-citizens, who are often non-White, confounds race and ethnicity effects of those with citizenship" (USSC, 2004: 120). Second, districts with comparatively large numbers of immigration cases commonly employ "fast-track" programs designed to expedite such cases (Bowman, 2003), whereas others do not have such fast-track programs. Fast-track programs present problems with uniformity in the system because the affected sentences are dependent not just on an offender's criminal conduct but on the district in which the offender is prosecuted (Maxfield and Burchfield, 2002). In the absence of controls for district variation (such as fixed-effects models) or

fast-track departures, this presents a potential omitted variable bias. Also, U.S. citizens would seldom be convicted of offenses involving "unlawfully entering or remaining in the U.S." (see §2L1.2 in the U.S. Guidelines Manual), which represent more than 70% of all immigration crimes. Again, this is not to say that immigration offenses should not be evaluated in sentencing outcomes. On the contrary, given the dramatic growth of such offenses in federal courts, we think this especially important issue deserves critical attention. However, we do argue that there are good reasons to suspect that immigration offenses are handled in distinct ways from most other offenses, and any analysis of federal data should be attuned to their distinctiveness, perhaps analyzing them separately.

The third methodological difference also involves the dependent variable. Whereas much previous research has examined sentences of incarceration to *prison* (which is the method we employ in our analysis; see also Bushway and Piehl, 2001; Doerner and Demuth, 2009, for similar analyses), the USSC uses a dependent variable that captures the months of *confinement* to either prison, home detention, community confinement, and intermittent confinement.[3] In other words, the racial disparities in "sentence lengths" reported by the commission could be a result of different prison sentences or could be a result of different terms of community confinement or home detention. Although it is certainly important to research racial disparities in these other forms of confinement, we argue that sentences of home detention (and other forms of confinement) are qualitatively different from time in prison to the point where such sentences should not be analyzed as equivalent forms of incarceration.

Finally, the USSC 2010 report did not include controls for criminal history in their "refined" models because of issues of multicollinearity and because criminal history is one of the components of the presumptive sentence measure (see the Data section). However, criminal history has been shown to be an important independent predictor of sentencing outcomes beyond that captured by the presumptive sentence in published research on both state and federal sentencing (Albonetti, 1998; Doerner and Demuth, 2009; Feldmeyer and Ulmer, in press; Johnson and Betsinger, 2009; Johnson et al., 2008; Ulmer, 2005). These studies, along with our analysis, did not report severe multicollinearity with these two measures; however, criminal history was notably correlated with race (Black defendants tend to have higher mean criminal history scores).[4] Thus, any increase in racial disparity could possibly be because judges (or prosecutors) put more weight on criminal history in the wake of *Booker* and *Gall*.

Why would researchers want to control for criminal history in sentencing models above and beyond its influence through the presumptive Guidelines sentence? One answer is that, even if criminal history influences sentencing over and above the effect of Guidelines

3 This variable is SLNSPL10 in the USSC data files.

4 The bivariate correlation between criminal history and presumptive sentence is approximately 0.35 in all time periods.

minimums and is therefore a discretionary rather than a Guidelines-driven consideration of criminal history, sentencing variation explained by criminal history is not variation explained by race or ethnicity (or other defendant social statuses). That criminal history may *mediate* part of the effect or race/ethnicity or other characteristics indicates to us the importance of controlling for it when we try to identify the sentencing effect of race/ethnicity that is not attributable to other factors. Also, as we note, the USSC in their "*Booker*" models and several other federal sentencing studies include criminal history in sentencing models. However, as we discuss in both the Results and Conclusion sections, there is legitimate debate as to the proper method for accounting for offender criminal history in sentencing studies that deserves additional attention.

It is also important to put the racial disparity findings from the USSC's refined model in broader temporal context. That is, how do post-*Booker* levels of sentencing disadvantage for Black males, for example, compare with Black male sentencing patterns in the pre-PROTECT Act era, or even before the important 1996 *Koon* decision? Perhaps the relatively low levels of racial disparity during the PROTECT Act era were atypical in the history of the Guidelines, and post-*Booker* racial disparity levels are comparable with earlier periods when the Guidelines were mandatory, but the PROTECT Act restrictions were not in effect. If this were the case, then it would not support arguments that the *Booker* and *Gall* decisions, and the increased judicial discretion they brought, produced a new trend of racial disparity in federal sentencing.

We attempt first to replicate the USSC's refined sentence length model (and also extend this analyses to the pre-PROTECT Act era) and then present alternative models that (a) examine disparity in the incarceration and length decisions separately, (b) control for criminal history, (c) do not equate alternative confinement with imprisonment, and (d) show levels of disparity with immigration offenses included in the models versus when they are excluded. We also extend the time period comparisons of racial disparity to the pre-PROTECT and the pre-*Koon* eras.

In addition, the 2010 report did not present an analysis of whether disparity has increased in sentences that depart/deviate from the Guidelines in the post-*Booker* periods, and it did not compare their refined model findings to time periods earlier than the years when the PROTECT Act was in force (2003–2004). We, therefore, present an analysis of whether disparity in departures (and which kinds of departures) has increased post-*Booker* and post-*Gall*, since judicial discretion to deviate from the Guidelines has increased post-*Booker*, and Guidelines departures have been found to be the locus of extralegal disparity in research on pre-*Booker* sentencing.

Data

The data come from the U.S. Sentencing Commission's Standardized Research Files, which are the same data used by the USSC for its reports. Consistent with the USSC's reports on the effects of *Booker*, we use the four time periods noted previously to assess the impact

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of *Booker*: (a) cases sentenced in the pre-PROTECT Act period, which includes fiscal year 2002 (October 1, 2001–September 20, 2002) and fiscal year 2003 through April 2003; (b) cases sentenced in the PROTECT Act period which includes the second part of fiscal year 2003 (see footnote 1) and fiscal year 2004 through June 2004, which corresponds with the decision by the Supreme Court in *Blakely v. Washington* being handed down on June 24, 2004 (hereafter *Blakely*); (c) cases sentenced in the post-*Booker* period (January 2005 through November 2007); and (d) cases sentenced post-*Gall* (December 2007 through September 2009).[5,6,7] The unit of analysis is each sentenced case.

Dependent Variables

Our analysis examines the following three dependent variables for each of the four time periods: (a) length of sentence, (b) the imprisonment decision, and (c) the likelihood of receiving downward departures from the guidelines, where substantial assistance and nonsubstantial assistance ("other" departures) are analyzed separately. Coefficients from the four separate time periods (pre-PROTECT, PROTECT, early post-*Booker*, and later post-*Booker*) are compared using z tests (Clogg, Petkova, and Haritou, 1995; Paternoster, Brame, Mazerolle, and Piquero, 1998). The first dependent variable is the sentence length ordered for each offender (capped at 470 months). For the analyses after Figure 2, our dependent variable differs from that used in the USSC 2010 report in that we only use terms of imprisonment in our analysis, whereas their analysis includes months of alternative confinement including home detention, community confinement, and intermittent confinement. The USSC's sentence length models also contain those who did not receive confinement sentences (e.g., probation) as sentence lengths of "0" (or 0.01, because 0 cannot be logged), whereas our analyses after Figure 2 do not. Because the sentence length variable is skewed positively and regression diagnostics indicated problematic standard errors, we use the natural log transformation (as did the USSC in its reports). Our other dependent variables are dichotomies: (a) incarceration = 1, 0 if not; and (b) downward departures (of particular kinds) = 1, 0 if not.

Independent Variables

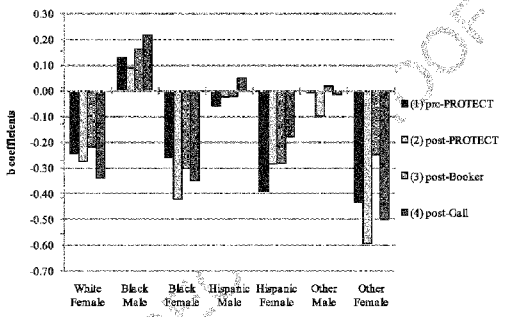
Consistent with prior research, we control for the *Guidelines-recommended sentence* by including a measure of the presumptive sentence equal to the minimum months of incarceration recommended by the sentencing guidelines after adjusting for any mandatory

5. Seven months of fiscal year 2003 were prior to the effective date of the PROTECT Act (October 1, 2002–April 30, 2003), and five months were after (May 1, 2003–September 30, 2003).

6. We remove the period between the *Blakely* and *Booker* decisions to remove any potential *Blakely* effects.

7. The *Booker* decision was handed down on January 12, 2005, and *Gall* was decided on December 10, 2007.

U.S. Sentencing Commission "Refined" OLS Models of Sentence Length



Race-Gender Combinations	(1) pre-PROTECT *Ln Length*[a] *b*	(2) post-PROTECT *Ln Length* *b*	(3) post-*Booker* *Ln Length* *b*	(4) post-*Gall* *Ln Length* *b*
White Male (reference)				
White Female	**-0.244**	**-0.275**	**-0.216** [2]	**-0.340** [1,2,3]
Black Male	**0.130**	**0.089**	**0.164** [1,2]	**0.217** [1,2,3]
Black Female	**-0.258**	**-0.422** [1]	**-0.300** [2]	**-0.349** [1]
Hispanic Male	**-0.058**	-0.023	-0.019 [1]	**0.049** [1,2,3]
Hispanic Female	**-0.391**	**-0.286** [1]	**-0.280** [1]	**-0.177** [1,2,3]
Other Male	-0.008	**-0.097** [1]	0.020 [2]	-0.014 [2]
Other Female	**-0.432**	**-0.592** [1]	**-0.247** [1,2]	**-0.499** [3]

BOLD denotes $p < .01$

[1] Coefficient is significantly different from pre-PROTECT Act estimate based on two-tailed z-test ($p < .05$)

[2] Coefficient is significantly different from post-PROTECT Act estimate based on two-tailed z-test ($p < .05$)

[3] Coefficient is significantly different from post-Booker estimate based on two-tailed z-test ($p < .05$)

[a] Models include controls for all variables in Appendix Table 1.

minimum trumps (Albonetti, 1998; Engen and Gainey, 2000; Johnson and Betsinger, 2009; USSC, 2004b). This measure incorporates the offense severity level and the criminal history, and it accounts for statutory sentencing provisions (i.e., mandatory minimum penalties) that affect the final presumptive sentence. As with sentence length, we cap the presumptive sentence variable at 470 months and take the natural log to reduce positive

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skewness.[8] Although criminal history is included in the presumptive sentence measure, we follow previous research (e.g., Albonetti, 1998; Doerner and Demuth, 2009; Johnson and Betsinger, 2009; Johnson et al., 2008; Ulmer, 2005; Ulmer et al., 2010) and include an additional control for the offender's criminal history score.

We also control for the type of offense with a set of dummy variables (drug, violent, fraud, firearms, and other offenses, with property offenses as the reference category). We control for two case characteristics: whether the offender was detained prior to sentencing, coded 1 if the offender was detained and 0 otherwise; and whether the individual was convicted by trial, coded 1 for a trial conviction and 0 otherwise. Our sentence length analyses include as predictors dummy variables for whether the defendant received an upward, downward, or substantial assistance (5K1) departure (coded 1 for these departures and 0 otherwise).

As in the USSC 2010 report's refined models, race/ethnicity and gender are combined into a set of dichotomous categories, a practice sometimes found in other sentencing studies as well (e.g., Doerner and Demuth, 2009; Kramer and Ulmer, 2009; Steffensmeier, Ulmer, and Kramer, 1998). In all analyses, we include dummy variables for Black males, Hispanic males, Black females, Hispanic females, White females, other race/ethnicity males, and other race/ethnicity females, with White males as the reference category. We also include a dummy variable for citizenship, with noncitizens coded as 1. Education is captured with four separate dummy variables: less than high school, high-school graduates, some college, and college graduates as the reference.

Results

First, we present our replication of the USSC's refined model, adopting their sentence length variable (with nonconfinement sentences included and with alternative confinement counted as equivalent to imprisonment) as well as their coding of all independent variables, but we extend the time period of comparison to the pre-PROTECT Act era.[9] Second, we present our alternative sentence length models across the four time periods. We then present similar models of the incarceration decision to compare racial/gender disparity across the different decision types. Fourth, both incarceration and sentence length decisions are reanalyzed without immigration offenses to evaluate the influence of these cases on

8. A constant of 0.1 is added to all zero values for the presumptive sentence variable but not for the sentence-length dependent variable. Taking the log of zero would exclude these values from the analysis. This is appropriate for the dependent variable because we want to analyze only those offenders who actually received a sentence length. The zeros are retained in the presumptive sentence variable (by adding 0.1 to all 0 values) because we want to retain those cases where an offender's minimum sentence was 0 months but he/she still received a prison sentence.

9. See the Appendix in *Demographic Differences in Federal Sentencing Practices: An Update of the Booker Report's Multivariate Regression Analysis* (USSC, 2010) for a description of all coding procedures used in USSC analyses.

demographic disparities in sentencing outcomes. Fifth, we compare post-*Booker* sentencing to sentencing practices prior to *Koon v. United States* (1996) to test the validity that a return to more mandatory guidelines will "correct" the problems wrought by *Booker* and *Gall*. Finally, we examine the effects of race/ethnicity-gender categories on the likelihood of receiving different kinds of downward departures/deviations from Guidelines across the time periods. Our primary focus is on comparing and contrasting our findings with those of the USSC with regard to disparity connected to the race/ethnicity-gender categories across the various time periods, and on extending the analysis of post-*Booker* race/ethnicity-gender disparity to decisions that depart/deviate below the Guidelines.

Replication and an Alternative to the USSC 2010 Report

Figure 2 shows the results from our replication of the models run in the USSC 2010 report.[10]

The results in Figure 2 display the USSC models of sentence length (logged) regressed on offender characteristics, case processing factors, offense categories, and Guidelines factors for each of the four time periods.[11] Consistent with previous research, both race-ethnicity and gender exert significant effects on sentence lengths in all time periods. Moreover, these results display similar patterns reported by the USSC, where certain forms of disparity have increased since *Booker* and *Gall*. For example, the Black male effect decreased from 0.130 in the pre-PROTECT era to 0.089 after the passing of the PROTECT Act, but then it increased to 0.164 in the wake of *Booker* and then again to 0.217 after *Gall*. Moreover, z tests show that these increases are statistically significant (see Appendix A). Figure 2 also shows that White female disparity has increased slightly since *Booker* and *Gall*, as has the Hispanic male effect.

Not only do some forms of disparity show increasing trends over time, but also these effects are large compared with the results published in previous sentencing research. For example, the Black female effect for the post-PROTECT era is −0.422, which corresponds to 34% lesser sentence lengths ($\exp[-0.422] - 1 \times 100 = -34$) compared with White males, net of controls. Interpreted substantively, this effect indicates that at the mean sentence length (62.6 months), Black female offenders receive sentences that are nearly 2 years (21.0 months) less on average compared with their White male counterparts. Given the relatively narrow sentencing ranges in the Guidelines, this is perhaps a shocking result.

10 For parsimony, we display only the results for the race-gender combinations. The full models are shown in Appendix A.

11 The results shown here are not identical to those published by the USSC. We attempted several different coding procedures to try to obtain the exact results of the USSC without success. However, the patterns of results are generally consistent with those published by the USSC, and these differences do not account for the different results we display based on modeling choice. In fact, our results in places display greater disparity than the USSC report. For example, the Black male effects in Figure 2 are slightly greater in the post-PROTECT and post-*Booker* periods than reported by the USSC.

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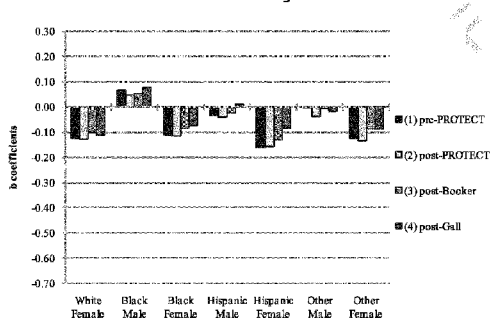
Alternative OLS Models of Sentence Length for Incarcerated Offenders



Race-Gender Combinations	(1) pre-PROTECT *Ln Length*[a] *b*	(2) post-PROTECT *Ln Length* *b*	(3) post-*Booker* *Ln Length* *b*	(4) post-*Gall* *Ln Length* *b*
White Male (reference)				
White Female	**-0.125**	**-0.128**	**-0.099** [1,2]	**-0.109**
Black Male	**0.066**	**0.045** [1]	**0.053** [1]	**0.077** [2,3]
Black Female	**-0.112**	**-0.115**	**-0.084** [1,2]	**-0.075** [1,2]
Hispanic Male	**-0.034**	**-0.039**	**-0.025**	0.011 [1,2,3]
Hispanic Female	**-0.162**	**-0.156**	**-0.132** [1]	**-0.085** [1,2,3]
Other Male	-0.004	**-0.036**	-0.005 [2]	-0.018
Other Female	**-0.123**	**-0.134**	**-0.086**	**-0.087**

BOLD denotes $p < .01$

[1] Coefficient is significantly different from pre-PROTECT Act estimate based on two-tailed z-test ($p < .05$)

[2] Coefficient is significantly different from post-PROTECT Act estimate based on two-tailed z-test ($p < .05$)

[3] Coefficient is significantly different from post-Booker estimate based on two-tailed z-test ($p < .05$)

[a] Models include controls for all variables in Appendix Table 2.

It is thus important to test the robustness of such findings against reasonable and common alternative modeling strategies.

Figure 3 reports the results from our alternative models of sentence length for all four time periods.[12]

12 Full results are available in Appendix B.

In separate models (not shown), we reran the analysis in Figure 3 without controlling for criminal history to assess the independent effect of excluding criminal history from models of sentence length. We find that criminal history has significant and substantial effects above and beyond the presumptive sentence. A one-unit increase in criminal history results in approximately 4% longer sentences, above that which is already captured by the presumptive sentence measure. Moreover, consistent with our predictions, including criminal history explains a significant portion of the race/ethnicity/gender effects. Put differently, criminal history seems to *mediate* a notable portion of the Black male effect. However, this was similarly true across time periods, and the inclusion or exclusion of criminal history does not change our conclusions about whether racial or ethnic disparity increased post-*Booker*/*Gall*. Across each time period, the racial/ethnic and gender disparities are approximately 20% larger when criminal history is not controlled for, and these effects vary across different racial-gender measures. For example, although criminal history accounts for virtually none of the Black female disparity, Black male disparity is more than 30% larger when a measure of criminal history is not included in the analysis. On the one hand, one could argue that by excluding criminal history from their "refined" models, the USSC may be overestimating racial and gender disparities in all time periods because part of the Black male effect in particular is explained by criminal history. On the other hand, one could argue that the true sentencing disadvantage of Black males is captured by not including criminal history because its Guidelines-based influence should occur through the presumptive sentence. Regardless, criminal history similarly mediates the Black male effect (in particular) across time periods.[13]

Although there are several differences in variable selection compared with Figure 2 (see the Data section for description), the most important difference between Figures 2 and 3 is the choice of dependent variable. In Figure 3, we include only those offenders who actually received a term of incarceration, whereas the USSC models included offenders who did not. The results reported in Figure 3 present a very different view of racial and gender disparity in the wake of *Booker* and *Gall*. First, the sizes of the disparity effects are substantially smaller. For example, whereas the Black male effect was 0.130, 0.089, 0.164, and 0.217 across the four time periods in Figure 2, they are 0.066, 0.045, 0.053, and 0.077 across the time periods in Figure 3. In other words, removing sentences of nonincarceration reduces the effect sizes by approximately 40% in each time period, and this pattern of results is generally consistent for the other racial-gender effects sizes. This reduction is almost entirely a result of removing the nonimprisonment cases—our omission of the alternative confinement cases as sentence

13. We also examined whether criminal history *moderates* the Black male effect by running supplemental analyses (available on request) that interacted criminal history by each race-gender dummy variable. We found a small moderation whereby the effect of criminal history was slightly greater for Black males (the Black male × Criminal history interaction term coefficients were as follows, pre PROTECT = 0.005, PROTECT = 0.006, post *Booker* = 0.004, post *Gall* = 0.007.) However, the differences in this interaction term across time periods were not statistically significant.

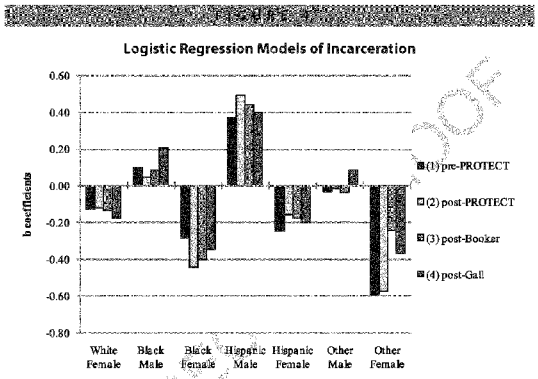
lengths does not change the results notably. The USSC's decision to include alternative confinement cases as sentence lengths therefore seems to be of negligible importance.

The second notable change in the pattern of results is the trends in effects over time. Although the Black male effect shows a similar pattern as Figure 2, where the effect dipped in the post-PROTECT era only to increase post-*Booker* and *Gall*, *z* tests show that the post-*Booker* effect is actually significantly *less than* the pre-PROTECT era, and there is no significant difference between the effects post-*Gall* and pre-PROTECT. In short, Black male disparity returned to the pre-PROTECT state in the wake of *Gall*. For other racial-gender effects, it seems that there is actually less disparity in sentence lengths after *Booker* and *Gall*. For example, compared with White males, the effects for Black females, Hispanic males, and Hispanic females are actually significantly *less* in the *Booker* and *Gall* periods than in the PROTECT era. In no case does it seem that racial-gender length disparities have substantially increased since *Booker* and *Gall*. Our findings, however, do raise serious questions about why our results differ from those of the USSC 2010 report. Because our dependent variable includes only terms of imprisonment, does this mean that disparity in the incarceration decision has increased after *Booker* and *Gall*? We explore this question in the next section.

Incarceration Decisions

Figure 4 reports the results of logistic regression models of the whether the offender was sentenced to prison regressed on the same independent variables reported in Appendix B.[14] The results offer mixed support for whether incarceration disparities have increased over time. Although the White female effect seems to have increased slightly, going from –0.125 in the pre-PROTECT era to –0.175 post-*Gall*, *z* tests show that none of the time period effects are significantly different from each other. This pattern of nonsignificant (or marginally significant) differences is generally true for nearly all the other race-gender effects as well but with one exception, the Black male effect. Consistent with the pattern of results for the sentence length decision, Black male disparity decreased in the PROTECT era but then increased in both the *Booker* and especially the *Gall* time periods. *z* tests confirm that post-*Gall* Black male *imprisonment* disparity is greater than in the previous time periods. These results explain the difference in sentence length disparity between the USSC report and our models. Whereas they interpret their findings as increases in sentence length disparity, we show that some differences in effects are actually caused by increased disparity in the incarceration decision. By including both imprisonment and length decisions into the USSC's dependent variable, these two distinct patterns of results become conflated. Such results raise questions about the extent to which our sentence length models in Figure 3 are biased by selection.

14. The only difference between the predictors in Figure 3 and 4 is the presumptive sentence variable is unlogged in Figure 4. The full table of incarceration results is available from the authors on request.



	(1) pre-PROTECT	(2) post-PROTECT	(3) post-*Booker*	(4) post-*Gall*
Race-Gender Combinations	*Ln Length*[a]	*Ln Length*	*Ln Length*	*Ln Length*
	b	*b*	*b*	*b*
White Male (reference)				
White Female	**-0.125**	-0.122	**-0.136**	**-0.175**
Black Male	0.101	0.046	0.084	**0.209** [2,3]
Black Female	**-0.283**	**-0.444**	**-0.401**	**-0.346**
Hispanic Male	**0.369**	**0.492**	**0.441**	**0.400**
Hispanic Female	**-0.245**	-0.158	**-0.177**	**-0.199**
Other Male	-0.032	-0.013	-0.038	0.084
Other Female	**-0.592**	**-0.573**	**-0.240** [1,2]	**-0.368**

BOLD denotes $p < .01$

[1] Coefficient is significantly different from pre-PROTECT Act estimate based on two-tailed z-test ($p < .05$)

[2] Coefficient is significantly different from post-PROTECT Act estimate based on two-tailed z-test ($p < .05$)

[3] Coefficient is significantly different from post-Booker estimate based on two-tailed z-test ($p < .05$)

[a] Models include controls for all variables in Appendix Table 2.

We ran our sentence length models both with and without a Heckman two-step correction factor, as discussed. For the purposes of the Heckman correction, we attempted to find exclusion restrictions and to estimate an incarceration model that was substantively different from the sentence length model. This was difficult because most variables that significantly predict imprisonment also predict length, although the strength of the effects is sometimes different. Nonetheless, our selection model included a dummy variable for

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presumptive disposition (despite whether the Guidelines recommended imprisonment), instead of Guidelines minimum. The selection model also omitted defendant education because this did not exert significant effects on imprisonment in the selection probit model. The Black male length effects in the Heckman corrected model are as follows (all are significant at $p < .001$): pre-PROTECT = 0.063, PROTECT = 0.041, post-*Booker* = 0.048, and post-*Gall* = 0.08). In the Heckman corrected models, the Hispanic male effect was –0.03 pre-PROTECT and –0.02 PROTECT, and –.016 post-*Booker* and 0.02 post-*Gall*. The other race/gender effects are comparable with those in the results we present.

In supplemental analyses, we also included all cases for the four time periods together in models of incarceration and length, and we included interaction terms for each race/ethnicity/gender variable times each time period (with pre-PROTECT left out as a reference category). These terms then allow us to include all cases together in one model with the same error structure and to examine differences in Black male effects, for example, across time periods in the same model.[15] The results generally corroborate what we present in our alternative analyses previously in that sentence length disparity for Black or Hispanic males is not significantly greater post-*Booker* or post-*Gall* than the pre-PROTECT or PROTECT eras. In fact, in the full time period interaction models, the increased incarceration odds post-*Gall* for Black males do not attain statistical significance. Furthermore, these models show that the Black male sentence length effects post-*Booker* and post-*Gall* are slightly but significantly *less* than that in the pre-PROTECT era, whereas our models in Figure 3 show no significant differences between the pre-PROTECT and post-*Booker*/post-*Gall* Black male effects. The Black male × Post-*Booker* coefficient is –0.023, and the Black male × Post-*Gall* coefficient is –0.017. Both indicate relatively small differences and are likely significant primarily because of the much larger number of cases in our combined-years model. Thus, the safest thing to say from our analyses is that the levels of sentence length disparity affecting Black males seems to be nearly identical pre-PROTECT Act, post-*Booker*, and post-*Gall*. However, we present the separate models here as our main analysis for comparability with the USSC 2010 report, and these separate models make it easier to compare each time period with one another.

We also estimated tobit models that combined nonimprisonment and imprisonment sentences, treating 0 as a censoring point. The Black male effects are as follows (all are significant at $p < .001$): pre-PROTECT = 0.064, PROTECT = 0.041, post-*Booker* = 0.05, and post-*Gall* = 0.07. In the tobit models, the Hispanic male effect changed from –0.04 pre-PROTECT and PROTECT, to –0.03 post-*Booker* and 0.008 (not significant) post-*Gall*.

15 We would like to thank several helpful reviewers for suggesting this alternative modeling approach

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Table 1. Alternative Models of Sentence Length and Incarceration WITHOUT Immigration Offenses

Sentence Length[a]	(1) pre-PROTECT b	(2) post-PROTECT b	(3) post-*Booker* b	(4) post-*Gall* b
White Male (reference)				
White Female	**−0.107**	**−0.113**	**−0.077**[1,2]	**−0.067**[1,2]
Black Male	**0.055**	**0.028**[1]	**0.035**[1]	**0.040**[1]
Black Female	**−0.097**	**−0.105**	**−0.068**[1,2]	**−0.059**[1,2]
Hispanic Male	−0.014	**−0.033**	**−0.013**[2]	0.005[1,2]
Hispanic Female	**−0.148**	**−0.140**	**−0.103**[1,2]	**−0.043**[1,2,3]
Other Male	−0.005	−0.027	0.006[2]	−0.012
Other Female	**−0.123**	**−0.114**	**−0.052**[1,2]	**−0.050**[1,2]
N	60,226	46,400	121,625	75,209
Adjusted R2	0.820	0.857	0.847	0.849
	(1) pre-PROTECT	**(2) post-PROTECT**	**(3) post-*Booker***	**(4) post-*Gall***
Incarceration[a]	**b**	**b**	**b**	**b**
White Male (reference)				
White Female	−0.110[2]	−0.127	**−0.136**	**−0.166**
Black Male	**0.126**	0.087	**0.113**	**0.228**[2,3]
Black Female	**0.240**	**−0.407**[1]	**−0.399**[1]	**−0.338**
Hispanic Male	**0.321**	**0.407**	**0.405**	**0.389**
Hispanic Female	−0.057	**−0.074**	**−0.107**	−0.122
Other Male	0.035	0.041	0.009	0.153
Other Female	**−0.497**	**−0.514**	−0.186[1,2]	−0.279
N	73,897	56,578	146,670	91,080
−2 log likelihood	31368.3	21318.6	50975.2	33249.8

BOLD denotes $p < .01$

[1] Coefficient is significantly different from pre-PROTECT Act estimate based on two-tailed z-test ($p < .05$)

[2] Coefficient is significantly different from post-PROTECT Act estimate based on two-tailed z-test ($p < .05$)

[3] Coefficient is significantly different from post-Booker estimate based on two-tailed z-test ($p < .05$)

[a] Models include controls for all variables in Appendix table 2.

Immigration Offenses

With immigration crimes accounting for more than 25% of all federal sentences in 2009, immigration offenses are an important component of federal sentencing. However, as stated, these offenses offer unique challenges to researchers interested in comparability with other crimes, across time, and across federal courts. In Table 1, we evaluate whether immigration offenses have played a role in changing racial-gender disparity since *Booker* and *Gall* in both the incarceration and sentence length decisions.

The results in Table 1 show the racial-gender effects for all four time periods across both the incarceration and sentence length decisions, excluding immigration offenses. For parsimony, we report only the race/ethnicity-gender effects (the full tables are available on request). The results for the trends in disparity in sentence length decisions, compared with

those reported in Figure 2, show that a substantial amount of racial-gender disparity can be attributed to immigration offenses. For each racial-gender effect across the four time periods, immigration offenses alone account for roughly 25% of the effect size. However, the impact of immigration offenses varies substantially across groups, accounting for roughly 40% of the Hispanic male and Black male effects but for only 10% of the other male effect. These results show clearly that immigration offenses offer unique challenges to the federal criminal justice system. Even though Hispanics comprise the overwhelming majority of immigration offenders, the inclusion of these offenses without properly accounting for the degree of interdistrict variation that goes along with the unique district policies (i.e., use of fast-track departures) used to deal with them results in greater estimates of racial-gender length disparity than would be the case if immigration offenses were excluded.

The impact of immigration offenses seems to have only a modest effect on incarceration disparity. Whereas excluding immigration offenses actually shows slightly (although non-significant) increases in Black male disparity, immigration crimes account for approximately 10% of the Hispanic male and more than 40% of the Hispanic female disparity effects.

Advisory versus Mandatory Guidelines: A Broader Time Comparison

So far, our models have found little substantive change in sentence length disparities based on race and gender when comparing the pre-PROTECT era with the post-*Booker* and *Gall* eras, but there has been an increase in Black male incarceration disparity. Also, roughly a quarter of all racial-gender disparities can be attributed to immigration offenses, likely resulting from the distinct methods certain federal districts use to handle the dramatic increase in immigration crimes.

As discussed, some commentators have claimed that increasing disparities post-*Booker* are caused by the increased discretion afforded judges (see, for example, Gonzales, 2005; Richter, 2008), and to prevent such disparity, the Guidelines need to be made mandatory once again. However, none of the critics of the new advisory system have demonstrated that there was actually less disparity during the many years when the Guidelines were mandatory. More to the point, are the PROTECT Act period and pre-PROTECT years since 2000 the only relevant comparisons? What about the many years prior to the PROTECT Act when the Guidelines were also mandatory?

Since 1996, considerable "back-and-forth" struggling has occurred between the Supreme Court and Congress about the proper amount of judicial discretion at sentencing (see Stith [2008] for a detailed discussion). The Supreme Court decision in *Koon v. United States* (1996) was a watershed in this struggle, and the aftermath of this decision eventually led to Congress's attempts to restrict judicial sentencing discretion even more strongly with the PROTECT Act (see Stith, 2008). Recall that in *Koon*, the Supreme Court held that departure decisions made by district judges should be given due deference by appellate courts and established that departures by judges should be examined by an "abuse of discretion" standard.

Table 2

Sentence Length and Incarceration Models Comparing Pre-Koon with post-Booker and post-Gall

Sentence Length[2]	(1) pre-*Koon* *Ln Length* *b*	(2) post-*Booker* *Ln Length* *b*	(3) post-*Gall* *Ln Length* *b*
White Male (reference)			
White Female	**−0.200**	**−0.110**	**−0.109**[1]
Black Male	**0.122**	**0.057**	**0.077**[1]
Black Female	**−0.107**	**−0.102**	**−0.075**
Hispanic Male	0.012	**−0.015**	0.011
Hispanic Female	**−0.125**	**−0.130**	**−0.085**[1]
Other Male	0.017	−0.007	−0.018 1
Other Female	**−0.109**	−0.007	**−0.087**

Incarceration[2]	(1) pre-*Koon* *Incarceration* *b*	(2) post-*Booker* *Incarceration* *b*	(3) post-*Gall* *Incarceration* *b*
White Male (reference)			
White Female	**−0.208**	**−0.156**	**−0.207**
Black Male	−0.008	0.078	**0.175**[1]
Black Female	**−0.558**	**−0.500**	**−0.500**
Hispanic Male	**0.489**	**0.588**	**0.437**
Hispanic Female	**−0.419**	**−0.200**[1]	**−0.282**
Other Male	−0.131	−0.053	−0.018
Other Female	**−0.734**	**−0.332**	−0.498

BOLD denotes $p < .05$

[1] Coefficient is significantly different from pre-*Koon* estimate based on two-tailed z-test ($p < .05$)

[2] Models include controls for all variables in Appendix table 2 with the exception of "Pre-Sentence Detention," because this information was not collected in the pre-*Koon* data.

Thus, prior to *Koon* and its modest relaxation of restrictions on judges' ability to depart from Guidelines, the Guidelines were arguably more "mandatory" than at any other point in their history except perhaps the PROTECT era. We, therefore, use federal sentencing data from fiscal years 1994 and 1995 as a comparison time period versus post-*Booker* and post-*Gall*. If there is less disparity in the pre-*Koon* time period compared with *Booker* and *Gall*, this might mean that the post-*Booker* environment of advisory Guidelines has fostered greater disparity, and it would support calls for renewed restrictions on judicial discretion.

Table 2 shows the results for sentence length and incarceration decisions in the pre-*Koon*, post-*Booker*, and post-*Gall* time periods.

For parsimony, we display only the results for the racial-gender effects (full tables are available on request; note that the post-*Booker*/*Gall* effects are not identical to Figures 3

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and 4 because we had to omit presentencing detention as a predictor.)[16] Beginning with the sentence length results, it seems that the post-*Booker* and post-*Gall* disparities are considerably *less than* those found prior to *Koon*. Indeed, the White female, Black male, and Hispanic female effects are significantly less in either the *Booker* or *Gall* periods than prior to *Koon*. In no instance has there been a significant increase in sentence length disparities since *Koon*. Put simply, racial and gender sentence length disparities are less today, under advisory Guidelines, than they were when the Guidelines were arguably their most rigid and constraining.

However, disparities in the incarceration decision show considerably more stability among the three time periods. Of the seven racial-gender effects shown, three of them (Black female, Hispanic male, and other male) show no significant changes, two effects display significant reductions in disparity (Hispanic and other females), and only one effect shows a significant increase in disparity (Black male); this latter finding is specific to the post-*Gall* period.

These findings call into question the notion that mandatory guidelines, per se, result in reduced racial and gender disparities. Although we do find that Black male incarceration disparity has increased post-*Gall* compared with the pre-*Koon* period, we also find that Black male sentence length disparity has been reduced considerably. Moreover, of the 14 racial-gender effects shown in Table 2 (7 effects across two sentencing decisions), 7 show that post-*Booker* or post-*Gall* disparities are significantly *less than* those found prior to *Koon*, and the other 6 effects in general display slight (although nonsignificant) reductions in disparity.

It should be noted that incarceration and sentence length decisions are not the only punishment decisions that judges make. In fact, much of the political and legal controversies surrounding the Guidelines have pertained to departures, and previous research has showed that departures from the guidelines are a locus of disparity in federal courts (Albonetti, 1998; Johnson et al., 2008; Mustard, 2001). As our final test of whether *Booker* and *Gall* have resulted in greater disparities, Figure 5 reports the results from logistic regression models of whether an offender received a nonsubstantial assistance downward departure from the guidelines.[17]

In all time periods, there is evidence of racial and gender disparity. Black males and females are both less likely to receive an "other" downward departure compared with their White male counterparts, net of controls, whereas White females are more likely to receive this form of sentencing discount. The trends in the effects, however, do not show that *Booker* and *Gall* have increased disparity substantially. z tests show that none of the Black

16. All models in Table 2 include all variables from Figures 3 and 4 except whether the offender was detained pending sentencing. Although this variable is shown to have an effect on racial and gender disparities, information on this measure is not available in USSC data in the pre-*Koon* period. Thus, to compare across time periods directly, this measure was removed.

17. Full models are shown in Appendix C.

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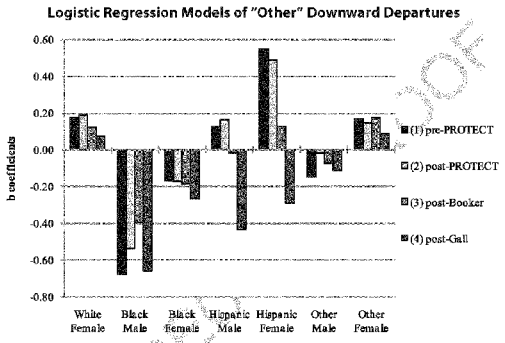
Figure 1



	(1) pre-PROTECT	(2) post-PROTECT	(3) post-*Booker*	(4) post-*Gall*
Race-Gender Combinations	*Downward Dep*[a]	*Downward Dep*	*Downward Dep*	*Downward Dep*
	b	*b*	*b*	*b*
White Male (reference)				
White Female	**0.173**	**0.189**	**0.122**	0.077
Black Male	**-0.678**	**-0.538** [1]	**-0.397** [1,2]	**-0.661** [2,3]
Black Female	**-0.167**	-0.172	**-0.185**	**-0.266**
Hispanic Male	**0.130**	**0.167**	-0.019 [1,2]	**-0.432** [1,2,3]
Hispanic Female	**0.551**	**0.486**	**0.129** [1,2]	**-0.290** [1,2,3]
Other Male	-0.147	-0.017	-0.073	**-0.111**
Other Female	0.168	0.145	**0.177**	0.089

BOLD denotes $p < .01$

[1] Coefficient is significantly different from pre-PROTECT Act estimate based on two-tailed z-test ($p < .05$)

[2] Coefficient is significantly different from post-PROTECT Act estimate based on two-tailed z-test ($p < .05$)

[3] Coefficient is significantly different from post-Booker estimate based on two-tailed z-test ($p < .05$)

[a] Models include controls for all variables in Appendix Table 3.

female effects are significantly different across time, and this is true for the White female effects as well. The likelihood of a Black male receiving this sentencing discount actually improved significantly in the post-*Booker* period compared with the pre-PROTECT and post-PROTECT eras. However, since *Gall*, this form of sentencing disparity has returned to the effect found in the pre-PROTECT time period, as evidenced by the nonsignificant

z score between times (4) and (1). Interestingly, the disparity against Hispanic males and females seems to have increased in the post-*Gall* time period only. Whereas Hispanic offenders (both male and female) were slightly more likely to receive an "other" downward departure in the pre-PROTECT and post-PROTECT periods, they are significantly less likely to receive this sentencing discount post-*Gall*.

In all, these results do not show that *Booker* and *Gall* produced greater disparity in the likelihood of minority offenders to receive nonsubstantial assistance departures. In most cases, the disparities returned to the pre-PROTECT effect sizes, although Hispanic disparity does seem to have increased since *Gall*. It should be noted, however, that this pattern of increased disparity against Hispanics is also true for substantial assistance departures. Figure 6 reports the results for the likelihood of receiving a substantial assistance departure across the four time periods.[18]

Again, there is clear disparity in the application of these departures in all time periods, specifically for Black and Hispanic males. Similar to the results in Figure 5, we find that Black male disparity increased in the post-*Gall* period, but this effect is not significantly different than in the pre-PROTECT period. This is not the case for Hispanic males, who have witnessed a significant increase in disparity post-*Gall* compared with all other time periods. These results are substantively important because, whereas most commentary on the effects of *Booker* and *Gall* has focused on how judges have reacted to their newfound discretion, little has been mentioned about how these cases may affect prosecutorial behavior. The results in Figure 6 suggest that disparity against Hispanic males in the prosecutorial use of substantial assistance departures has increased considerably since *Gall*.

The idea that prosecutorial discretion, as opposed to judicial discretion, has been more of a locus of disparity in the wake of *Booker* and *Gall* receives additional support in Table 3.

Prior to *Booker*, the USSC did not keep detailed information on different types of downward departures except to indicate substantial assistance departures. However, government-sponsored downward departures and even fast-track departures were around long before *United States v. Booker*. After *Booker*, the USSC began keeping more detailed information on these specific departures types. Thus, in Table 3, we model the likelihood of receiving a judge-initiated downward departure, a government-sponsored downward departure, or a fast-track departure in the post-*Booker* and *Gall* time periods. The first part of the table shows that both Black and Hispanic males are particularly disadvantaged in their likelihood of receiving a judge-initiated departure, and both forms of disparity have become significantly worse post-*Gall* compared with post-*Booker*. These results lend some support to those who claim that judges have used their newfound discretion in discriminatory ways. However, it is important to note that these effect sizes for "true" judge-initiated departures are considerably less than those found in Figure 4, which contained all three of the different

18 Figure 6 includes all controls shown in Appendix C. Full tables are available from authors on request.

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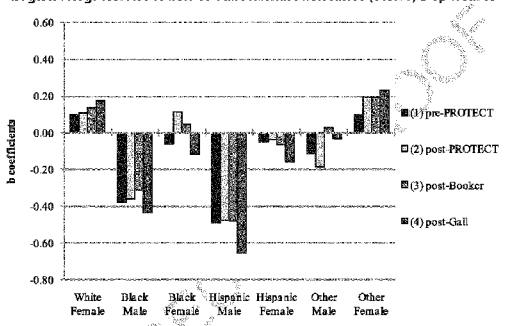
Figure 4

Logistic Regression Models of Substantial Assistance (5K1.1) Departures



Race-Gender Combinations	(1) pre-PROTECT *5K1.1 Dep*	(2) post-PROTECT *5K1.1 Dep*	(3) post-*Booker* *5K1.1 Dep*	(4) post-*Gall* *5K1.1 Dep*
	b	*b*	*b*	*b*
White Male (reference)				
White Female	**0.101**	0.109	**0.135**	**0.175**
Black Male	**-0.378**	**-0.361**	**-0.313**	**-0.436** [3]
Black Female	-0.057	0.112 [1]	0.050	-0.116 [2,3]
Hispanic Male	**-0.489**	**-0.474**	**-0.482**	**-0.656** [1,2,3]
Hispanic Female	-0.050	-0.037	-0.066	**-0.157**
Other Male	-0.113	**-0.186**	0.029 [2]	-0.030
Other Female	0.102	0.194	**0.195**	0.233

BOLD denotes $p < .01$

[1] Coefficient is significantly different from pre-PROTECT Act estimate based on two-tailed z-test ($p < .05$)

[2] Coefficient is significantly different from post-PROTECT Act estimate based on two-tailed z-test ($p < .05$)

[3] Coefficient is significantly different from post-Booker estimate based on two-tailed z-test ($p < .05$)

[a] Models include controls for all variables in Appendix Table 3.

nonsubstantial assistance departure types combined into the "other" downward departure category. For example, in both the post-*Booker* and post-*Gall* periods, the effect for Black males in judge-initiated departures is only half the size of the effect for "other" downward departures, which suggest that prosecutor-sponsored departures are responsible for the other half. Moreover, the disparity against African Americans is considerably greater in both forms

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Table 3

Logistic Regression Models of Different Departure Types in the post-Booker Era

Judge Initiated Departure[2]	(1) post-*Booker* b	(2) post-*Gall* b
White Male (reference)		
White Female	**0.124**	0.077
Black Male	**−0.200**	**−0.341**
Black Female	−0.020	−0.050
Hispanic Male	**−0.213**	**−0.308**
Hispanic Female	**0.119**	−0.014
Other Male	−0.027	0.015
Other Female	0.044	0.091
Government Sponsored Dep.[2]	**(1) post-*Booker* b**	**(2) post-*Gall* b**
White Male (reference)		
White Female	0.045	−0.061
Black Male	**−0.299**	**−0.599**
Black Female	**−0.499**	**−0.438**
Hispanic Male	**0.264**	0.110[1]
Hispanic Female	**0.561**	**0.317**
Other Male	**0.353**	**0.474**
Other Female	**0.473**	**0.689**
Fast-Track Departures[2]	**(1) post-*Booker* b**	**(2) post-*Gall* b**
White Male (reference)		
White Female	**0.274**	**0.420**
Black Male	**−2.580**	**−3.595**
Black Female	**−2.200**	**−2.902**
Hispanic Male	0.059	**−1.118**
Hispanic Female	**0.148**	**−1.148**
Other Male	**−0.511**	**−1.184**
Other Female	**0.784**	0.104[1]

BOLD denotes $p < .01$

[1] Coefficient is significantly different from post-*Booker* estimate based on two-tailed z-test ($p < .05$)

[2] Models include controls for all variables in Appendix Table 3.

of government-sponsored departures, and it has increased to a greater extent since *Gall*. Taken together, although much scholarly attention has been devoted to the changes in judges' discretion, the results in Figure 5, Figure 6, and Table 3 suggest that the post-*Booker* and post-*Gall* eras have observed equal or greater changes in prosecutorial behavior.

Conclusions

If a primary goal of federal sentencing reform was a reduction of unwarranted disparity, the impact of the *Booker/Fanfan* decision on disparity is among the most important empirical

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questions facing sentencing policy makers (Hofer, 2007). Indeed, U.S. Attorney General Eric Holder (2009) emphasized the need for such research in recent remarks to Congress. We have provided an alternative to and extension of the USSC's 2010 report, which found that sentence length disparity affecting Black males has increased relative to the PROTECT era. Our sentence length findings differ in important respects with the USSC 2010 report, and our analyses go beyond theirs to provide a more extensive and fine-grained analysis of different sentencing decisions where disparity affecting Black males (and others) may occur.

First, in analytically separating the imprisonment decision from the length decision, we find that a considerable part of the USSC's Black male disparity findings are attributable to their analyses' combining of the imprisonment and length decisions into one model (and using OLS regression, rather than other options such as tobit models). We find that Black male incarceration odds have stayed relatively stable from pre-PROTECT up through post-*Booker*. Interestingly, the pre-PROTECT, PROTECT, and post-*Booker* periods show greater imprisonment decision disparity affecting Black males than the period before the 1996 *Koon* decision. However, Black male imprisonment odds do increase significantly post-*Gall*. This post-*Gall* increase in Black males' odds of imprisonment plays a big part in driving the USSC's findings of greater Black male sentence length disparity. We have in fact shown that *post-Gall increases in Black male disparity are specific to the imprisonment decision* and not to sentence lengths. This indicates that it matters a great deal for questions of disparity how one defines sentence outcome variables, and how one deals with selection into imprisonment, as well as the issue of censoring.

Second, we find that post-*Gall* sentence length disparity disadvantaging Black males has increased significantly only with respect to the PROTECT era, and *not* in comparison with earlier periods. Notably, the post-*Booker*/*Gall* levels of Black male sentence length disparity are lower than in the pre-*Koon* period, in addition to the pre-PROTECT era. Thus, one concludes that the post-*Booker* era has brought greater sentence length racial disparity disadvantaging Black males *only* when one's basis of comparison is the PROTECT era.

Regarding racial disparity, the truly unusual period in the history of the Guidelines may be the PROTECT Act era, rather than the post-*Booker*/*Gall* eras. Taking the long view, the relatively low levels of disparity in the PROTECT period were an anomaly compared with the earlier years when the Guidelines were also mandatory (particularly the pre-*Koon* period), as well as the post-*Booker* years. If post-*Booker*/*Gall* racial/gender length disparity levels were comparable with or lower than levels in previous periods when the Guidelines were also mandatory, this calls into question the notion that the post-*Booker*/*Gall* eras of advisory Guidelines have produced *uniquely high* levels of racial disparity in sentence lengths. In our view, this also calls into question the need for blanket policy remedies that would attempt to curtail overall judicial sentencing discretion in the name of reducing disparity in sentence lengths.

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Third, criminal history has an effect on sentences independent of Guidelines presumptive sentences, and criminal history *mediates* a notable portion of the Black male effect. The implications of this mediation should be considered further. On the one hand, Black males on average have higher criminal histories compared with White males (the Black male–criminal history correlation across all years is 0.25, whereas the White male–criminal history correlation is –0.29). Thus, it could be argued that criminal history, even its discretionary consideration beyond its influence in establishing the presumptive sentence, captures "real" legally relevant differences—differences that are not attributable to race/gender categories. Therefore, the "true" degree of disparity is that which is left over after criminal history is taken into account. However, one could argue that the consideration of criminal history itself disadvantages Black male defendants and that the "true" degree of sentencing disadvantage is that which is produced by courts' discretionary consideration of criminal history beyond its influence on presumptive sentence because the consequences of such consideration fall harder on Black males.[19] Furthermore, the criminal records of Black males may themselves be the product of discriminatory processes and may be viewed subjectively and counted as more serious than those of other offenders. Although answering these questions is beyond the scope of this current article, it is safe to say that controlling for both presumptive sentence and criminal history likely produces lower bound estimates of racial disparity, and our results suggest a need for future research and policy discussions about the consideration of criminal history, how it should be modeled properly, and its differential impact on Black males. It should be noted, however, that criminal history mediates the Black male effect similarly across each time period and, thus, does not account for the different trends in disparity between our analysis and the USSC 2010 report.

Fourth, a substantial portion of the sentence length disparity affecting Black males across time is attributable to *immigration offenses*, especially for the post-*Booker/Gall* period. When immigration offenses are removed from the models, Black male sentence length disadvantage is notably less than when immigration offenses are included. What is more, when immigration offenses are removed, there is actually significantly *less* length disparity affecting Black males in the post-*Booker/Gall* periods than in the pre-PROTECT era. Incidentally, this is also true when we use the USSC model specification as in Table 1 without immigration offenses (available on request).

Booker and especially *Gall* gave judges more freedom to deviate from the Guidelines. Thus, if judges sentence Black males increasingly more severely compared with others post-*Booker/Gall*, logically we should view greater disparity affecting Black males (or others) in downward departures/deviations. We observe no such increase for Black males compared with the pre-PROTECT era. Black females are less likely to receive overall downward departures post-*Gall* (although not significantly), but there is no significant Black female

19 As one reviewer noted, "we need to avoid kitchen sink models when looking for racial disparity."

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disadvantage in *judge-initiated* deviations (whereas there is for government-sponsored deviations). We also observe a greater Black male disadvantage in substantial assistance and government-sponsored departures than in judge-initiated departures. Furthermore, Hispanic males are significantly less likely to receive overall downward departures post-*Gall* compared with the pre-PROTECT and PROTECT eras. However, a substantial portion of this post-*Gall* disparity in overall downward departures affecting Hispanic males seems to be caused by dramatic post-*Gall* declines in the likelihood of Hispanic males receiving government-sponsored and fast-track departures, two decisions influenced heavily by prosecutors. Overall, the departure findings do not point to unique and comparatively large post-*Booker*/*Gall* racial/ethnic disparities in *judge-initiated* Guidelines deviations. In fact, greater disparity affecting Black and Hispanic males characterizes departures decisions heavily influenced by prosecutors more than judge-initiated departures.

Must the Guidelines be mandatory to be influential and to constrain disparity? Furthermore, why might *Booker* and *Gall* not have resulted in increased disparity? Perhaps the Guidelines serve a norm-setting function (Kramer, 2009) and have become embedded in the organizational and legal culture of federal courts. As Reitz (2005) observed, the Guidelines continue to structure federal sentencing in the aftermath of *Booker*—courts must continue to calculate and consider them and must provide legally defensible reasons for deviating from them. Furthermore, state court sentencing guidelines, such as Pennsylvania, Minnesota, Washington, Florida, and others have never been mandatory, and the federal guidelines now have a legal status similar to such state sentencing guidelines (Kramer and Ulmer, 2009). Evidence exists that a major reason Pennsylvania's guidelines were influential was their norm-setting function: They became embedded in local court communities as taken-for-granted decision tools (Kramer and Ulmer, 2009; Ulmer, 1997). Although sentencing disparities affecting Black and especially Hispanic males, particularly in incarceration decisions, still exist under Pennsylvania's guidelines, these disparities have been reduced over time (Kramer and Ulmer, 2009).

Our study is certainly not the last word on the impact(s) of *Booker* and its aftermath on federal sentencing. We need to monitor levels of disparity continually, and our analysis raises some troubling questions. What accounts for the increase in the imprisonment odds of Black males post-*Gall*? What is responsible for the greater racial disparity among immigration cases, which are clustered in certain districts and processed in distinctive ways? Additional research on the role of race in immigration cases is needed. Why have Hispanic males become so much less likely to receive government-sponsored and fast-track departures post-*Gall*? We cannot answer these questions, but future research should continue to monitor more nuanced effects of *Booker* and *Gall* by evaluating sentencing outcomes for specific types of offenders, offenses, and specific decisions.

A chief limitation in our study is our inability to address disparities that might occur in earlier stages of case processing, such as charging and conviction processes. Our major goal in this article was to address important implications raised by the USSC 2010 report, which

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focused on disparity in sentence lengths, and thus sentencing-stage discretion. However, we are acutely aware that prosecutors have always played a crucial role in federal sentencing, especially under the Guidelines. Our departure analyses differentiated substantial-assistance, government-sponsored, and fast-track departures from judge-initiated departures. However, offenders' exposure to Guidelines punishments is to a great extent a product of prosecutors' charging decisions and the plea agreement process, in which negotiated stipulations about Guidelines-relevant conduct and offense-specific behavior (which raise or lower the final offense level) are commonplace (Shermer and Johnson, 2010; Ulmer, 2005; Ulmer et al., 2010). It has been long recognized that changes in sentencing schemes affect the distribution of discretion among court actors (Engen, 2009; Reitz, 1998); and it is likely that federal prosecutors' decisions and behavior in the charging and plea agreement process have changed significantly in the wake of *Booker* and have changed in nonuniform ways. Some evidence for this is found in our results for substantial-assistance, government-sponsored, and fast-track departures. Our lack of presentence stage data means that we may be understating overall, process-wide disparity stemming from prosecutors' charging decisions and plea agreement behavior. If prosecutors have exhibited a greater tendency to consider extralegal factors in their charging decisions and in their plea agreement concessions in the post-*Booker* periods, our analyses would be unable to detect it.

The USSC 2010 report points to greater sentence length disparity affecting Black males in the post-*Booker/Gall* periods, although it does not claim that *Booker* and *Gall* caused this increase. We have no wish to impugn the USSC or its commendable attention to the issue of unwarranted disparity. However, based on our differing results using alternative procedures that are reasonable in light of prior federal sentencing literature, as well as our analysis of Guidelines departures, we question the notion that *Booker* and *Gall* have caused increases in race/ethnic and gender sentence length disparity compared with the full range of years when the Guidelines were mandatory.

We do find an unexplained increase in Black males' odds of imprisonment post-*Gall*, an empirical possibility that the *Booker* report cannot discern. There also seems to be notable disparity affecting Black males in immigration cases. These specific situations warrant additional scrutiny and perhaps discussions of policy changes targeted specifically to those two circumstances. Consideration of where disparities occur is fundamentally important to policy makers because, depending on where disparities are most prevalent, policy solutions differ. For example, based on the 2010 *Booker* report, a policy observer may favor restricting the sentencing ranges in the Guidelines table to reduce the amount of sentence length disparity. However, if the bulk of disparity is located in the incarceration decision, such a "solution" would be misguided and would do little to help reduce this form of inequality. The same can be said for suggestions to "mandatorize" the guidelines (see the Consumer Privacy Protection Act of 2005) to reduce sentencing disparities. In addition, if immigration cases are a particularly glaring locus of sentence length disparity, but other kinds of offenses are not, then attention might be paid to the causes of such disparity and solutions drafted

to target immigration cases. We argue that there is insufficient empirical support for broad-based policies, such as the Consumer Privacy Protection Act, that would globally constrain federal judges' sentencing discretion as a remedy for disparity. Such a policy would not only be a blanket, blunt instrument solution to fairly specific loci of disparity but also would do nothing about prosecutorial decisions that affect sentencing outcomes (i.e., substantial-assistance, government-sponsored, and fast-track departures), which we have shown to be as great or greater a locus of disparity as judicial discretion.

References

American Bar Association. 2005. ABA Criminal Justice Section, Report and Recommendation on *Booker*. *Federal Sentencing Reporter*, 17: 335–340.

Albonetti, Celesta A. 1997. Sentencing under the federal sentencing Guidelines: Effects of defendant characteristics, guilty pleas, and departures on sentence outcomes for drug offenses, 1991–1992. *Law & Society Review*, 31: 789–822.

Albonetti, Celesta A. 1998. The role of gender and departures in the sentencing of defendants convicted of a White collar offense under the federal sentencing Guidelines. In (Jeffery T. Ulmer, ed.), *Sociology of Crime, Law, and Deviance*, Vol. 1. Greenwich, CT: JAI Press.

Anderson, Amy and Cassia Spohn. 2010. Lawlessness in the federal sentencing process: A test for uniformity and consistency in sentencing practices. *Justice Quarterly*, 27: 362–393.

Berman, Douglas A. 2005. Assessing federal sentencing after *Booker*. *Federal Sentencing Reporter*, 17: 291–294.

Bowman, Frank O. III. 2003. *Only Suckers Pay the Sticker Price: The Effect of "Fast Track" Programs on the Future of the Sentencing Guidelines as a Principled Sentencing System*. Testimony before the U.S. Sentencing Commission, Sept. 23, 2003, Washington, DC.

Bowman, Frank O. III. 2005. Letter from Frank Bowman concerning H.R. 1528. *Federal Sentencing Reporter*, 17: 311–314.

Bushway, Shawn D., Brian D. Johnson, and Lee Ann Slocum. 2007. Is the magic still there? The relevance of the Heckman two-step correction for selection bias in criminology. *Journal of Quantitative Criminology*, 23: 151–178.

Bushway, Shawn D. and Anne Morrison Piehl. 2001. Judging judicial discretion: Legal factors and racial discrimination in sentencing. *Law & Society Review*, 35: 733–764.

Clogg, Clifford C., Eva Petkova, and Adamantios Haritou. 1995. Statistical methods for comparing regression coefficients between models. *American Journal of Sociology*, 100: 1261–1293.

Doerner, Jill K. and Stephen Demuth. 2009. The independent and joint effects of race/ethnicity, gender, and age on sentencing outcomes in U.S. federal courts. *Justice Quarterly*, 27: 1–27.

Engen, Rodney. 2009. Assessing determinate and presumptive sentencing: Making research relevant. *Criminology and Public Policy*, 8: 323–335.

Engen, Rodney and Randy R. Gainey. 2000. Modeling the effects of legally relevant and extralegal factors under sentencing guidelines: the rules have changed. *Criminology*, 38: 1207–1230.

Feldmeyer, Ben and Jeffery T. Ulmer. In press. Racial/ethnic threat and federal sentencing. *Journal of Research in Crime and Delinquency*.

Frase, Richard. 2007. The Apprendi-Blakely cases: Sentencing reform counter-revolution? *Criminology & Public Policy*, 6: 403–432.

Gonzales, Alberto. 2005. Federal sentencing guidelines speech by Attorney General Alberto Gonzales. *Federal Sentencing Reporter*, 17: 324–326.

Hartley, Richard, Sean Maddan, and Cassia Spohn. 2007. Prosecutorial discretion: An examination of substantial assistance departures in federal crack-cocaine and powder cocaine cases. *Justice Quarterly*, 24: 382–407.

Hofer, Paul J. 2007. *United States v. Booker* as a natural experiment: Using empirical research to inform the federal sentencing policy debate. *Crime & Public Policy*, 6: 433–460.

Holder, Eric. 2009. Remarks for the Charles Hamilton Houston Institute for Race and Justice and Congressional Black Caucus Symposium "Rethinking Federal Sentencing Policy 25th Anniversary of the Sentencing Reform Act." June 24, 2009. Washington, DC.

Johnson, Brian D. 2006. The multilevel context of criminal sentencing: Integrating judge and county level influences in the study of courtroom decision making. *Criminology*, 44: 259–298.

Johnson, Brian D. and Sara Betsinger. 2009. Punishing the 'model minority': Asian-American criminal sentencing outcomes in federal district courts. *Criminology*, 47: 1045–1090.

Johnson, Brian D., Jeffery T. Ulmer, and John H. Kramer. 2008. The social context of Guideline circumvention: the case of federal district courts. *Criminology*, 46: 711–783.

Kautt, Paula M. 2002. Location, location, location: Interdistrict and intercircuit variation in sentencing outcomes for federal drug-trafficking offenses. *Justice Quarterly*, 19: 633–671.

Kempf-Leonard, Kimberly and Lisa Sample. 2001. Have federal sentencing guidelines reduced severity? An examination of one circuit. *Journal of Quantitative Criminology*, 17: 111–144.

Kramer, John H. 2009. Mandatory sentencing guidelines: The framing of justice. *Criminology & Public Policy*, 8: 313–321.

Kramer, John H. and Jeffery T. Ulmer. 2009. *Sentencing Guidelines: Lessons from Pennsylvania*. Boulder, CO: Lynne Rienner.

Kurlychek, Megan and Brian D. Johnson. 2004. The juvenile penalty: A comparison of juvenile and young adult sentencing outcomes in adult criminal court. *Criminology*, 42: 485–517.

Maxfield, Linda D. and Keri Burchfield. 2002. Immigration offenses involving unlawful entry: Is federal practice comparable across districts? *Federal Sentencing Reporter*, 14: 260–266.

Maxfield, Linda D. and John H. Kramer. 1998. Substantial assistance: An empirical yardstick for gauging equity in current federal policy and practice. *Federal Sentencing Reporter*, 11: 6–12.

Mitchell, Ojmarrh and Doris L. MacKenzie. 2004. *The Relationship Between Race, Ethnicity, and Sentencing Outcomes: A Meta-Analysis of Sentencing Research: Final Report*. Submitted to the National Institute of Justice, Washington, DC.

Mustard, David. 2001. Racial, ethnic, and gender disparities in sentencing: Evidence from the U.S. federal courts. *Journal of Law and Economics*, 44: 285–314.

Paternoster, Raymond, Robert Brame, Paul Mazzerolle, and Alex R. Piquero. 1998. Using the correct statistical test for the equality of regression coefficients. *Criminology*, 36: 859–866.

Peterson, Ruth D. and John Hagan. 1984. Changing conceptions of race: Towards an account of anomalous findings in sentencing research. *American Sociological Review*, 49: 56–70.

Reitz, Kevin R. 1998. Modeling discretion in American sentencing systems. *Law and Policy*, 20: 389–428.

Reitz, Kevin R. 2005. The enforceability of sentencing guidelines. *Stanford Law Review*, 58: 155–174.

Richter, John C. 2008. Deja vu all over again: How post-*Booker* sentencing threatens equal justice under the law. *Federal Sentencing Reporter*, 20: 340–342.

Shermer, Lauren O'Neill and Brian D. Johnson. 2010. Criminal prosecutions: Examining prosecutorial discretion and charge reductions in U.S. federal district courts. *Justice Quarterly*, 27: 394–430.

Spohn, Cassia. 2000. Thirty years of sentencing reform: The quest for a racially neutral sentencing process. In *Policies, Processes and Decisions of the Criminal Justice System*. Vol. 3: *Criminal Justice 2000*. Washington, DC: U.S. Department of Justice.

Spohn, Cassia and David Holleran. 2000. The imprisonment penalty paid by young unemployed Black and Hispanic male offenders. *Criminology*, 38: 281–306.

Steffensmeier, Darrell and Stephen Demuth. 2000. Ethnicity and sentencing outcomes in U.S. federal courts: Who is punished more harshly? *American Sociological Review*, 65: 705–729.

Steffensmeier, Darrell, John H. Kramer, and Cathy Streifel. 1993. Gender and imprisonment decisions. *Criminology*, 31: 411–446.

Steffensmeier, Darrell, Jeffery T. Ulmer, and John H. Kramer. 1998. The interaction of race, gender, and age in criminal sentencing: The punishment cost of being young, Black, and male. *Criminology*, 36: 763–798.

Stith, Kate. 2008. The arc of the pendulum: Judges, prosecutors, and the exercise of discretion. *The Yale Law Journal*, 117: 1420–1497.

Stith, Kate and Jose Cabranes. 1998. *Fear of Judging*. Chicago, IL: University of Chicago Press.

Stolzenberg, Ross M. and Daniel A. Relles. 1997. Tools for intuition about sample selection bias and its correction. *American Sociological Review*, 62: 494–507.

Thompson, Sandra G. 2006. The *Booker* project: The future of federal sentencing. *Houston Law Review*, 43: 269–278.

Ulmer, Jeffery T. 1997. *Social Worlds of Sentencing: Court Communities Under Sentencing Guidelines*. Albany: State University of New York Press.

Ulmer, Jeffery T. 2005. The localized uses of federal sentencing guidelines in four U.S. district courts: Evidence of processual order. *Symbolic Interaction*, 28: 255–279.

Ulmer, Jeffery T., James Eisenstein, and Brian D. Johnson. 2010. Trial penalties in federal sentencing: Extra-guidelines factors and district variation. *Justice Quarterly*, 27: 560–592.

Ulmer, Jeffery T. and Brian D. Johnson. 2004. Sentencing in context: A multilevel analysis. *Criminology*, 42: 137–177.

U.S. Sentencing Commission. 2004. *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System Is Achieving the Goals of Sentencing Reform*. Washington, DC: Author.

U.S. Sentencing Commission. 2006. *Final Report on the Impact of United States v. Booker on Federal Sentencing*. Washington, DC: Author.

U.S. Sentencing Commission. 2010. *Demographic Differences in Federal Sentencing Practices: An Update of the Booker Report's Multivariate Regression Analysis*. Washington, DC: Author.

Zatz, Marjorie. 2000. The convergence of race, ethnicity, gender, and class on court decision making: Looking toward the 21st century. In *Policies, Processes and Decisions of the Criminal Justice System*, Vol. 3, *Criminal Justice 2000*. Washington, DC: U.S. Department of Justice.

Statutes Cited

Consumer Privacy Protection Act of 2005, H.R. 1528.

PROTECT Act of 2003, Pub.L. 108–21, 117 Stat. 650, S. 151, enacted April 30, 2003; amendment Stat. 667.

Court Cases Cited

Blakely v. Washington, (02–1632) 542 U.S. 296 (2004) 111 Wash. App. 851, 47 P.3d 149, reversed and remanded.

Gall v. United States, 552 U.S. 38 (2007).

Kimbrough v. United States, 552 U.S. 85 (2007).

Koon v. United States, 518 U.S. 81 (1996).

Rita v. United States, 551 U.S. 338 (2007).

United States v. Booker, 543 U.S. 220 (2005).

Jeffery T. Ulmer is currently Associate Professor of Sociology and Crime, Law, and Justice. His articles in journals such as *American Sociological Review*, *Social Problems*, *Criminology*,

Criminology and Public Policy, *Justice Quarterly*, *The Sociological Quarterly* and *Journal of Research in Crime and Delinquency* on courts and sentencing, criminological theory, race, ethnicity, and violence, religion and crime, symbolic interactionism, criminal enterprise, and the integration of qualitative and quantitative methods. He is the author of *Social Worlds of Sentencing: Court Communities Under Sentencing Guidelines* (1997, State University of New York Press), and coauthor (with Darrell Steffensmeier) of *Confessions of a Dying Thief: Understanding Criminal Careers and Illegal Enterprise* (2005, Aldine-Transaction) which won the 2006 Hindelang Award from the American Society of Criminology. His newest book (with John Kramer), *Sentencing Guidelines: Lessons from Pennsylvania* was published in 2009 by Lynne Rienner Publishers.

Michael T. Light is a PhD candidate in the Department of Sociology and Crime, Law and Justice at The Pennsylvania State University. His research interests include punishment, immigration, race, ethnicity and criminal offending, and spatial analysis of crime. He (with Casey Harris) is the recipient of American Sociological Associations Crime, Law, and Deviance best student paper award and his recent work has been published in *Justice Quarterly*, *The Journal of Gender, Race, & Justice*, and *Federal Sentencing Reporter*.

John H. Kramer is Professor of Sociology and Crime, Law, and Justice. He served as Executive Director of the Pennsylvania Commission on Sentencing from 1978 to 1998, Advisor to the U.S. Sentencing Commission from 1995 to 1996, and Staff Director of the U.S. Sentencing Commission from 1996 to 1998. His research and policy development focus have been in the areas of sentencing disparity, the impact of sentencing reform, and evaluating the effectiveness of intermediate punishment and drug courts. His research has been published in numerous journals including *Criminology*, *Justice Quarterly*, *Social Problems*, *Journal of Research in Crime and Delinquency*, and *Criminology and Public Policy*. He is co-author (with Jeffery Ulmer) of *Sentencing Guidelines: Lessons from Pennsylvania* (2009, Lynne Rienner Publishers)

Table 4.

U.S. Sentencing Commission "Refined" OLS Models of Sentence Length Based on 2010 *Booker* Report

	(1) pre-PROTECT Ln Length		(2) post-PROTECT Ln Length		(3) post-*Booker* Ln Length		(4) post-*Gall* Ln Length								
Independent Variables	*b*	*SE*	*b*	*SE*	*b*	*SE*	*b*	*SE*	(2) vs. (1) $z^{\dagger}$	(3) vs. (1) *z*	(3) vs. (2) *z*	(4) vs. (1) *z*	(4) vs. (2) *z*	(4) vs. (3) *z*
White male (reference)														
White female	−0.077	0.013***	−0.076	0.014***	−0.016	0.015***	−0.010	0.017***	−0.090	1.601	7.260*	−1.100***	−2.047*	−4.277***
Black male	0.103	0.014***	0.089	0.015***	0.164	0.016***	0.172	0.017***	−1.942†	7.987*	4.102***	4.597***	6.208***	3.287***
Black female	0.258	0.025***	−0.422	0.028***	−0.333	0.018***	−0.349	0.021***	−4.359***	−7.343	3.867***	−2.483	1.901†	−1.519
Hispanic male	−0.002	0.015***	−0.023	0.017	−0.010	0.011†	0.040	0.013***	1.127	2.041*	0.192	5.102***	3.846***	3.995***
Hispanic female	−0.201	0.027***	−0.186	0.028***	−0.230	0.017***	−0.177	0.024***	2.676**	3.463***	0.384	5.925***	2.944**	3.496
Other male	−0.009	0.052	−0.097	0.056***	0.002	0.018	−0.014	0.022	−2.062*	0.795	3.736***	−0.165	2.110*	−1.694***
Other female	−0.482	0.052***	−0.592	0.056***	−0.247	0.064***	−0.499	0.069***	−2.062*	2.620**	5.254***	−0.883	1.254	−4.218***
>25 years old	0.053	0.010***	0.077	0.010***	0.053	0.008***	0.076	0.011***	0.35	0.011	0.000	−2.578	−0.761	−0.651
Justification	−0.086	0.015***	−0.021	0.016	−0.052	0.018***	−0.074	0.023***	3.052**	1.958*	−1.562†	0.596	−2.608**	−1.369
Attending college	−0.103	0.012***	−0.070	0.013***	−0.077	0.008***	−0.075	0.011***	1.722†	4.507†	−0.258	1.657†	−0.594	0.105
Sexual abuse	−0.100	0.065	0.057	0.025	−0.012	0.042	−0.026	0.052	1.705†	2.182	−0.270	0.875	−0.994	−0.218
Agency policy	−0.015	0.054	0.050	0.053	0.245	0.028***	0.329	0.034***	0.062	4.201***	3.250***	5.412***	4.295***	1.906†
Drug trafficking	−0.122	0.024***	−0.063	0.026*	−0.047	0.015***	−0.179	0.027***	1.870†	2.827**	0.937	−1.573	−3.477***	−4.809***
White collar	−0.402	0.025***	−0.519	0.028***	−0.455	0.019***	−0.558	0.024***	−0.270	3.267**	1.161	−1.860†	−1.058	−2.905**
Immigration	0.072	0.017	0.075	0.019	0.017	0.018**	−0.008	0.014	0.27	0.924	2.804	−2.686	−0.835	−4.504†
Other criminal	−0.337	0.025***	−0.303	0.026***	−0.257	0.017***	−0.474	0.022***	2.935	7.345	2.204*	−2.315*	−3.896***	−4.779***
Upward departure	0.579	0.017***	0.650	0.014***	0.976	0.013***	0.884	0.011***	1.583	0.651	−1.026	−2.659*	−2.631**	−2.337*
Downward departure assistance sep.	−1.217	0.014***	−1.162	0.015***	−1.115	0.012***	−1.092	0.013***	1.772†	5.854***	3.590***	6.531***	4.528***	7.661†
Other downward departure	−1.575	0.014***	−0.885	0.016***	−0.918	0.012***	−0.979	0.010***	9.950***	19.251***	−1.575	28.453***	−4.998***	−5.782***
Mandatory minimum	0.253	0.015***	0.295	0.017***	0.334	0.012***	0.324	0.012***	−1.8 2†	7.197	3.265***	10.943***	11.542***	10.846***
Trial	0.224	0.025***	0.240	0.024***	0.285	0.015***	0.375	0.022***	0.442	2.023*	1.590	5.485***	4.755***	3.401***
Prior criminal criminal	0.715	0.012***	0.749	0.013***	0.755	0.008***	0.767	0.009***	1.637	3.018***	0.967	18.193***	7.109***	7.601***
(Intercept) Constant sentence	2.715	0.012***	0.635	0.022***	0.594	0.007***	0.642	0.009***	−84.147***	−60.935***	−19.9***	−77.883***	−18.9***	−30.555***
Constant	2.738	0.013***	0.738	0.014***	0.871	0.007***	0.777	0.009***	−0.007	−3.007**	−7.907**	−2.383	−0.198	7.828**
N	88,656		79,905		67,793		124,118							
Adjusted R^2	0.585		0.715		0.678		0.620							

$\dagger p < 0.10$; $^{*}p < 0.05$; $^{**}p < 0.01$; $^{***}p < 0.001$. †Based on a two-tailed test.

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Alternative OLS Models of Sentence Length for Those Who Received Incarceration Sentences

	(1) pre-PROTECT Ln Length		(2) post-PROTECT Ln Length		(3) post-*Booker* Ln Length		(4) post-*Gall* Ln Length							
Independent Variables	*b*	*SE*	*b*	*SE*	*b*	*SE*	*b*	*SE*	(2) vs. (1) *z*[a]	(3) vs. (1) *z*	(3) vs. (2) *z*	(4) vs. (1) *z*	(4) vs. (2) *z*	(4) vs. (3) *z*
White male (reference)														
White female	−0.125	0.010***	−0.128	0.010***	−0.099	0.006***	−0.109	0.008***	−0.265	2.202*	2.412*	1.226	1.466	−0.975
Black male	0.066	0.005***	0.045	0.006***	0.053	0.002***	0.077	0.004***	2.748**	2.164*	1.172	1.547	4.424***	4.226***
Black female	−0.112	0.011***	−0.115	0.013***	−0.084	0.008***	−0.075	0.011***	−0.205	2.057*	2.105*	2.413*	2.449*	0.705
Hispanic male	0.034	0.006***	0.039	0.006***	0.025	0.001***	0.011	0.005*	0.610	1.292	1.941†	5.986***	6.388***	5.974***
Hispanic female	−0.162	0.011***	−0.156	0.011***	−0.132	0.007***	−0.085	0.009***	0.571	2.367*	1.833†	5.631***	5.041***	4.421***
Other male	0.004	0.011	0.036	0.011**	0.005	0.007	0.018	0.009*	1.953†	0.079	2.303*	0.983	1.202	1.190
Other female	−0.173	0.026***	−0.134	0.026***	−0.086	0.014***	−0.087	0.019***	−0.318	1.926	1.672	1.115	1.479	−0.013
Age (in years)	0.001	0.000***	0.001	0.000***	0.001	0.000	0.001	0.000***	0.335	2.743*	2.212*	2.189*	1.726†	0.443
U.S. citizen	0.003	0.005	−0.007	0.006	−0.007	0.004*	0.076	0.005***	−1.273	−1.645	−0.060	3.779***	4.457***	5.810***
Less than high school	−0.008	0.009	−0.003	0.010	0.012	0.006*	−0.023	0.008***	0.322	1.851†	1.335	−1.297	−1.558	−3.668***
High school graduate	0.000	0.009	−0.007	0.010	0.018	0.006**	−0.007	0.008	−0.106	1.682†	1.676†	−0.555	−0.405	−2.576**
Some college	−0.015	0.009†	−0.005	0.010	0.008	0.006	−0.016	0.008*	0.731	2.105*	1.095	−0.015	−0.799	−2.388*
Drug	0.281	0.012***	0.319	0.014***	0.231	0.010***	0.215	0.014***	2.944**	3.126***	5.109***	3.936***	5.272***	0.960
Immigration	0.126	0.013***	0.098	0.015***	0.050	0.010***	0.044	0.014***	1.086	4.220***	2.697**	3.994***	2.655**	0.346
Violent	0.284	0.015***	0.301	0.017***	0.183	0.011***	0.167	0.015***	0.767	5.556***	5.919***	8.533***	5.909***	0.874
Fraud	0.005	0.013	0.010	0.015	0.013	0.010	0.073	0.014†	0.777	0.510	0.162	0.944	0.617	0.567

(Continued)

Table 2. (Continued)

	(1) pre-PROTECT Ln Length		(2) post-PROTECT Ln Length		(3) post-*Booker* Ln Length		(4) post-*Gall* Ln Length		(2) vs. (1)	(3) vs. (1)	(3) vs. (2)	(4) vs. (1)	(4) vs. (2)	(4) vs. (3)
Independent Variables	*b*	*SE*	*b*	*SE*	*b*	*SE*	*b*	*SE*	*z*[a]	*z*	*z*	*z*	*z*	*z*
Firearms	0.128	0.013***	0.148	0.015***	0.106	0.010***	0.133	0.010***	1.009	1.320	2.353*	0.258	0.735	1.560
Other offense	0.068	0.015***	0.100	0.016***	0.127	0.011***	0.156	0.015***	1.464	3.278***	1.392	4.272***	2.563*	1.608
Upward departure	0.721	0.018***	0.783	0.019***	0.781	0.008***	0.751	0.010***	2.390*	3.046**	0.098	1.477	1.526	2.419*
Substantial assistance dep.	−0.513	0.005***	−0.486	0.006***	−0.533	0.003***	−0.515	0.005***	5.469***	−3.342***	−7.137***	−0.382	−3.993***	3.137***
Other downward departure	0.537	0.005***	0.474	0.006***	0.459	0.003***	0.463	0.003***	8.104***	12.615***	2.279*	12.116***	1.593	1.079
Trial	0.768	0.009***	0.761	0.008***	0.737	0.005***	0.757	0.007***	−0.673	3.556***	2.899**	−0.988	−0.318	2.917**
Presentence detention	0.182	0.005***	0.190	0.005***	0.180	0.003***	0.206	0.004***	1.131	−0.310	−1.581	3.811***	2.396*	4.862***
Criminal history	0.061	0.001***	0.049	0.001***	0.038	0.001***	0.030	0.001***	−1.355	−9.201***	−7.107***	−13.572***	−11.505***	−6.471***
(ln) presumptive sentence	0.669	0.002***	0.633	0.002***	0.712	0.001***	0.689	0.001***	−6.399***	21.610***	28.562***	9.476***	16.298***	−13.217***
Constant	0.820	0.017***	0.872	0.020***	0.721	0.013***	0.802	0.017***	1.974*	4.600***	6.472***	0.752	2.691**	3.782***
N	73,401		58,734		157,685		102,643							
Adjusted R^2	0.813		0.830		0.836		0.838							

†$p < 0.10$; *$p < 0.05$; **$p < 0.01$; ***$p < 0.001$. [a]Based on a two-tailed test.

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Appendix A

Logistic Regression Models of "Other" Downward Departures

	(1) pre-PROTECT Downward Dep		(2) post-PROTECT Downward Dep		(3) post-*Booker* Downward Dep		(4) post-*Gall* Downward Dep								
									(2) vs. (1)	(3) vs. (1)	(3) vs. (2)	(4) vs. (1)	(4) vs. (2)	(4) vs. (3)
Independent Variables	*b*	*SE*	*b*	*SE*	*b*	*SE*	*b*	*SE*	z^D	*z*	*z*	*z*	*z*	*z*
White male (reference)														
White female	0.173	0.049***	0.189	0.064**	0.122	0.029***	0.077	0.034*	0.200	−0.881	−0.951	−1.607	−1.556	−1.017
Black male	0.678	0.036***	0.538	0.046***	0.397	0.020***	0.601	0.023***	2.401*	6.900***	2.793**	0.398	2.387*	8.715***
Black female	−0.167	0.060**	−0.172	0.082*	−0.185	0.037***	−0.266	0.044***	−0.040	−0.248	−0.149	−1.323	−1.016	−1.413
Hispanic male	0.130	0.032***	0.167	0.042***	0.019	0.020	0.432	0.022***	0.694	3.925***	4.002***	14.340***	12.627***	13.817***
Hispanic female	0.551	0.049***	0.486	0.062***	0.129	0.031***	−0.290	0.038***	−0.810	−7.218***	−5.128***	−13.564***	−10.673***	−8.581***
Other male	0.147	0.065*	0.017	0.078	0.073	0.035*	0.111	0.041**	1.271†	0.998	0.650	0.470	1.000	0.700
Other female	0.168	0.116	0.145	0.143	0.177	0.063**	0.089	0.078	−0.176	0.064	0.707	−0.568	−0.347	−0.880
Age (in years)	0.005	0.001***	0.007	0.001***	0.003	0.001***	0.003	0.001***	1.233†	1.084	2.337*	1.586	2.734**	0.730
U.S. citizen	−0.174	0.030***	−0.229	0.038***	−0.289	0.018***	−0.245	0.022***	−1.148†	−3.798***	−1.423	−1.927†	−0.377	1.503
Less than high school	−0.119	0.047*	−0.268	0.060***	−0.228	0.028***	−0.240	0.033***	−1.949†	−3.990***	0.699	−2.099*	0.405	−0.274
High school graduate	−0.283	0.048***	−0.389	0.061***	−0.276	0.028***	−0.262	0.033***	−1.378	0.170	1.691†	0.363	1.843†	0.333
Some college	−0.162	0.050***	−0.305	0.063***	−0.168	0.029***	−0.120	0.034***	−1.777†	0.062	2.102*	0.689	2.563*	0.848
Drug	1.090	0.072***	0.740	0.092***	0.641	0.044***	0.751	0.054***	2.965**	5.324***	0.959	3.752***	0.131	1.609
Immigration	1.548	0.074***	1.482	0.095***	1.228	0.046***	1.209	0.056***	0.549	3.663***	2.414*	3.648***	2.483*	0.260
Violent	1.048	0.065***	0.697	0.114***	0.550	0.054***	0.453	0.065***	2.464*	4.970***	1.171	5.539***	1.867†	1.147
Fraud	0.509	0.073***	0.398	0.093***	0.400	0.045***	0.524	0.054***	−0.944	−1.287	0.070	0.157	1.167	1.771†

(Continued)

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Appendix C.

(Continued)

	(1) pre-PROTECT Downward Dep		(2) post-PROTECT Downward Dep		(3) post-*Booker* Downward Dep		(4) post-*Gall* Downward Dep									
Independent Variables	***b***	***SE***	***b***	***SE***	***b***	***SE***	***b***	***SE***	***z***[a]	**(2) vs. (1)** ***z***	**(3) vs. (1)** ***z***	**(3) vs. (2)** ***z***	**(4) vs. (1)** ***z***	**(4) vs. (2)** ***z***	**(4) vs. (3)** ***z***
Firearms	0.872	0.078***	0.475	0.099***	0.407	0.047***	0.503	0.057***	3.152***	−5.117***	−0.617	−3.837***	0.242	1.297	
Other offense	0.748	0.081***	0.353	0.106***	0.476	0.048***	0.628	0.057***	−2.960**	−2.893**	1.052	−1.216	2.278*	2.031*	
Trial	−0.602	0.063***	−0.577	0.072***	−0.301	0.028***	−0.344	0.036***	0.254	4.333***	3.565***	3.540***	2.897**	−0.934	
Presentence detention	−0.248	0.026***	−0.312	0.035***	−0.549	0.017***	−0.583	0.019***	−1.447	−9.633***	−6.123***	−10.185***	−6.762***	−1.311	
Criminal history	0.068	0.007***	0.057	0.009***	0.019	0.004***	0.028	0.005***	−3.007	−6.047***	−3.963***	−4.776***	−2.960**	1.411	
Presumptive sentence	0.000	0.000	0.001	0.000***	0.003	0.000***	0.003	0.000***	3.289***	12.440***	6.511***	14.352***	8.332***	3.491***	
Constant	−2.290	0.096***	−2.374	0.123***	−1.091	0.059***	−0.691	0.071***	−0.534	10.649***	9.401***	13.419***	11.860***	4.370***	
N	72,807		58,662		156,406		104,390								
−2 log likelihood	68,128.8		46,263.2		180,084.9		129,834.2								

†$p < 0.10$; *$p < 0.05$; **$p < 0.01$; ***$p < 0.001$. [a]Based on a two-tailed test.

Response to Questions for the Record from the United States Sentencing Commission

UNITED STATES SENTENCING COMMISSION
ONE COLUMBUS CIRCLE, N.E.
SUITE 2-500, SOUTH LOBBY
WASHINGTON, D.C. 20002-8002
(202) 502-4500
FAX (202) 502-4699

February 2, 2012

The Honorable Lamar S. Smith
Chairman
Committee on the Judiciary
United States House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

Re: U.S. Sentencing Commission Responses to Questions for the Record

Dear Chairman Smith:

Attached please find the United States Sentencing Commission's responses to questions for the record submitted by the majority and minority Members of the Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security following the October 12, 2011, hearing entitled "Uncertain Justice: The Status of Federal Sentencing and the U.S. Sentencing Commission Six Years After U.S. v. Booker."

Please do not hesitate to contact me if you have any questions.

Sincerely,

Patti B Saris

Patti B. Saris
Chair

cc: The Honorable Robert "Bobby" C. Scott

Questions for the Record: Majority

1. Judge Saris, despite the fact that the Guidelines are no longer mandatory, reducing the impact of the Sentencing Commission, the money expended on your commission has increased by 20% since the Booker decision.

a. In this economic climate, why is the Commission spending even more money to generate guidelines that Courts routinely ignore?

Response: Under Supreme Court case law, the guidelines continue to be the starting point for every sentence and must be given respectful weight by the court throughout the sentencing process. Sentencing data show that judges do not routinely ignore this responsibility, and that the federal sentencing guidelines continue to provide a significant gravitational pull in federal sentencing, as evidenced by the fact that sentences imposed for all federal offenses (for which the Commission collects information) combined closely parallel the minimum of the guideline range.[1] As detailed in the Commission's October 12, 2011, written statement, over 80 percent of 83,000 plus federal offenders sentenced in fiscal year 2010 received a sentence either within the applicable guideline range or below the applicable guideline range pursuant to a request by the government.

The Commission's workload has been significant since the 2005 *Booker*[2] decision. The Commission remains a critical component of federal sentencing and continues to perform the statutory duties required by the Sentencing Reform Act. These duties include, but are not limited to, (1) promulgating sentencing guidelines to be determined, calculated, and considered in all federal criminal cases; (2) collecting, analyzing, and reporting sentencing data systematically to detect new criminal trends, to determine if federal crime policies are achieving their goals, and to serve as a clearinghouse for federal sentencing statistics; (3) conducting research on sentencing issues and serving as an information center for the collection, preparation, and dissemination of information on federal sentencing practices; and (4) providing specialized training to judges, probation officers, staff attorneys, law clerks, prosecutors, defense attorneys, and other members of the federal criminal justice community on federal sentencing issues, including application of the guidelines.[3]

The volume of cases collected, analyzed and reported annually has increased by 11,404 cases from 72,462 in fiscal year 2005 (the year *Booker* was decided) to 83,946 cases in fiscal year 2010 (an increase of 15.8%). A series of seven Supreme Court decisions since *Booker* has required the Commission to increase its efforts to provide meaningful guidance to the courts and the entire

[1] Average sentence lengths have remained relatively stable over the past 15 years. Over the last few years, however, average sentence lengths have decreased. The recent decrease in average sentence length corresponds to a decrease in the minimum of the applicable guideline range beginning toward the end of the *Booker* period. This decrease indicates a reduction in the overall severity of the aggregate offenses in the federal caseload. The reduction in offense severity is largely due to the increasing portion of the federal caseload involving immigration cases, which carry lower sentences on average than other offenses, and are rarely subject to mandatory minimum penalties. Another factor contributing the reduction of the average sentence length is the decrease in the rate at which courts are imposing sentences within the applicable guideline range. Finally, recent changes to the statutes and guidelines applicable to crack cocaine offenses have generally reduced penalties for such offenses.

[2] 543 U.S. 220 (2005).

[3] *See generally*, 28 U.S.C. §§ 991-998.

criminal justice system, and to ensure that the guidelines continue to reflect the purposes of sentencing. As stated in the Commission's written statement, the Commission has promulgated 79 guideline amendments since *Booker*, 40 of those in response to changes in the law, including congressional directives to the Commission. Those changes also have meant more analysis, more training, and more overall work for the Commission. The Commission's data collection, analysis and reporting requirements are impacted by the increasingly high volume of cases sentenced in the federal system annually; however, the Commission's modernization and refinement efforts have kept pace with demands placed on it. The Commission has created significant efficiencies through automation, and has focused resources to increase access to its work-product. For example, in recent years, the Commission has reported to Congress on its development and implementation of an electronic document submission system that enables sentencing courts to submit documentation to the Commission electronically and can report that all 94 judicial districts now use this system. This enables the Commission to meet its clearinghouse requirements and provide near real-time data to the criminal justice community. The Commission's exploration of new ways to use information technology helps ensure that policymakers have the most current data on sentencing practices and trends available as they consider criminal law issues.

In 2010, the Commission significantly revamped its website. Between January 30, 2011, and September 30, 2011, the Commission's website received 589,586 visits – or 2,416 visits per day. The website is routinely accessed by all branches of the government, including the courts (23,513 visits); the Department of Justice (10,976 visits); the United States Senate (470 visits); and the United States House of Representatives (312 visits), and numerous other governmental entities, schools, law firms, and other members of the public. The Commission is in the process of automating data contained in its annual sourcebooks, and the Commission expects access to that automated data through its website will be available in spring 2012. These efforts have enabled the Commission to undertake more projects and release the Commission's work-product to the public in less time and with no increase in staff. Access to near real-time data, the Commission's extensive research, training materials, and other information have efficiently and effectively kept sentencing stakeholders informed of changes and developments since *Booker* and helped provide stability to the federal sentencing system.

The Commission maintains an extensive research and development program[4] and has released several significant reports and studies in the years since *Booker*.[5] These publications provide comprehensive analyses and information on a variety of sentencing issues and are used regularly by all three branches of government, advocates, academics, and members of the public. In fiscal year 2012, the Commission already has released a report on statutory mandatory minimum penalties as well as the most recent version of the *Guidelines Manual*. The Commission anticipates releasing a comprehensive report on *Booker* and its progeny that will expand on the testimony presented at the October 12, 2011, hearing, as well as a detailed report on child pornography offenses.

As discussed in more detail in response to Question 3, *infra*, the Commission provides extensive training to the federal criminal justice community. In fiscal year 2010, the Commission

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[4] *See* 28 U.S.C. § 995(a)(12).
[5] A list of the Commission's publications from fiscal years 2006-2011 is attached as Attachment 1.

provided ongoing specialized training in all 12 federal circuits and nearly every federal judicial district in the country. That year, the Commission trained approximately 6,000 people on the federal sentencing guidelines and related sentencing and criminal justice issues. In fiscal year 2011, that number increased to approximately 7,000. The Commission also maintains a telephonic "Helpline" that averages about 1,200 calls annually on sentencing guideline and related issues from judges, probation officers, law clerks and practitioners.

The Commission's annual appropriations have increased modestly since fiscal year 2006 (the fiscal year *Booker* was decided), and actually decreased in fiscal year 2011. Since fiscal year 2006, the Commission has limited its appropriation requests to cover only changes in the rate of inflation and adjustments to personnel costs and has not requested any program increases during this time. The Commission targets its annual appropriations requests to ensure that it can perform its statutory duties in the most cost-effective and efficient manner possible.

USSC Annual Appropriations FY2006-FY2011

	Appropriation ($000s)	% Change
FY2006	$ 14,256	0.00% (baseline)
FY2007	$ 14,601	2.42%
FY2008	$ 15,477	6.00%[6]
FY2009	$ 16,225	4.83%
FY2010	$ 16,837	3.77%
FY2011	$ 16,803	-0.20%

2. Judge Saris, regarding the composition of the Commission, why does the Commission need 2 *full-time* commissioners, at full Federal salaries?

Response: The use of the term "full-time" commissioner in the Sentencing Reform Act is capable of misinterpretation with respect to both the duties and overall cost of the commissioners' salaries. This is primarily due to the fact that the Sentencing Reform Act requires that at least three of the commissioners be federal judges. The judge commissioners retain caseloads, ancillary responsibilities, and official duty stations in their home district or circuit, and continue to draw their district court or circuit court of appeals salaries.

The seven voting members of the Commission[7] are nominated by the President and confirmed by the Senate. The Sentencing Reform Act, as amended, provides for a Chair and three Vice Chairs, designated as "full-time positions" compensated at the annual rate at which United States Court of Appeals judges are compensated -- currently $184,500. The remaining three part-time

[6] The Commission's increase in fiscal year appropriations for fiscal year 2006 was due to the compounding of locality pay adjustments for the DC area, and a 3% cost of living adjustment (COLA) from Congress. A higher inflation factor government-wide also contributed to the overall increase from fiscal year 2007 to fiscal year 2008.
[7] The Commission has had a vacancy in its membership since December 2010.

commissioners are compensated per diem at the daily rate that Court of Appeals judges are compensated -- currently $512.50. (The Chair must be specifically confirmed for that position by the Senate; the Vice Chair positions are designated for that position by the President.) A district court judge who occupies one of the part-time positions is compensated per diem at the rate of the difference between district court and court of appeals daily rates of compensation - currently $29.17.

While not required by statute, to date the Chair has always been a district or circuit court judge. The other judge commissioners may serve in either Vice Chair or part-time positions. A court of appeals judge who serves on the Commission receives no additional compensation from the Commission. A district court judge who occupies one of the "full-time" (Chair or Vice Chair) positions receives additional annual compensation from the Commission representing the difference between district court and court of appeals salaries, currently $10,500.00.

Since March 2010, there have been two non-judge Vice Chairs, full-time positions (as commonly understood) drawing full federal salaries and benefits from the Commission, and generally precluded from outside employment. Prior to 2010, and going back to 1999, there had never been more than one full-time, non-judge Vice Chair, as the other Vice Chair positions were occupied by judges or at times vacant.

The overall duties and responsibilities of the Vice Chair and part-time positions are the same: each Commissioner participates in Commission meetings; reviews and contributes to Commission work-product; sets and implements Commission policies, and participates in training and outreach programs across the country. It is not essential to the Commission's exercise of its statutory responsibilities that there be any full-time (as commonly understood) non-judge commissioners; however, these positions are useful to the Commission. Because full-time non-judge Commissioners must forego or abandon other employment,[8] they are available to participate in training programs, and to represent the Commission at bar association and other professional seminars and programs on a regular basis. Their time spent "in the field" around the country provides the Commission with an additional and very useful source of information about how federal prosecution, plea bargaining and sentencing practices are occurring, beyond what is necessarily reflected in the documentation received from the district courts.

3. Judge Saris, when the Commission travels for "training", what are the Commissioners "training" for?

a. Who gets more training, full-time or part-time Commissioners?

b. Should full-time commissioners get more training than part-time commissioners?

Response: The Commissioners do not receive training; they provide training to fulfill the Commission's statutory missions. Congress created the Commission as a body that would "devise and conduct, in various geographical locations, seminars and workshops providing continuing studies

[8] *See* 5 U.S.C. App'x § 501. The Judiciary's regulations implementing this statute may be found in the Guide to Judiciary Policy, Vol. 2, Part C, ch. 10, §1020.25.

for persons engaged in the sentencing field,"[9] and "devise and conduct periodic training programs of instruction in sentencing techniques for judicial and probation personnel and other persons connected with the sentencing process."[10] Congress also tasked the Commission with, among other things, issuing instructions to probation officers concerning the application of the guidelines and policy statements.[11]

The Commission fulfills its statutory duty to provide training and specialized technical assistance on federal sentencing issues, including application of the sentencing guidelines, to federal judges (including training of new judges), probation officers, staff attorneys, law clerks, prosecutors, and defense attorneys by providing educational programs around the country throughout the year. All Commissioners (as well as Commission staff) conduct these ongoing specialized training programs throughout the country. The Commission continues to expand its training and outreach efforts, in large part as a result of *Booker* and subsequent Supreme Court cases. In fiscal year 2010, for example, the Commission conducted training programs in all 12 circuits and most of the 94 judicial districts. In fiscal year 2011, the Commission trained approximately 7,000 people. In the coming months, the Commission plans to continue to provide training to the district and circuit courts on a number of federal sentencing issues, including training on the guideline amendments that became effective on November 1, 2011. Commissioners and Commission staff also routinely participate in numerous academic programs, symposia, and circuit conferences as part of the ongoing discussion of federal sentencing issues.

An evolving federal sentencing system, coupled with a steady influx of new judges, law clerks, prosecutors, probation officers, and defense attorneys, produces an ongoing need for effective training programs and materials. The Commission prepares and disseminates training materials and provides support and services to the criminal justice community on sentencing issues. The Commission continues to expand these offerings including making more training materials available on its website such as more videos and other interactive materials.

4. Why are white collar crimes departing more leniently than most other crimes?

a. Do you believe that the Sentencing Commission has a duty to correct this disparity?

b. How will your proposals definitively cure this defect?

Response: The Commission is actively involved in the review of federal white collar fraud offenses[12] and their corresponding penalties, and has been since enactment of the Sentencing Reform Act. In fact, the sentencing disparity between, and among, white collar and non-white collar offenders led in

[9] 28 U.S.C. § 995(a)(17).
[10] 28 U.S.C. § 995(a)(18).
[11] 28 U.S.C. § 995(a)(10).
[12] The Commission defines white collar fraud offenses as those which involve larceny, embezzlement, and other forms of theft as well as offenses involving stolen property, property damage, fraud and deceit, forgery, and offenses involving altered or counterfeit instruments other than counterfeit bearer obligations of the United States.

part to passage of the Sentencing Reform Act.[13] Congress concluded that "[s]entences that are disproportionate to the seriousness of the offense create a disrespect for the law."[14] This conclusion led Congress to direct the Commission to "insure that the [original] guidelines reflect the fact that, in many cases, current sentences do not reflect the seriousness of the offense."[15]

In 2001, the Commission comprehensively amended the guidelines governing economic crimes as part of its "Economic Crime Package."[16] This package sought, among other things, to simplify the guidelines and to focus the most severe sentences on the most serious offenders.[17] The Commission further refined the guidelines and increased penalties for white collar offenses in 2003 in response to the Sarbanes-Oxley Act and the massive corporate frauds that occurred in 2001 and 2002. In 2010, the Commission responded to the Patient Protection Act and further amended the guidelines with respect to certain large-scale healthcare fraud offenses.

In 2010, Congress directed the Commission to review the guidelines that govern securities and other similar frauds, as well as financial institution and mortgage fraud.[18] In testimony before the Commission in February 2011, the Department of Justice expressed concern "based on the experience of some Districts, that more and more, particularly in the context of high-loss, large-scale fraud cases, there are not consistently tough and fair outcomes."[19] Commission data suggest that the within guideline range rate for fraud offenses decreases as the amount of loss involved in the offense increases.[20] This decrease is the result of an increase in both government sponsored and non-government sponsored departures and variances at the high end of the loss table.[21] Pursuant to the Commission's core mission of evaluating feedback it receives on the operation of the federal sentencing guidelines from the criminal justice community, the Commission intends to focus on fraud offenses during its upcoming hearings both on the impact of *Booker* on federal sentencing and in its hearings regarding proposed amendments during the amendment cycle ending May 1, 2012.

The Commission believes that the proposals set forth in its October 12, 2011, written statement, particularly those related to tightening the standards of appellate review, will help promote more uniform sentences throughout the country for white collar fraud and other offenses, and may result in fewer non-government sponsored below range sentences. If these proposals are coupled with guideline changes which address the concerns expressed by the judiciary, prosecutors, and defense counsel about the severity of the guidelines in high loss cases, they may result in fewer outside the range sentences.

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[13] *See* S. Rep. No. 98-225 at 3226-3228 (setting forth findings of studies undertaken by the Department of Justice and private researchers on sentences given across the country for a variety of offenses including fraud).
[14] *Id.* at 3229.
[15] 28 U.S.C. § 994(m).
[16] *See, e.g.*, U.S. Sent'g Comm'n Press Release, *Sentencing Commission Increases Penalties for High-Dollar Fraud Offenders, Sexual Predators, and Ecstasy Traffickers* (Apr. 16, 2001)(providing highlights of the Commission's economic crime package) .
[17] *Id.*
[18] See Pub. L. No. 111-203, § 1079A.
[19] Testimony of Preet Bharara, United States Attorney for the Southern District of New York, to the U.S. Sent'g Comm'n, at 3-4 (Feb. 16, 2011) available at www.ussc.gov.
[20] *See* the table attached as Attachment 2.
[21] *Id.*

5. Are you concerned about the growing disparity in sentence length between members of difference races?

a. Does the Commission have a reason this is happening? Does the Commission have a working theory?

b. How will the Commission's proposals address this disparity?

Response: As noted in the Commission's October 12, 2011, written statement, the Commission's multivariate regression analyses document demographic differences across time, particularly with respect to sentences between black male and white male offenders. This disparity has increased over time and is substantial. This does not mean that the Commission's multivariate analyses prove a racial prejudice or motivation in the federal sentencing system. The Commission's multivariate regression analyses are useful analytical tools because they account, or control for, the effect of each factor contained in the analyses; however, there are limitations and the analyses should be read with caution. One or more key factors that could affect the sentence imposed may have been omitted from the methodologies used because a particular factor is unknown, unavailable, or erroneously excluded from the analyses. For example, the Commission's multivariate regression analyses do not include a measure of the violence in an offender's criminal past, information about crimes not reflected in an offender's criminal history score as calculated under the sentencing guidelines, or information about an offender's employment record. Systematically extracting such information from the sentencing documents submitted to the Commission is extremely difficult. The demographic differences documented in the Commission's multivariate regression analyses may be explained, in part, by these factors that are not included in the analyses.

The Commission expects to further analyze and address these differences and other sentencing practices and trends in its upcoming report on federal sentencing since *Booker*. As it stated throughout its testimony and in answers to these Questions for the Record, the Commission believes that enactment of the legislative proposals set forth in its October 12, 2011, written statement will help promote more uniformity in sentencing, which may help address the demographic differences that have become more apparent in the post-*Booker* advisory guideline system.

6. Judge Saris, in view of the fact that 'advisory only' guidelines have led to less and less guideline compliance every year, to the point that it's now at an all-time low; and in view of the fact that this means more and more disparate and unequal treatment is seeping back into the system, don't we actually need more mandatory minimums, not fewer?

Response: The Commission disagrees with the premise of this question as it assumes that more statutory mandatory minimums are necessarily the only response to any perceived weaknesses within the post-*Booker* federal sentencing system. The Commission recently submitted its report to Congress regarding statutory mandatory minimum penalties in the federal system. The Commission believes that a strong and effective guideline system best serves the purposes of sentencing, including promoting consistency, transparency, certainty, and avoiding unwarranted disparities. As detailed in its mandatory minimum report, the Commission also believes that certain mandatory minimum

provisions apply too broadly, are set too high, or both, to warrant the prescribed minimum penalty for the full range of offenders who could be prosecuted under the particular criminal statute. This has led to inconsistencies in application of certain mandatory minimum penalties, specifically the provisions at 18 U.S.C. § 924(c) (firearms) and 21 U.S.C. § 851 (drug trafficking), and with respect to some child pornography distribution and receipt cases.

The Commission, however, recognizes that Supreme Court decisions rendering the guidelines advisory and establishing a deferential appellate standard of review[22] have increased inconsistencies in sentencing practices. Specifically, the Commission has noticed an increase in geographical and demographic variations in sentencing since *Booker*, and it plans to examine these variations in more detail in its forthcoming *Booker* report.

In fiscal year 2010, offenders were sentenced within the applicable guideline range or below the applicable guideline range as a result of request by the government[23] in 80 percent of the cases. While the national rate of offenders receiving a non-government sponsored below range sentence has increased from 12.1 percent in fiscal year 2006 to 17.8 percent in fiscal year 2010,[24] these figures may be plateauing. Preliminary data for fiscal year 2011 show that both the third-quarter and the fourth-quarter cumulative non-government sponsored below range rates were 17.2 percent, respectively.[25]

The Commission believes that if Congress chooses to exercise its power to direct sentencing policy by enacting mandatory minimum penalties, such penalties should not be overly severe, be narrowly tailored to apply only to those offenders who warrant such punishment, and be applied consistently. The Commission also believes that the recommendations it set forth in its October 12, 2011, written statement will help strengthen the advisory guidelines system.

7. The Commission is required to analyze sentencing and to compile data on federal sentencing trends and practices. *See* 28 U.S.C. §§ 994(w)(3), 995. We hereby request the sentencing data for all individual Federal judges from 2001 to 2011.

Response: The Commission's response to this question is provided under separate cover.

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[22] *See Booker*, *supra*, n.2; Gall v. United States, 552 U.S. 38 (2007); Kimbrough v. United States, 552 U.S. 85 (2007); Rita v. United States, 551 U.S. 338 (2007); Spears v. United States, 555 U.S. 261(2009); Pepper v. United States, __ U.S.__, 131 S. Ct. 1229 (2011).

[23] The Commission would note that with respect to most government-sponsored below range sentences, these could also be considered "congressionally sponsored" or "congressionally sanctioned" below range sentences. The Commission categorizes a below range sentence as "government sponsored" if it based on the substantial assistance guideline (USSG §5K1.1) that corresponds with 18 U.S.C. § 3553(e) or pursuant to an early disposition (fast track) motion (USSG §5K3.1) that was specifically added to the guidelines in response to the PROTECT Act of 2003. In fiscal year 2010, 25.4% of cases had a government sponsored sentence imposed: 11.5% pursuant to USSG 5K1.1; 9.9% pursuant to USSG §5K3.1. The remaining 3.9% were for other government sponsored motions.

[24] *See* U.S. SENT'G COMM'N, 2010 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS 63 (2010).

[25] *See* Table 1 of the Commission's Fourth Quarter FY11 Preliminary Quarterly Sentencing Updated (Published December 5, 2011), available at www.ussc.gov.

8. US District Judge Richard Kopf of Nebraska has publicly suggested (on Doug Berman's Sentencing web site) that the individual sentencing statistics for judges be published. Although it has the data and although it releases data on a court-by-court basis, the United States Sentencing Commission has never publicly released information on the extent to which individual federal judges sentence within or outside the Guidelines. Judge Kopf proposes that the Sentencing Commission annually release sentencing statistics for each federal judge who sentenced a significant number of offenders during that year. He argues that now that the Guidelines are discretionary, the public, and scholars should be able to see how that discretion is applied. "In short," the Judge wrote, "it is time for federal sentencing judges like me to pay the piper."

You were asked during the hearing if the Sentencing Commission would release sentencing data on individual judges. Your response was that the Commission does not release identifying information on individual judges. You stated, "I think at this point the Judicial Conference has that policy and we do as well." Hearing, at p. 59-58.

a. Why doesn't the Sentencing Commission publish the sentencing data for individual judges?

Response: Questions 7 and 8 collectively raise two interests with respect to sentencing data: (1) the use of sentencing data for purposes of policymaking, and (2) the use of sentencing data for research and analysis purposes. Among the Commission's duties under the SRA is to "establish sentencing policies and practices for the Federal criminal justice system that reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process,"[26] the policymaking aspect of the Commission's statutory obligations. Congress also envisioned that the Commission would "serv[e] as a clearinghouse and information center for the collection, preparation, and dissemination of information on Federal sentencing practices,"[27] the research and analysis aspect of its statutory obligations. The Commission historically has not released information to the public that would identify a specific judge (or a specific case) because the release of such information is not necessary to fulfill the statutory duties given to it by Congress under the SRA. The Commission occasionally reviews sentencing practices at the individual court level when fulfilling its statutory mandates and it can understand that Congress also would want such information as it formulates sentencing policy. The identity of a specific judge, however, serves no useful purpose in policymaking nor does it add value to research and analysis of sentencing practices and trends. As such, the Commission does not use judge-specific identifying information in its policymaking.

The Commission's independent determination to not release judge-specific identifying information is consistent with a practice established by the Administrative Office of the United States Courts (AO) dating back to 1974 under which the provision of statistics regarding individual judicial workloads to the public were done on an "impersonal basis." In 1988, the Commission and the AO

[26] 28 U.S.C. § 991(b)(1)(C).
[27] 28 U.S.C. § 995(a)(12)(A).

entered into a Memorandum of Understanding (MOU)[28] that embodies the practice of maintaining confidentiality of judge-specific identifying information. That MOU remains in place and the Commission does not believe that it is necessary to alter the MOU at this time.

The Commission continues to believe that the release of judge-specific sentencing information is not necessary to fulfill its statutory requirements, even after enactment of the PROTECT Act or the *Booker* decision. First, knowing the identity of an individual judge is irrelevant to the analyses undertaken by the Commission or the formulation of guideline amendments specifically, or sentencing policy generally.[29] Second, the identity of a specific judge does not further the Commission's mandate to act as a clearinghouse and information center for the collection, preparation, and dissemination of information on federal sentencing practices.[30] Third, the Commission believes that releasing such information publically[31] could lead to the possibility of misinterpretation because sentencing decisions often are based on facts and circumstances not appropriate for public release (for example, the sentencing decision may reflect the degree to which the defendant cooperated with the government). For all of these reasons, the Commission continues to believe that the release of judge-specific identifying information is not necessary for the formulation of sentencing policy by Congress, the Commission, or any other stakeholder.

b. Of what relevance is the position of the Judicial Conference on this matter to the Sentencing Commission?

Response: As indicated in the response to question 8(a) *supra*, the Commission made an independent determination that release of judge-specific identifying information was not necessary to meet its duties under the SRA. Specifically, the Commission notes in its *Public Access to Sentencing Commission Documents and Data* that "[p]roviding public access to non-confidential sentencing information is consistent both with the letter and the spirit of the Sentencing Reform Act of 1984." Because the Commission is an independent agency located within the judicial branch and must rely on the work-product of the courts to meet its statutory goals, the policies of the Judiciary with respect to release of that information are important considerations for the Commission, but they do not ultimately dictate the Commission's decisions on what information it releases publically.

c. Is the Commission not publishing sentencing data on individual judges because of the opposition of the Judicial Conference?

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[28] The MOU is available on the Commission's website, www.ussc.gov.

[29] *See* 28 U.S.C. § 991(b)(1)(C) requiring the Commission to "establish sentencing policies and practices for the Federal criminal justice system that reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process." Compliance with this directive is not furthered by knowing the identity of a specific judge.

[30] *See* 28 U.S.C. § 995(a)(12)(A).

[31] Question 8 and its subparts ask about issues associated with *public* release of judge-specific identifying information. This is different than release contemplated by the provisions added to 28 U.S.C. § 994(w) which contemplate requests for identifying documents and underlying data by Congress or the Attorney General. As such, the Commission is responding to your questions based on *public* release of judge-specific identifying information.

Response: As indicated in its responses to questions 8(a) and 8(b) *supra*, the Commission has made an independent determination to enter into an MOU with the AO to maintain confidentiality of identifying information contained in the Commission's datasets.

d. The Judicial Conference recently approved a one-year pilot program with the GPO to grant public electronic access to judicial opinions. The press release stated that "The Judiciary continually has sought ways to enhance public access to court opinions."[32] Given this policy of granting access, what objection does the Sentencing Commission have to publishing to the public sentencing information on an individual basis?

Response: The Judiciary's determination to provide access to court opinions through the Government Printing Office is not analogous to the Commission's statutory obligations, and does not impact the Commission's determination that the release of judge-specific identifying information is not necessary to meet its statutory obligations.

e. Would the Commission object to publishing the departure data from individual judges in a way that redacted their names?

Response: The Commission refers back to its response to Question 8(a). For all of the reasons articulated in that response, the Commission believes that it is not necessary to make available publically judge-specific identifying information. At this time, the Commission believes that the data it makes publically available strikes the appropriate balance and fulfills its statutory obligations.

f. Do you believe that by making individual sentencing statistics available, federal judges will be held publicly accountable for the exercise of their new found discretion? And that might have the beneficial effect of causing judges to think more deeply about the sentences they impose and explain more clearly the reasons for those sentences?

Response: Question 8(f) suggests that in a post-*Booker* world, there is less thought going into the sentencing process when in fact, that is not the case. Every sentencing is conducted in public and the courts must articulate the reasons for the sentence imposed in open court.[33] Sentencing courts must consider each of the sentencing factors set forth in 18 U.S.C. § 3553(a) and explain how they have factored into the ultimate sentence imposed, and such judgments are subject to appeal if this process is not followed. Publically releasing judge-specific identifying information will not alter the statutory obligations that courts already have at sentencing.

g. Perhaps more importantly, armed with this data, outside scholars who seriously study these things will be better informed and therefore better able to provide a reasoned critique of the federal sentencing process in this post-*Booker* world?

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[32] http://www.gpo.gov/pdfs/news-media/press/11news23.pdf.

[33] *See* 18 U.S.C. § 3553(c). A court may limit the reasons it cites in open court for imposing a certain sentence. For example, the sentencing decision may reflect the degree to which the defendant cooperated with the government.

Response: As reflected throughout the Commission's responses to this series of questions, the Commission believes that its policies and practices with respect to the public release of sentencing information strikes an appropriate balance and ensures that the Commission is meeting its statutory obligations. For example, the Commission annually makes available for public use its comprehensive datasets through the Inter-University Consortium for Political and Social Research (absent identifying information). Data from this source can be used freely and manipulated as the individual researchers need for a particular project. From time-to-time, the Commission also may make available datasets of other non-confidential information which it has compiled in the course of conducting research, in support of policy development or in otherwise performing its functions. It is the Commission's opinion that, at this time, expanding availability of these datasets to include judge-specific identifying information would not further the formulation of sound sentencing policy or result in more efficient research and analysis.

9. You were recently interviewed, and that interview was published on "The Third Branch", the website of the U.S. Courts. In the interview you revealed that a recent study of Federal district judges found that 70% felt that the penalties for receipt and possession of child porn were too high, "a sentiment likely responsible for a more than 40% variance rate."

a. What is you basis of belief that Federal district judges feel child porn sentence guidelines are too high?

Response: In 2010, the Commission sent a comprehensive survey to 942 federal district court judges with active sentencing dockets on a wide range of sentencing policy issues. The Commission received responses back from 639 federal district court judges. In the 2010 survey, the Commission asked judges whether the guideline range was "generally appropriate" for a variety of offenses, including possession of child pornography. Seventy percent of respondents to that question stated that they found the guideline range for child pornography possession to be "too high."[34] This response, coupled with the 42.4 percent non-government sponsored below range rate of sentencing in the post-*Gall* period, suggests to the Commission that many federal judges feel the guideline penalties are too high for possession of child pornography.

b. Do you believe that law enforcement of the United States, as it applies to child porn, should depend on the "sentiment" of U.S. judges about the severity of the sentences?

Response: The Commission's testimony did not suggest that federal law enforcement with respect to child pornography offenses should be based on the sentiment of United States judges about the severity of these sentences. Federal judges have never indicated to the Commission that these cases should not be pursued by law enforcement; rather, judges have opined on the severity of the sentences for these types of offenses.

The Sentencing Reform Act requires the Commission to review and periodically amend the federal sentencing guidelines "in consideration of comments and data coming to its attention."[35] In

[34] U.S. SENT'G COMM'N, RESULTS OF SURVEY OF UNITED STATES DISTRICT JUDGES JANUARY 2010 THROUGH MARCH 2010, Question 8 (2010).
[35] 28 U.S.C. § 994(*o*).

fulfilling its duties, the Commission is required to "consult with authorities on, and individual and institutional representatives of, various aspects of the Federal criminal justice community . . ." including probation officers, the Judicial Conference of the United States, the Department of Justice, representatives of the federal defenders service, and others.[36] As such, the Commission is statutorily required to consider the views of judges on the operation of the federal sentencing guidelines. The Commission has received requests from the Department of Justice to review the child pornography guideline, and the National Center for Missing and Exploited Children also has indicated that an examination of this guideline may be appropriate. The Commission is undertaking a review of child pornography offenses and expects to release a comprehensive report sometime in the coming months. As part of its review of these offenses, the Commission is planning a public hearing on child pornography offenses in February 2012.

c. Do you believe that the sentencing guidelines for child porn possession and distribution are too high?

Response: As indicated in the Commission's responses to questions 9(a) and 9(b), the Commission is in the process of preparing a comprehensive report on child pornography offenses and the accompanying penalties. The Commission believes that this report will provide the most current information on these offenses and help policymakers determine appropriate sentences for these offenses.

10. You have proposed a system of "presumptive" guidelines, but have not offered us specific statutory language for implementing such a system. Will you submit such language to us within *60 days* so we can analyze it?

a. How is it permissible under Booker, Gall, Rita and their progeny, in particular Nelson v. United States, decided in January 2009? There, the Supreme Court said point-blank, "Our cases do not allow a sentencing court to presume that a sentence within the applicable Guidelines range is reasonable." How can we square that language with any proposal for "presumptive" guidelines?

b. It's well known that Congress did not want an advisory system. Such a system was proposed and considered at the time the SRA was drafted, and specifically rejected. Yet for all this time -- again, nearly seven years -- the Commission has never so much as suggested bringing back the regimen Congress chose. Instead it has sat in total silence as, every single year, for want of any binding power; the guidelines have been increasingly shunted off to one side in courtrooms all across the country. There are those who might suspect that the Commission's silence is not a product of lassitude, but an indication that the Commission itself simply has no enthusiasm for mandatory guidelines.

c. Is that true? How would you answer such suspicions? And are you personally committed to full restoration of the rule of law in federal sentencing?

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[36] *Id.*

Response: The Commission is responding to questions 10(a-c) collectively. First, the Commission disagrees with the characterization that it has sat in "total silence" since the Supreme Court decided *Booker*. As detailed in its written statement and the responses to these Questions for the Record, the Commission has been actively undertaking its duties under the Sentencing Reform Act and making significant contributions to the nation's sentencing policy.

In 2005 (one month after the *Booker* decision) and again in 2006 (one year after the *Booker* decision), the Commission testified before Congress that the system was relatively stable but proposed specific recommendations to Congress to improve the advisory guideline system. The Commission also issued a comprehensive report on the impact of *Booker* on the federal sentencing system a year after the decision. In the years since *Booker*, Congress has taken action on only one of the Commission's recommendations.[37] Until receiving these Questions for the Record, Congress has not asked the Commission to revisit its proposals, propose additional options for addressing *Booker*, or assist Congress in responding to the seven Supreme Court decisions that have been issued since *Booker*. The Commission remains ready to provide Congress with assistance in exploring the options it presented in 2005 and 2006, or any others Congress identifies, as well as other issues associated with *Booker* and federal sentencing.

Although Congress has taken no specific action to address *Booker* and its progeny, the Commission has acted. In the intervening years since *Booker*, the Commission has undertaken a number of important steps on its own to stabilize the federal sentencing system and to fulfill its statutory duties under the Sentencing Reform Act. It has provided near real-time data on sentencing trends and practices, assisted Congress and other policymakers on the development of sentencing policy, undertaken a rigorous research agenda, trained thousands of judges, probation officers, prosecutors, and defense counsel on the guidelines, and promulgated 79 amendments to the federal sentencing guidelines, 40 of which were in response to changes in the law, including congressional directives that reflect the Commission's commitment to the goals of the Sentencing Reform Act. Immediately after *Booker*, the Commission began educating courts and practitioners on the "3-step" approach to sentencing and subsequently codified the 3-step approach in the *Guidelines Manual*.[38]

With respect to question 10(a), the Commission's proposal package does not reinstate "presumptive" guidelines as they existed prior to *Booker*. Rather, the proposals – consistent with the *Booker* line of cases – set forth certain legislative adjustments to the *current* system. First, the Commission recommends that Congress ensure that the guidelines receive appropriate weight at the district court level. Second, consistent with *Rita*, the Commission recommends a presumption of reasonableness apply *at the appellate level*. *Rita* permits, but does not require appellate courts to adopt a presumption of reasonableness for within range sentences. The Commission believes that requiring a presumption of reasonableness at the appellate level may provide more consistent sentencing outcomes and practices throughout the system. It would also assist in ensuring that the federal sentencing guidelines be given due respect during sentencing. Third, the Commission recommends that Congress direct sentencing courts to provide greater justifications for sentences

[37] In 2006, Congress enacted changes to 28 U.S.C. § 994(w) that set forth what documents sentencing courts are required to send to the Commission. *See* Pub. L. No. 109-177 (2006).
[38] *See* USSG App. C, amdt 741 (2010). The Commission also filed amicus briefs in *Rita*, *supra* n.22, and Dillon v. United States, __ U.S. __, 130 S. Ct. 2683 (2010).

imposed the further the sentence is from the otherwise applicable guideline range, which is consistent with *Rita* and *Gall*.[39] As the Court noted in *Gall*, "We find it uncontroversial that a major departure should be supported by a more significant justification than a minor one."[40] Finally, the Commission recommends that Congress address the *Kimbrough* and *Spears* decisions and create a heightened standard of review for sentences imposed as a result of a "policy disagreement" with the guidelines. The Commission believes that each of these proposals is consistent with current Supreme Court precedent and would improve the ability of the advisory guidelines system to achieve the statutory purposes of sentencing.

Finally, with respect to question 10(c), the Commission stands ready to work with Congress as it engages in its review of federal sentencing policy and to provide any assistance Congress may need. The Commission believes its legislative proposals will promote a more effective and uniform sentencing system and could be implemented with minimal burden on the criminal justice community. At the same time, the Commission continues to work on its upcoming *Booker* report that will significantly expand on the data and analyses presented in its October 12, 2011, written statement.

11. Judge Saris, you indicated in your testimony that the Commission is thinking about proposing "presumptive guidelines," which would be something of a cross between advisory and mandatory guidelines. When the Commission produces a plan for "presumptive guidelines," would you also produce for comparison, and for our consideration, a mandatory guidelines plan? We will be better positioned to write legislation, and we'll be more informed, if we could look at both proposals side-by-side. Will you commit to having the Commission formulate a plan for re-instituting mandatory guidelines and agree to submit that to us within 90 days?

Response: The Commission is actively engaged in writing its *Booker* report that will expand on its October 12, 2011, written statement and include analyses of various options available to Congress for addressing the *Booker* decision. The Commission continues to believe, as stated most recently in its mandatory minimum report and at the October 12, 2011, hearing that a strong and effective guidelines system is the best approach to meeting the goals and purposes of sentencing.

The Commission will fulfill any congressional request for assistance in drafting a legislative proposal that would result in a "mandatory" guidelines system consistent with the Constitutional holding in *Booker*, or any other option that Congress wishes to explore. The Commission suggests that congressional staff contact Commission staff to request any drafting assistance, as well as to provide information on any elements Congress believes should be included in a proposal that would reinstitute mandatory guidelines in a way consistent with the Constitution.

12. Under the original Sentencing Reform Act, we had the rule of law. Now we have the rule of discretion -- to the extent "discretion" can be thought of as a "rule." Your proposal for

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[39] *See Gall v. United States*, 552 U.S.38, 50 (2007).
[40] *Id.*

presumptive guidelines seems to take us half way back to the rule of law without ever really getting there.

a. Why shouldn't we just do what Justice Stevens and the other Booker dissenters suggested and reinstate mandatory guidelines? The government would need to prove beyond reasonable doubt facts that would take the sentence above the top of the range, but so what? Such cases are comparatively rare, and where they exist, why shouldn't the government have to meet that burden?

b. Isn't it worth it to have settled rules -- real rules -- that the parties can count on? Shouldn't the rule of law be more than merely an aspiration or a half-way measure?

Response: The Commission is responding to Questions 12(a) and (b) collectively.

In *Booker*, the Supreme Court held that the imposition of an enhanced sentence under the federal sentencing guidelines based on the sentencing judge's determination of a fact (other than a prior conviction) that was not found by the jury or admitted by the defendant violated the Sixth Amendment. *Booker* would require that, under a mandatory guideline system, not only would facts that increase the sentence above the top of the applicable guideline range have to be found by a jury or admitted by the defendant as the question suggests, but also any facts that establish an increased guideline range would have to be found by a jury or admitted by the defendant.

As the question indicates, sentences above the applicable guideline range are relatively rare, consisting of 1.8 percent of offenders sentenced in fiscal year 2010. However, 77.9 percent of offenders sentenced in fiscal year 2010 (56,789 of the 72,878 cases with sufficient documentation to conduct this analysis) received an increase in the applicable guideline range because a Chapter Two specific offense characteristic, Chapter Three upward adjustment, or an increased base offense level based on drug quantity applied. In a mandatory guideline system, the facts that triggered each of these upward enhancements and adjustments would have to be found by a jury or admitted by the defendant to conform to the requirements of *Booker*. Such a system, as discussed by Justice Breyer in the *Booker* remedial opinion, "would nonetheless affect every case."[41] This system would require a number of changes to the statutory framework created by the Sentencing Reform Act and the corresponding federal sentencing guidelines, which most likely would require a period of time before they could be fully implemented by the Commission and fully adapted to by the federal criminal justice system.[42]

The Commission also notes that Congress always envisioned a system in which judges would have discretion to impose a sentence outside of the guidelines. Throughout the legislative debate that

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[41] *Booker* at 248.
[42] *See* Justice Breyer's discussion, *id.* at 248-49, of the statutory provisions created by the Sentencing Reform Act that would not be compatible with such a system.

led to the ultimate passage of the Sentencing Reform Act, Congress included provisions for judges to exercise discretion to sentence outside the guidelines system.[43]

13. The Supreme Court has suggested that a guidelines system would have to be accompanied by, in some instances, submission of sentencing facts to the jury for a finding Beyond a Reasonable Doubt. But as I understand it, your proposal includes no such provision. Isn't it an open question at best whether the Supreme Court would approve it without that provision? But if we adopt a beyond a reasonable doubt test, why shouldn't we go the whole way toward restoration of the SRA?

Response: As your question suggests, and as discussed in question 12, any mandatory guideline system would require that facts that trigger upward enhancements and adjustments under the guidelines would have to be found by a jury beyond a reasonable doubt standard or admitted by the defendant. As Justice Breyer noted, a system such as the one suggested in Questions 12 and 13 would implicate other aspects of the criminal justice process such as the decision whether to go to trial, the content of plea negotiations and the role of the judge in sentencing.[44] The Commission notes, as did Justice Breyer in the *Booker* remedial opinion, that the system created by the Sentencing Reform Act did not require proof beyond a reasonable doubt for facts a judge relied on at sentencing.[45]

14. On the other hand, the presumptive guidelines proposal doesn't go far enough. A presumption is a presumption, not a rule. The Guidelines as Congress envisioned them in the SRA were rules. Of course they were rules with exceptions (departures), but the exceptions were also governed by rules. Wouldn't it be better to restore the rule-of-law system we had, while perhaps expanding the rules covering departures?

Response: The Commission understands this question to ask about the system suggested by Justice Stevens in the merits portion of the *Booker* opinion. The Commission refers back to its answers to Questions 12 and 13 in response to this question, as well as its 2005 and 2006 testimony and its 2006 *Booker* report. The Commission intends to re-evaluate the various options described in those sources in its forthcoming report on *Booker*. In the interim, the Commission believes that the legislative proposals it provided to Congress in its October 12, 2011, written statement, which are derived from Supreme Court case law that has developed over the past few years, may help the current advisory guideline system better meet the statutory purposes of sentencing set forth by Congress in the Sentencing Reform Act.

15. Relatedly, do we really want to saddle the district and appellate courts with having to figure out and adjust to the third new-and-improved sentencing overhaul in the last 24 years? Wouldn't we be asking for years more of confusing and conflicting results as courts wrestled to figure out in concrete terms what a "presumptive guideline" actually is?

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[43] For detailed examination of the legislative history of the departure provisions of the Sentencing Reform Act, see U.S. SENT'G COMM'N, REPORT TO CONGRESS: DOWNWARD DEPARTURES FROM THE FEDERAL SENTENCING GUIDELINES (IN RESPONSE TO SECTION 401(M) OF PUB. L. 108-21) App. B (2003).
[44] *Booker* at 254-55.
[45] *Id.* at 251-52.

a. Even now, almost seven years after Booker, the courts are showing considerable disagreement about a host of questions, including what is substantive sentencing review versus procedural review, and when and under what circumstances the former is even permissible. Wouldn't your proposed hybrid system essentially guarantee more years of doubt and confusion? All at a time when the courts are already overburdened with runaway litigation?

b. With all respect, isn't the presumptive guidelines proposal just the advisory guidelines in another form? Even assuming the courts would understand the change, what guarantees can you give the Committee that the defects of luck-of-the-draw sentencing would really be remedied, rather than just being papered over?

Response: Question 15 raises a number of issues associated with federal sentencing policy since *Booker* and the various options available to address the *Booker* line of cases. The Commission believes that these important questions should be answered as comprehensively as possible and intends to do so in its upcoming *Booker* report. In the interim, the Commission believes its legislative proposals, which are derived from Supreme Court case law that has developed over the past few years, may help the courts resolve their differences regarding certain aspects of federal sentencing, including the weight to be accorded to the guidelines at the district court level, the amount of explanation or justification a decision that deviates from the guidelines on policy grounds should contain, and the corresponding level of scrutiny that such a decision should receive at the appellate level, and the uniform application of a presumption of reasonableness by *appellate* courts when reviewing a sentence imposed within a properly calculated guideline range. These changes would not shock the system as suggested by Question 15 and may help promote the stability, certainty, and transparency that Congress desired when it passed the Sentencing Reform Act.

Questions for the Record: Minority

1) Your written testimony reports that average sentence lengths have remained relatively stable, but that there has been a decrease in average sentence length over the past three years and that this "can be attributed to" 1) "a reduction in the overall severity of the aggregate offenses in the federal caseload" due to increases in the portion of immigration offenses, which carry lower sentences, on average, than other offenses; and 2) "a decrease in the rate at which courts are imposing sentences within the applicable guideline range." (p. 7, 22).

(a) Do these two factors fully explain the decrease in sentences in recent years, or have other factors, such as changes to the statutes enacted by Congress and the guidelines promulgated by the Commission, for example, the changes to the crack cocaine statutes and guidelines, also contributed to the decrease?

(b) If so, to what extent, and which factor has had the greatest effect on reducing sentence lengths -- a reduction in the overall severity of the aggregate offenses in the federal caseload, a decrease in the rate at which courts are imposing sentences within the applicable guideline range, or changes to statutes and guidelines applicable in cases involving crack cocaine?

Response: As indicated in the question, and the Commission's October 12, 2011, written statement, there are a number of factors that contribute to the average length of sentence reported by the Commission, including the composition of the docket for a given time period, prosecutorial initiatives and decisions, the sentences imposed by courts, and other factors. Quantifying precisely all of the factors that contribute to the average sentence length for any given year is complex and imperfect.

In the past four fiscal years, the average sentence length for all offenders has been as follows: 50.0 months in fiscal year 2008, 47.2 months in fiscal year 2009, 44.4 months in fiscal year 2010, and 42.9 months in fiscal year 2011.[46] This represents a decrease in average sentence length of 7.1 months – or 14.2 percent – from fiscal year 2008 to fiscal year 2011. The table below shows these average sentence lengths during each of the four fiscal years and then shows the average sentence lengths when immigration cases and cases receiving Early Disposition Program (EDP) departures are excluded. Finally, the table shows the average sentence lengths for the remaining cases (i.e., non-immigration/non-EDP cases) when cases receiving a non-government sponsored below range sentences are "resentenced" at the minimum of the applicable guidelines range. These analyses show that the increase in the immigration caseload has had a substantially greater impact on reducing average sentence lengths than the increase in the number of non-government sponsored below range sentences in non-immigration/non-EDP cases.

[46] The Commission is including information in this response for fiscal year 2011 but notes that the data is preliminary only and subject to change as the Commission completes the dataset for publication of the fiscal year 2011 annual report and sourcebook.

	Average Sentence Length In Months			
	2008	2009	2010	2011
All Cases	50.0	47.2	44.4	42.9
Excluding Immigration and Early Disposition Program (EDP) Cases	63.4	62.4	59.6	57.9
Excluding Immigration and EDP Cases and "Resentencing" Non-Government Sponsored Below Range Sentences at Minimum of Guidelines	66.8	67.1	65.1	62.9

Immigration offenses represent a substantial and increasing proportion of the federal criminal caseload. Immigration offenses accounted for 28.0 percent of the federal criminal caseload in fiscal year 2008, 31.9 percent in fiscal year 2009, 34.0 percent in fiscal year 2010, and 34.8 percent in fiscal year 2011. Immigration offenses, therefore, have a substantial impact on the average sentence length for all federal offenders. As seen in the table, in fiscal year 2008, the average sentence length for all offenders was 50.0 months. When immigration cases and cases receiving an EDP departure are excluded from the analysis, the average sentence length increases to 63.4 months, which is 13.4 months (26.8%) longer than when immigration and EDP cases are included in the analysis. The difference grows slightly over time. In fiscal year 2009, the average sentence length was 62.4 months when immigration offenses and cases receiving an EDP departure are excluded, which is 15.2 months (32.2%) longer than when immigration and EDP cases are included in the analysis. In fiscal year 2010, the average sentence length was 59.6 months when immigration cases and cases receiving an EDP departure are excluded, which is 15.2 months (34.2%) longer than when immigration and EDP cases are included in the analysis. Finally, in fiscal year 2011, the average sentence length was 57.9 months when immigration cases and cases receiving an EDP departure are excluded, which is 15.0 months (35.0%) longer than when immigration cases are included in the analysis. Note that when immigration and EDP cases are excluded, average sentence lengths still have decreased from 63.4 months in fiscal year 2008 to 57.9 months in fiscal year 2011, a decrease of 5.5 months or 8.7 percent. As would be expected based on the analysis above, this decrease is smaller than the 14.2 percent decrease for all cases, including immigration and EDP cases.

To estimate the effect that non-government sponsored below range sentences had on average sentence lengths, the analysis next "resentences" the non-immigration/non-EDP offenders who

received a non-government sponsored below range sentence at the minimum of the applicable guidelines range. Non-government sponsored below range sentence cases accounted for 16.1 percent of the non-immigration/non-EDP cases in fiscal year 2008, 19.8 percent in fiscal year 2009, 21.8 percent in fiscal year 2010, and 20.8 percent in fiscal year 2011. In fiscal year 2008, if these offenders had received sentences at the minimum of the applicable guidelines range, the average sentence length for all non-immigration/non-EDP offenders would have been 66.8 months, which is 3.4 months (5.4%) longer than the average sentence length of 63.4 months actually imposed for such offenders. In fiscal year 2009, if these offenders had received sentences at the minimum of the applicable guidelines range, the average sentence length for all non-immigration/non-EDP offenders would have been 67.1 months, which is 4.7 months (7.5%) longer than the average sentence length of 62.4 months actually imposed for such offenders. In fiscal year 2010, if these offenders had received sentences at the minimum of the applicable guidelines range, the average sentence length for all non-immigration/non-EDP offenders would have been 65.1 months, which is 5.5 months (9.2%) longer than the average sentence length of 59.6 months actually imposed for such offenders. In fiscal year 2011, if these offenders had received sentences at the minimum of the applicable guidelines range, the average sentence length for all non-immigration/non-EDP offenders would have been 62.9 months, which is 5.0 months (8.6%) longer than the average sentence length of 57.9 months actually imposed for such offenders. Thus, it appears that immigration cases, which reduced the average sentence length for all offenses by 35.0 percent in fiscal year 2011, play a larger role in the reduction in average sentence length than non-government sponsored below range sentences, which are estimated to have reduced the average sentence length for non-immigration/non EDP cases by 8.6 percent in the same year.

The question poses an additional possible factor explaining the overall reduction in average sentences – the change in statutory and guideline provisions for crack cocaine offenses. The analysis to determine the impact of crack cocaine offenses on the average sentence length is different than that for immigration offenses or non-government sponsored below range sentences. To determine the impact of guideline and statutory changes to crack cocaine sentences a comparison between fiscal years must be made – that is a comparison between fiscal year 2007 crack cocaine sentences (before the Commission's guideline amendment) and sentences in later fiscal years. To focus specifically on the effect of the statutory and guideline changes, the following analysis is limited to cases receiving a sentence within the applicable guideline range. Including sentences imposed outside the guideline range may mask any effect that the statutory and guideline changes had.

Crack cocaine offenses sentenced within the guideline range represented a very small, and shrinking, proportion of all cases sentenced in federal court (4.6% in fiscal year 2007, 4.8% in fiscal year 2008, 3.8% in fiscal year 2009, 2.7% in fiscal year 2010, and 2.6% in fiscal year 2011). In fiscal year 2007, the year prior to the Commission's crack cocaine amendment, the average sentence for crack cocaine offenders sentenced within the guideline range was 148.1 months. In fiscal year 2008, sentences for crack cocaine offenders sentenced within the guideline range dropped to 129.6 months – a 12.5 percent decline in crack cocaine sentences. In fiscal year 2009 the average sentence for crack cocaine offenders sentenced within the guideline range was 133.8 months – a 9.7 percent difference when compared to crack cocaine sentences in fiscal year 2007. In fiscal year 2010 the average sentence for crack cocaine offenders sentenced within the guideline range was 131.9 months – a 10.9 percent difference when compared to crack cocaine sentences in fiscal year 2007. In fiscal

year 2011 the average sentence for crack cocaine offenders sentenced within the guideline range was 114.7 months – a 22.6 percent difference when compared to crack cocaine sentences in fiscal year 2007.

Thus, while both the percentage of the docket attributable to crack cocaine offenses and the average sentence length of those offenses has decreased over time, this reduction does not compare in magnitude to the reduction associated with the increasing immigration caseload.

2) We have been told by the American Bar Association and the Federal Public Defenders that the rate at which judges impose sentences below the guideline range has dropped over the first three quarters of 2011. That information is not included in your testimony.

(a) Is it correct that the rate at which judges impose sentences below the guideline range has dropped over the first three quarters of 2011?

(b) If so, have you determined the cause, and if so, what is it?

(c) Do you intend to include information about a drop in the rate at which judges impose sentences below the guideline range in your upcoming report on post-*Booker* sentencing?

Response: It is true that preliminary data for fiscal year 2011 shows a decrease in the percentage of non-government sponsored below range sentences and a corresponding increase in the percentage of government-sponsored below range sentences. According to the preliminary data for the first three quarters of fiscal year 2011 data, which is published on the Commission's website (www.ussc.gov), the Commission received 61,781 cases sentenced on or after October 1, 2010 and for which the Commission received, coded and edited information as of August 24, 2011. Of those, the Commission had sufficient information to conduct an analysis of the sentence imposed relative to the guideline range in 60,830 cases. Of those 60,830 cases, 54.3 percent (n=33,004) were sentenced within the guideline range. Another 26.8 percent (n=16,275) were government sponsored below range sentences. An additional 17.2 percent (n=10,474) were non-government sponsored below range sentences.

Since the hearing, the Commission has released preliminary data for all four quarters of fiscal year 2011, cumulatively. The Commission received 84,072 cases sentenced between October 1, 2010 and October 1, 2010 and for which the Commission received, coded and edited information as of November 21, 2011. Of those, the Commission had sufficient information to conduct an analysis of the sentence imposed relative to the guideline range in 82,740 cases. Of those 82,740 cases, 54.6 percent (n=45,180) were sentenced within the guideline range. Another 26.4 percent (n=21,843) were government sponsored below range sentences. An additional 17.2 percent (n=14,221) were non-government sponsored below range sentences.[47]

[47] *See* Table 1 of the Commission's Fourth Quarter FY11 Preliminary Quarterly Sentencing Updated (Published December 5, 2011), available at www.ussc.gov. By comparison, in fiscal year 2010, 55.0 percent of cases were sentenced within the guideline range; 25.4 percent were government sponsored below range sentences; and 17.8 percent were non-government sponsored below range sentences.

The Commission cautions against relying on preliminary data, however. The Commission's experience with data collection, analysis and reporting indicates that preliminary data often fluctuate and do not provide a full picture of federal sentencing trends and practices for a given year but instead present a snapshot of those cases that have been provided to the Commission by a certain time. The quarterly fluctuation in cases is most easily seen in Table 4 of the Commission's third quarter fiscal year 2011 data analysis, which shows the within, government sponsored, below, and above range rates by quarter from fiscal year 2006 through the third quarter of fiscal year 2011.

The Commission undertakes a substantial collection and analysis process before it reports final sentencing statistics in its annual sourcebooks. First, the Commission gathers information from the courts throughout the year as required by 28 U.S.C. § 994(w). As that information is received, it is coded and analyzed and used to provide quarterly updates such as that referred to by the American Bar Association. At the close of a fiscal year, however, the Commission engages both the courts and the Administrative Office of the United States Courts (AO) in a more thorough process to ensure that as many cases as possible are accounted for, including a match between the AO and the Commission datasets. When the Commission is confident it has received all available cases, the dataset is closed for purposes of the sourcebook and the information is coded, analyzed and reported in the Commission's annual Sourcebook. These datasets then become the basis for the Commission's further reporting as they are considered the most reliable indicators of actual sentencing trends and provide the most cases for analysis. This is why the Commission used fiscal year 2010 data for its testimony.

The Commission anticipates that it will use the most current fiscal year's data that is available for purposes of its upcoming *Booker* report. That report will include any changes in sentencing trends and practices that are evident from the data collected.

3) The Commission reports rates of sentences below the guideline range in two broad categories: (1) "government sponsored" and (2) "non-government sponsored." Your written testimony states that "[t]he most notable change in federal sentencing over time involves the rate of non-government sponsored below range sentences" (p. 23).

(a) To what extent are defendants sentenced below the guideline range over the objections of the government?

(b) Does the Commission have data gathered from the courts to report rates at which the government agrees with, or does not object to, below-range sentences that the Commission categorizes as "non-government sponsored"?

Response: In fiscal year 2010, 14,565 offenders (17.8%) received a non-government sponsored below range sentence. In 3,678 of those cases (25.3%), the court cited a defense motion to which the government objected. The Commission provides this information from data extracted from the statement of reasons form (AO245B) that courts are required to complete and send to the Commission pursuant to 28 U.S.C. § 994(w).[48] That form (attached here for your reference as

[48] *See* U.S. SENT'G COMM'N, 2010 SOURCEBOOK OF FEDERAL SENT'G STATISTICS, Table 28A, at p.83.

attachment 3) includes information on motions and plea practice, including a box designated "defense motion for a sentence outside of the advisory guideline system to which the government objected."

4) On page 23 your testimony notes, "A direct comparison of non-government sponsored below range sentences in earlier [pre-PROTECT Act] years cannot be made [with post-PROTECT years] as the Commission did not distinguish between these sentences and government sponsored sentences (other than substantial assistance) in those earlier years." On pages 26-53, however, your testimony presents many tables with rates and extent of "government-sponsored" and "non-government sponsored" sentences for various types of crime in four time periods: (1) post-*Koon*, (2) post-PROTECT Act, (3) post-*Booker*, and (4) post-*Gall*. Doesn't this mean that the figures for the post-*Koon* period are inaccurate indicators of the non-government sponsored and government sponsored rates of departure? Are you planning any other statistical analyses to more accurately gauge the effects of these legal changes on government and non-government departures?

Response: As the Commission explained in its October 12, 2011, written statement, a direct comparison across all four time periods cannot be made because the Commission changed the way it collects, analyzes, and reports data on departures after enactment of the PROTECT Act in April 2003. Prior to the PROTECT Act, the Commissioned reported two categories of below range sentences: "substantial assistance" and "other downward departures."[49] In its 2003 report on departures under the guidelines,[50] the Commission found that approximately 40 percent of the "other downward departures" attributed to the courts in fiscal year 2001 cited some benefit to the government as the reason for the departure. The existence of only two departure categories therefore resulted in an overstatement of the proportion of downward departures attributable to the court and an understatement of the proportion of downward departures attributable to the government. Consequently, the Post-*Koon* period is unique compared to the other time periods set forth in the Commission's written statement. The "other downward departures" category during the Post-*Koon* period represents all downward departures other than those for substantial assistance to authorities. Included in this group are below range sentences that were advocated by the government for reasons other than substantial assistance, such as a plea agreement.

The PROTECT Act also authorized the creation of Early Disposition Programs (fast track), under which defendants in districts designated by the Attorney General and the United States Attorney may enter into written plea agreements stipulating to early disposition of their cases in exchange for a reduced sentence. The PROTECT Act essentially formalized a departure that was already in use, albeit informally, in various districts. The PROTECT Act also directed the Commission to promulgate a policy statement authorizing downward departures in such cases.[51] As a result, the Commission promulgated USSG §5K3.1 (Early Disposition Program).

As a result of these findings and changes in the law, the Commission created a new category of below range sentences: government sponsored departures. This category includes substantial

[49] *See, e.g.*, U.S. SENT'G COMM'N, 2001 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, Figure G, at p.51.
[50] U.S. SENT'G COMM'N, REPORT TO CONGRESS: DOWNWARD DEPARTURES FROM THE SENTENCING GUIDELINES 59 (October 2003).
[51] Pub. L. No. 108-21, §401(m), 117 Stat. 650 (2003).

assistance departures, and also includes departures received pursuant to an early disposition program (under USSG §5K3.1), and departures pursuant to a plea agreement. This new attribution methodology became fully implemented in fiscal year 2004. As a result, the Post-*Koon* period data (defined in the Commission's written statement as June 13, 1996, through April 30, 2003) cannot be directly compared with the later time periods, as the Commission has consistently noted in all of its reports that provide trend analyses across time.

Comparisons across the PROTECT Act (May 1, 2003, through June 24, 2004), Post-*Booker* (January 12, 2005, through December 120, 2007), and Post-*Gall* (December 11, 2007, through September 30, 2010) periods can be made as the data collection methodology is consistent.

5) In your testimony, you listed districts from the highest to the lowest in rates of "non-government sponsored" sentences below the guideline range. The Chairman and several members of the Subcommittee pressed you for explanations of these differences and asked if the Commission had done any analysis of the reasons for these differences. Previous Commission research noted that "[a]nalyzing sources of inter-judge and regional disparity is complicated because the potential sources are so many, varied, and interacting",[52] and warned that "[i]nferring unwarranted disparity from uncontrolled comparisons of average sentences or rates of departure may be erroneous."[53] There was also a warning that data needed to explain many possible reasons for differences among districts is not available and "[w]hen assessing the role of departures in creating unwarranted sentencing disparity . . . caution is advisable and caveats are unavoidable."[54]

You and other witnesses mentioned several possible reasons for variations among districts that are not discussed in your written testimony. Will your coming report on post-*Booker* sentencing include discussions of any of these sources of regional variations in rates of "non-government sponsored" below range sentences, including:

(a) Variations among districts in composition of the case load, including the presence in some districts of a large number of cases, such as immigration cases, with low guideline ranges where defendants may be sentenced to time served, and the presence in other districts of cases without such low guideline ranges.

(b) Variations among districts in the rate of government-sponsored downward departures and variances, including use of (i) "fast track" departures, (ii) substantial

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[52] U.S. SENT'G COMM'N, FIFTEEN YEARS OF GUIDELINES SENTENCING: AN ASSESSMENT OF HOW WELL THE FEDERAL CRIMINAL JUSTICE SYSTEM IS ACHIEVING THE GOALS OF SENTENCING REFORM 93 (November, 2004). ("Sentencing can be influenced by differences among the districts and circuits in their sentencing case law and 'personas.' These, in turn, are influenced by the political climates of different regions of the country. A great deal of research has established the importance of the local norms of different district courts---what some researchers have called court communities. The norms of different courts are also influenced by practical constraints, such as court workload and the availability of different types of sentencing options.").
[53] *Id.* at 100.
[54] *Id.* at 111.

assistance departures, (iii) other variances and departures, and (iv) Rule 35 motions after sentence is imposed.

(c) Variations in the use of what has been called "hidden" departures, whereby the guideline range is adjusted "below the radar screen," through fact bargaining, guideline factor bargaining, or charge bargaining, in effect making a "hidden" departure appear as a within-guideline sentence.[55]

(d) Information on whether courts in some districts vary downward to counteract the stacking of mandatory minimum counts, or mandatory sentence enhancements, or manipulation of the guideline range.

(e) Information on whether judges in districts with no "fast track" program depart or vary downward at a higher rate in immigration or drug cases than in districts with a "fast track" program for immigration or drug cases.

Response: Question 5 raises a number of issues associated with a review of the current system of federal sentencing. The Commission believes that a response to each of these issues should be undertaken comprehensively and will do so in its upcoming *Booker* report to the extent that sentencing data is available to conduct an analysis. Some of these issues, including those raised in Question 5(d), already have been addressed in the Commission's October 2011 report on mandatory minimums.

6) Previous research both within and outside the Commission emphasized that inter-judge disparity is but one source of unwarranted sentencing disparity, and many observers have noted that mandatory guidelines *increased* unwarranted disparity from other sources.

(a) Isn't it true that mandatory guidelines shifted discretion from judges to prosecutors, and that decisions at pre-sentencing stages by prosecutors and law enforcement agents created as much or more disparity than judicial decisions in the pre-guidelines era?

Response: As the Commission has noted in previous reports, sentencing uniformity depends at least to some degree on charging uniformity. The Commission recognized from its inception the existence of uneven charging practices in the federal criminal justice system, and has repeated that concern throughout the reports it has released over the past 20 years, including most recently in its October 2011 report on mandatory minimum penalties and their role in federal sentencing.

During the initial formulation of the federal sentencing guidelines, the Commission was particularly concerned that uneven charging practices could undermine sentencing reform, despite the Department of Justice's attempts to control it. The Commission, therefore, sought to build into the guidelines mechanisms that would help to ameliorate the effects of any uneven charging. These

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[55] Hon. Patti B. Saris, *Below the Radar Screens: Have the Sentencing Guidelines Eliminated Disparity? One Judge's Perspective*, 30 Suffolk U. L. Rev. 1027 (1997).

mechanisms include: 1) the multiple count rule, found in Part D, Chapter Three of the *Guidelines Manual*, 2) cross-references among guidelines, and 3) the relevant conduct rule found at USSG §1B1.3. While these mechanisms were designed to reduce sentencing disparity resulting from uneven charging decisions, they cannot eliminate the effects altogether.

(b) Isn't it also true that some guideline rules and mandatory minimum statutes themselves create unwarranted disparity and uniformity, with an adverse impact on minority defendants, and that increased judicial discretion under advisory guidelines has been used to offset these other sources of unwarranted disparity?

Response: In response to this question the Commission refers the Committee to its recently released report on mandatory minimum penalties in the federal system.

(c) Will future testimony before this Subcommittee or future Commission reports discuss any of these other sources of disparity, or describe how sentencing below the recommended guideline range can sometimes *prevent* unwarranted disparity?

Response: The Commission notes that when Congress enacted the Sentencing Reform Act and the Commission promulgated the federal sentencing guidelines that there always was room for departures (and subsequently variances). What Congress and the Commission intended to address was unwarranted disparity in the system that can, as your question suggests, arise from a variety of sources besides the use of departures and variances at sentencing. The Commission anticipates addressing sources of disparity in its forthcoming *Booker* report. In the interim, the Commission believes that the recommendations contained in its October 12, 2011, written statement will help strengthen the advisory guideline system and address some concerns that have arisen since the Supreme Court's 2005 *Booker* decision, and the Commission stands ready to work with members of the Committee on those recommendations.

7) The Chairman cited your testimony to reach the disturbing conclusion that "racial disparity in sentencing has increased" in the post-*Booker* era. Warnings contained in the Commission's March 2010 report, as well as research conducted outside the Commission, raise questions about the validity of this conclusion. Moreover, the Federal Public and Community Defenders, who represent most minority defendants, have noted that the gap in average sentence lengths between African-American and other offenders did not exist before the guidelines went into effect, then grew wide in the mandatory guideline era, but has begun to shrink in recent years.

(a) **Do you agree that the existing Commission testimony and reports are an insufficient basis on which to conclude that mandatory guidelines are needed to prevent judges from discriminating against minority defendants ---a claim that was also raised in the pre-guidelines era but later found unsubstantiated?**[56]

[56] Douglas C. McDonald & Kenneth E. Carlson, U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Sentencing in the Federal Courts: Does Race Matter? The Transition to Sentencing Guidelines, 1986-90*, at 1-2, 24-25 (1993).

(b) **The "refined" model used in your March 2010 report began on May 1, 2003. You stated in that report (at page 2 and footnote 4) that you were unable to include earlier years in the "refined" model because data on detention status was "not readily available in the Commission's datasets before fiscal year 2003," and (at page 18) that it was important to include detention status. Did the Commission obtain and include data on detention status for the new period discussed in your testimony beginning October 1999? If not, please explain how one period without data on detention status can validly be compared with later periods that include data on detention status.**

Response: As your question reflects, the Commission's March 2010 report entitled "Demographic Differences in Federal Sentencing Practices: An Update of the *Booker Report*'s Multivariate Regression Analysis" limited its analysis to offenders sentenced after May 1, 2003. The Commission continues to believe that it is important to include information on the offender's detention status in this analysis and in preparation for the analysis for the House hearing determined that information on this variable is available dating from October 1999. The Commission now has added that information to the analysis and performed comparisons across a longer period of time than presented in its March 2010 (and 2006 *Booker* Report) analyses. Thus, the data set forth in its October 12, 2011, written statement is the most current and thorough analysis conducted by the Commission to date.

The Commission's multivariate analyses do not state that there is racial prejudice or motivation in the federal sentencing system. However, as noted in the Commission's October 12, 2011, written statement and mentioned during its oral statement, the Commission has documented demographic differences across time, particularly with respect to sentences between black male and white male offenders. The difference between sentences for black male and white male offenders has increased over time and is substantial. This does not mean that the Commission's multivariate analyses prove a racial prejudice or motivation in the federal sentencing system.

The Commission's multivariate regression analyses are useful analytical tools because they account, or control for, the effect of each factor contained in the analyses; however, there are limitations and the analyses should be read with caution. One or more key factors which could affect the sentence imposed may have been omitted from the methodologies used because a particular factor is unknown, unavailable, or erroneously excluded from the analyses. For example, the Commission's multivariate regression analyses do not include a measure of the violence in an offender's criminal past, information about crimes not reflected in an offender's criminal history score as calculated under the sentencing guidelines, or information about an offender's employment record. Systematically extracting such information from the sentencing documents submitted to the Commission is extremely difficult. The demographic differences documented in the Commission's multivariate regression analyses may be explained, in part, by these factors that are not included in the analyses.

Recently published research in the social science literature is consistent with the findings from the Commission's multivariate analysis. This work, performed at Pennsylvania State University (Penn State Study), also found that black males received longer sentences than white males in the

Pre-PROTECT Act Period, the PROTECT Act Period, the Post-*Booker* Period, and in the Post-*Gall* Period (all statistically significant). The Penn State Study, however, showed a smaller - though still statistically significant - magnitude in the differences in sentence lengths between black male and white male offenders for each time period studied because of certain differences in methodologies, including:

1) The Commission Report includes immigration cases in the analysis while the Penn State Study does not. The Commission believes including immigration offenders in the analysis presents a more complete picture of the total state of federal sentencing. The authors of the Penn State Study excluded immigration cases based because they claim that the presence of Early Disposition Program (EDP) departures, whether authorized or unauthorized, and the fact that most immigration offenders will be deported limit the court's sentencing options. While the Commission disagrees that excluding these cases is the best methodology, the Commission notes that the Penn State Study does not completely eliminate the effect of EDP departures and pending deportation on federal sentencing because EDP departures and deportation occur in other cases as well. For example, 21 percent of cases involving an EDP departure involve an offense other than immigration (principally drug trafficking).

2) The Commission Report does not use an offender's criminal history as a separate variable while the Penn State Study does. The Commission did not include an offender's criminal history as a separate measure because criminal history is a major component of an offender's presumptive sentence, which is the minimum of the applicable guidelines sentencing range. The Commission's model, therefore, accounts for the criminal history by using the presumptive sentence as the main variable (much like an offender's offense level, or statutory minimums and maximums are accounted for by using the presumptive sentence as the main variable). This presumptive sentence is also the key variable in the Penn State Study, but it also includes an offender's criminal history as a separate variable. Including criminal history as a separate variable is problematic because an offender's criminal history and guideline range are highly correlated (a correlation is a measure of the strength of the relationship between two variables such as criminal history and guideline range). The correlation between the presumptive sentence and the criminal history variable in the Penn State Study model is 0.35. The Commission cautions against using two variables that are correlated at a rate greater than 0.25 because of a statistical effect called multicollinearity.[57] Multicollinearity occurs in a multivariate model when two or more variables are highly correlated (e.g., criminal history and presumptive sentence). The effect this has on the model's findings is that it can result in an invalid finding regarding one of the variables or it may cause other problems within the model. For these reasons it is generally preferred that multicollinearity be avoided.

The Commission expects to further analyze and address these differences and other sentencing practices and trends in its upcoming report on federal sentencing since *Booker*. As it stated throughout its testimony and in answers to these Questions for the Record, the Commission

[57] A panel of social science experts that reviewed the Commission's multivariate regression analysis methodology also cautioned against using two variables that are highly correlated.

believes that enactment of the legislative proposals set forth in its October 12, 2011, written statement will help promote more uniformity in sentencing, which may help address the demographic differences that have become more apparent in the post-*Booker* advisory guideline system.

(c) **Do you intend to do any analysis of whether prosecutors' decisions regarding charging or moving for departures or variances result in racial disparity?**

Response: The Commission is not in a position to perform either of these analyses because the Commission does not receive the information regarding charging practices necessary to perform them. For example, the Commission does not receive information on the prosecutor's decision processes regarding whether to move for a departure or variance. Any analysis of such decision-making would require close coordination and cooperation with the Department of Justice.

8) Has average sentence length decreased or increased in child pornography cases after *Booker*?

Response: As indicated in the Commission's October 12, 2011, written statement, the average sentence length for all child pornography offenses has increased over time:

Time Period	Child Pornography Production	Child Pornography Possession
Post-*Koon*	133 months	34 months
Post-PROTECT ACT	164 months	47 months
Post-*Booker*	244 months	82 months
Post-*Gall*	271 months	92 months

The attached chart (from Appendix B of the Commission's October 12, 2011, written statement)[58] also demonstrates the increase in sentence length for these offenses across time.

9) At the hearing, a number of members asked you about the variance or departure rate in child pornography cases. It is my understanding that the Sentencing Commission is preparing a report on the child pornography guideline. Will the report address the problem that this guideline includes Congressionally directed increases, as opposed to empirical evidence that such increases will further the goals of sentencing, resulting in an over 1500% increase in the guideline since 1987, which requires judges to depart or vary downward to arrive at an appropriate sentence under the 18 U.S.C. § 3553(a) factors?

Response: In October 2009, the Commission issued a detailed report on the history of the child pornography guidelines and their interaction with congressional directives. The Commission is in the process of preparing a comprehensive report on child pornography offenses and corresponding penalties, including an analysis of sentencing trends and practices related to these offenses.

[58] *See* Attachment 4.

10) If an 18 year old high school junior is convicted of having sex with a 14 year old high school sophomore under 18 U.S.C. § 2243 (a), and a 21 year old is convicted of having sex with a 12 year old, under the same statute, the sentence called for in the guidelines (§ 2A3.2) would be the same, assuming both have the same criminal history score. Shouldn't the sentencing judge be allowed to take into account the age of the offender in fashioning an appropriate sentence in each case, since preventing the judge from considering the age of the defendant, as the guidelines advise, would require the judge to treat these two very different cases exactly the same, resulting in unwarranted uniformity and possibly an unjust sentence?

Response: The *Guidelines Manual* accounts for both the age of the victim and the offender convicted under 18 U.S.C. § 2243(a) in several ways. A defendant convicted under 18 U.S.C. § 2243(a) would be sentenced pursuant to USSG §2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts). Under USSG §2A3.2, there is a rebuttable presumption that the 4-level "undue influence" enhancement at subsection (b)(2(B)(ii) applies if the participant is at least 10 years older than the minor. In addition, the guideline contains a cross reference to USSG §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) if the victim had not attained the age of 12 years, regardless of the "consent" of the victim. In such a case, USSG §2A3.1 would provide a base offense level of 30 (compared to base offense level 18 in USSG §2A3.2), and the 4-level enhancement at subsection (b)(2) would apply because the victim hat not attained the age of 12 years.

In addition to these guidelines provisions, USSG §5H1.1 (Age) (Policy Statement) provides that age (including youth) may be relevant in determining whether a departure is warranted, if considerations based on age, individually or in combination with other offender characteristics, are present to an unusual degree and distinguish the case from the typical cases covered by the guidelines.

11) You testified that Congress directed the Commission "not to incorporate certain offender characteristics into the guidelines," and your written testimony indicates that the Commission believes there is tension between §994(d) and §994(e). Section 994(e) states that the Commission should generally not recommend "a term of imprisonment or length of a term of imprisonment" based on some of the factors in §994(d). Given that judges are finding that the factors enumerated in 28 U.S.C. §994(e) such as age, education, employment record, and family ties are relevant to sentencing and are considering them as directed by18 U.S.C. § 3553(a)(1), what is your recommendation for how Congress should clarify the relevance of these factors at sentencing?

Response: The role of offender characteristics in the sentencing guidelines is one of the most difficult policy issues triggered by *Booker*. As noted in the Commission's written statement (and referenced in your question), Congress gave the Commission a series of instructions in the Sentencing Reform Act about how and to what extent the Commission should incorporate offender characteristics into the guidelines, including factors that the Commission could find ordinarily not relevant to the sentencing decision (e.g., education, vocational skills, employment record, family ties and responsibilities, community service), and prohibited factors (e.g., race, sex, national origin,

religion, creed, socioeconomic status).[59] As such, the Commission has incorporated offender characteristics into the guidelines in a variety of ways. Congress also directed sentencing courts to consider "the history and characteristics of the defendant," among other factors, at the time of sentencing.[60]

The Commission has noted that after *Booker* some judges feel that it is appropriate to impose a sentence based on individual characteristics that Congress (through the Sentencing Reform Act) instructed the Commission were not ordinarily relevant at sentencing. Some, however, do not feel that these characteristics should be considered when imposing a sentence because the directive to the Commission was also meant to be a directive to the courts. Even the Supreme Court seems to issue competing decisions on how and to what extent offender characteristics should be considered at sentencing.[61]

Congress, like judges and others in the criminal justice community, may have different views on rectifying this tension; however, addressing it is important to promote the purposes of sentencing. As the Commission noted in the *Guidelines Manual*, the current advisory system, like the pre-*Booker* system, requires judges to consider the history and characteristics of the defendant but "to avoid unwarranted sentencing disparities the court[s] should not give them excessive weight."[62] Congress must determine the weight to be given to individual offender characteristics to resolve this tension. The Commission believes that its October 12, 2011 legislative proposals, particularly those that provide for more effective appellate review and thorough explanations for significant variances, also may promote a more uniform consideration of offender characteristics by judges and therefore help ameliorate perceptions of unwarranted disparity. The Commission stands ready to work with Congress in considering these proposals and their possible impact on federal sentencing.

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[59] *See* 28 U.S.C. §§ 994(d), 994(e).
[60] 18 U.S.C. § 3553(a)(1).
[61] Compare *Pepper*, *supra* n.19 (holding, among other things, that a defendant's post-rehabilitative efforts may be considered when the defendant is resentenced after appeal) with Tapia v. United States, 564 U.S. __, 131 S. Ct. 2382 (2011) (holding that 18 U.S.C. § 3582(a) does not permit a sentencing court to impose or lengthen a prison term in order to foster a defendant's rehabilitation). The holdings in *Tapia* and *Pepper* suggest that the Supreme Court is examining the tension between the long history of individualized sentencing on the one hand, and the role of the guidelines on the other.
[62] *Guidelines Manual* at 456.

ATTACHMENT 1

FISCAL YEAR 2006
(OCTOBER 1, 2005 – SEPTEMBER 30, 2006)

TITLE OF PUBLICATION
2005 Guidelines Manual
Supplement to the 2005 Guidelines Manual (Effective 03/27/06)
Emergency Amendment to the Sentencing Guidelines (Effective 09/12/06)
Guideline Application Frequencies
2005 Annual Report and Sourcebook of Federal Sentencing Statistics
Federal Sentencing Statistics by District, State, and Circuit
Post-Booker/Quarterly Sentencing Updates
Final Report on the Impact of United States v. Booker on Federal Sentencing
Steroids Policy Team Report
Interim Staff Report on Immigration and the Federal Sentencing Guidelines
Intellectual Property Policy Team Report

FISCAL YEAR 2007
(OCTOBER 1, 2006 – SEPTEMBER 30, 2007)

TITLE OF PUBLICATION
2006 Guidelines Manual
Supplement to the 2006 Guidelines Manual (Effective 05/01/07)
Guideline Application Frequencies
2006 Annual Report and Sourcebook of Federal Sentencing Statistics
Federal Sentencing Statistics by District, State, and Circuit
Post-Booker/Quarterly Sentencing Updates
Report to the Congress: Cocaine and Federal Sentencing Policy
Preliminary Crack Cocaine Retroactivity Report
An Overview of Loss in USSG §2B1.1
Overview of Federal Criminal Cases, Fiscal Year 2007

FISCAL YEAR 2008
(OCTOBER 1, 2007 – SEPTEMBER 30, 2008)

TITLE OF PUBLICATION
2007 Guidelines Manual
Supplement to the 2007 Guidelines Manual (Effective 02/06/08 and 03/03/08)
Supplement to the 2007 Guidelines Manual (Effective 02/06/08, 03/03/08, and 05/01/08)
Guideline Application Frequencies
2007 Annual Report and Sourcebook of Federal Sentencing Statistics
Federal Sentencing Statistics by District, State, and Circuit
Post-Booker/Quarterly Sentencing Updates
Report to the Congress: Amendments to the Federal Sentencing Guidelines in Response to the Emergency Disaster Assistance Fraud Penalty Enhancement Act of 2007
Proceedings from the Symposium on Alternatives to Incarceration
Analysis of the Impact of the Crack Cocaine Amendment if Made Retroactive
Staff Analysis of the Effect of the United States Supreme Court Decision in Lopez v. Gonzalez

FISCAL YEAR 2009
(OCTOBER 1, 2008 – SEPTEMBER 30, 2009)

TITLE OF PUBLICATION
2008 Guidelines Manual
Guideline Application Frequencies
2008 Annual Report and Sourcebook of Federal Sentencing Statistics
Federal Sentencing Statistics by District, State, and Circuit
Post-Booker/Quarterly Sentencing Updates
Fiscal Year 2008 Post-Kimbrough/Gall Data Report
Preliminary Crack Cocaine Retroactivity Report
United States Sentencing Commission Report to Congress Regarding Federal Mandatory Minimum Sentencing Penalties
Changing Face of Federal Criminal Sentencing: Seventeen Years of Growth in the Federal Sentencing Caseload
Report on Federal Escape Offenses in Fiscal Years 2006 and 2007
Alternative Sentencing in the Federal Criminal Justice System
Impact of Prior Minor Offenses on Eligibility for Safety Valve
Analysis of the Impact of the Influencing a Minor Amendment if Made Retroactive
Introduction to the Collection of Individual Offender Data by the United States Sentencing Commission

FISCAL YEAR 2010
(OCTOBER 1, 2009 – SEPTEMBER 30, 2010)

TITLE OF PUBLICATION
2009 Guidelines Manual
Guideline Application Frequencies
2009 Annual Report and Sourcebook of Federal Sentencing Statistics
Federal Sentencing Statistics by District, State, and Circuit
Post-Booker/Quarterly Sentencing Updates
Preliminary Crack Cocaine Retroactivity Report
Report on the History of the Child Pornography Guidelines
Computation of "Recency" Criminal History Points Under §4A1.1(e).
Overview of Federal Criminal Cases, Fiscal Year 2008
Federal Sentencing Data and Analysis Issues
Brief for the United States Sentencing Commission as amicus curiae in Support of Respondent, United States of America, in Dillon v. United States, No. 09-6338 (filed March 3, 2010)
Federal Offenders Sentenced to Supervised Release
Demographic Differences in Federal Sentencing Practices: An Update of the Booker Report's Multivariate Analysis

FISCAL YEAR 2011
(OCTOBER 1, 2010 – SEPTEMBER 30, 2011)

AS OF DECEMBER 2010

TITLE OF PUBLICATION
2010 Guidelines Manual
Supplement to the 2010 Guidelines Manual
Data on Retroactive Application of the Crack Cocaine Amendment
Overview of Federal Criminal Cases, Fiscal Year 2009

ATTACHMENT 2

Sentences Relative to the Guideline Range for
Offenders Sentenced Under §2B1.1
Fiscal Year 2010

	Within Range	Above Range	Government Sponsored Below Range	Non-Government Sponsored Below Range	Total
Less than $5K	1,330	50	49	102	1,531
	86.9	3.3	3.2	6.7	18.7
More than $5K	418	10	29	61	518
	80.7	1.9	5.6	11.8	6.3
More than $10K	820	31	117	203	1,171
	70.0	2.7	10.0	17.3	14.3
More than $30K	522	22	192	372	1,108
	47.1	2.0	17.3	33.6	13.6
More than $70K	300	25	147	250	722
	41.6	3.5	20.4	34.6	8.8
More than $120K	241	18	172	224	655
	36.8	2.8	26.3	34.2	8.0
More than $200K	251	16	185	206	658
	38.2	2.4	28.1	31.3	8.1
More than $400K	315	18	220	216	769
	41.0	2.3	28.6	28.1	9.4
More than $1M	184	12	146	130	472
	39.0	2.5	30.9	27.5	5.8
More than $2.5M	127	7	104	80	318
	39.9	2.2	32.7	25.2	3.9
More than $7M	63	1	48	34	146
	43.2	0.7	32.9	23.3	1.8
More than $20M	24	2	20	12	58
	41.4	3.5	34.5	20.7	0.7
More than $50M	7	0	10	3	20
	35.0	0.0	50.0	15.0	0.2
More than $100M	1	0	3	2	6
	16.7	0.0	50.0	33.3	0.1
More than $200M	0	0	0	2	2
	0.0	0.0	0.0	100.0	0.0
More than $400M	4	0	5	4	13
	30.8	0.0	38.5	30.8	0.2
Total	4,607	212	1,447	1,901	8,167
	56.4	2.6	17.7	23.3	100.0

SOURCE: U.S. Sentencing Commission 2010 Datafile, USSCFY2010. Of the 8,170 cases with complete guideline application information sentenced under §2B1.1 in fiscal year 2010, three were excluded that were sentenced using a *Guidelines Manual* in effect prior to November 1, 2001.

ATTACHMENT 3

DEFENDANT:
CASE NUMBER:
DISTRICT:

STATEMENT OF REASONS
(Not for Public Disclosure)

I COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

A ☐ **The court adopts the presentence investigation report without change.**

B ☐ **The court adopts the presentence investigation report with the following changes.**
(Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report, if applicable.)
(Use page 4 if necessary.)

1 ☐ **Chapter Two of the U.S.S.G. Manual** determinations by court (including changes to base offense level, or specific offense characteristics):

2 ☐ **Chapter Three of the U.S.S.G. Manual** determinations by court (including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility):

3 ☐ **Chapter Four of the U.S.S.G. Manual** determinations by court (including changes to criminal history category or scores, career offender, or criminal livelihood determinations):

4 ☐ **Additional Comments or Findings** (including comments or factual findings concerning certain information in the presentence report that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions):

C ☐ **The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.**

II COURT FINDING ON MANDATORY MINIMUM SENTENCE *(Check all that apply.)*

A ☐ No count of conviction carries a mandatory minimum sentence.

B ☐ Mandatory minimum sentence imposed.

C ☐ One or more counts of conviction alleged in the indictment carry a mandatory minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the court has determined that the mandatory minimum does not apply based on

☐ findings of fact in this case:

☐ substantial assistance (18 U.S.C. § 3553(e))

☐ the statutory safety valve (18 U.S.C. § 3553(f))

III COURT DETERMINATION OF ADVISORY GUIDELINE RANGE *(BEFORE DEPARTURES)*:

Total Offense Level: _____
Criminal History Category: _____
Imprisonment Range: _____ to _____ months
Supervised Release Range: _____ to _____ years
Fine Range: $ _____ to $ _____

☐ Fine waived or below the guideline range because of inability to pay.

DEFENDANT:
CASE NUMBER:
DISTRICT:

STATEMENT OF REASONS
(Not for Public Disclosure)

IV ADVISORY GUIDELINE SENTENCING DETERMINATION *(Check only one.)*

A ☐ **The sentence is within an advisory guideline range that is not greater than 24 months, and the court finds no reason to depart.**

B ☐ **The sentence is within an advisory guideline range that is greater than 24 months, and the specific sentence is imposed for these reasons.** *(Use page 4 if necessary.)*

C ☐ **The court departs from the advisory guideline range for reasons authorized by the sentencing guidelines manual.** *(Also complete Section V.)*

D ☐ **The court imposed a sentence outside the advisory sentencing guideline system.** *(Also complete Section VI.)*

V DEPARTURES AUTHORIZED BY THE ADVISORY SENTENCING GUIDELINES *(If applicable.)*

A **The sentence imposed departs** *(Check only one.)*:
☐ below the advisory guideline range
☐ above the advisory guideline range

B **Departure based on** *(Check all that apply.)*:

1 **Plea Agreement** (Check all that apply and check reason(s) below.):
☐ 5K1.1 plea agreement based on the defendant's substantial assistance
☐ 5K3.1 plea agreement based on Early Disposition or "Fast-track" Program
☐ binding plea agreement for departure accepted by the court
☐ plea agreement for departure, which the court finds to be reasonable
☐ plea agreement that states that the government will not oppose a defense departure motion.

2 **Motion Not Addressed in a Plea Agreement** *(Check all that apply and check reason(s) below.)*:
☐ 5K1.1 government motion based on the defendant's substantial assistance
☐ 5K3.1 government motion based on Early Disposition or "Fast-track" program
☐ government motion for departure
☐ defense motion for departure to which the government did not object
☐ defense motion for departure to which the government objected

3 **Other**
☐ Other than a plea agreement or motion by the parties for departure *(Check reason(s) below.)*:

C **Reason(s) for Departure** *(Check all that apply other than 5K1.1 or 5K3.1.)*

☐ 4A1.3 Criminal History Inadequacy
☐ 5H1.1 Age
☐ 5H1.2 Education and Vocational Skills
☐ 5H1.3 Mental and Emotional Condition
☐ 5H1.4 Physical Condition
☐ 5H1.5 Employment Record
☐ 5H1.6 Family Ties and Responsibilities
☐ 5H1.11 Military Record, Charitable Service, Good Works
☐ 5K2.0 Aggravating or Mitigating Circumstances
☐ 5K2.1 Death
☐ 5K2.2 Physical Injury
☐ 5K2.3 Extreme Psychological Injury
☐ 5K2.4 Abduction or Unlawful Restraint
☐ 5K2.5 Property Damage or Loss
☐ 5K2.6 Weapon or Dangerous Weapon
☐ 5K2.7 Disruption of Government Function
☐ 5K2.8 Extreme Conduct
☐ 5K2.9 Criminal Purpose
☐ 5K2.10 Victim's Conduct
☐ 5K2.11 Lesser Harm
☐ 5K2.12 Coercion and Duress
☐ 5K2.13 Diminished Capacity
☐ 5K2.14 Public Welfare
☐ 5K2.16 Voluntary Disclosure of Offense
☐ 5K2.17 High-Capacity, Semiautomatic Weapon
☐ 5K2.18 Violent Street Gang
☐ 5K2.20 Aberrant Behavior
☐ 5K2.21 Dismissed and Uncharged Conduct
☐ 5K2.22 Age or Health of Sex Offenders
☐ 5K2.23 Discharged Terms of Imprisonment
☐ Other guideline basis (e.g., 2B1.1 commentary)

D **Explain the facts justifying the departure.** *(Use page 4 if necessary.)*

DEFENDANT:
CASE NUMBER:
DISTRICT:

STATEMENT OF REASONS
(Not for Public Disclosure)

VI COURT DETERMINATION FOR SENTENCE OUTSIDE THE ADVISORY GUIDELINE SYSTEM
(Check all that apply.)

A **The sentence imposed is** *(Check only one.)*:
☐ below the advisory guideline range
☐ above the advisory guideline range

B **Sentence imposed pursuant to** *(Check all that apply.)*:

1 **Plea Agreement** *(Check all that apply and check reason(s) below.)*:
☐ binding plea agreement for a sentence outside the advisory guideline system accepted by the court
☐ plea agreement for a sentence outside the advisory guideline system, which the court finds to be reasonable
☐ plea agreement that states that the government will not oppose a defense motion to the court to sentence outside the advisory guideline system

2 **Motion Not Addressed in a Plea Agreement** *(Check all that apply and check reason(s) below.)*:
☐ government motion for a sentence outside of the advisory guideline system
☐ defense motion for a sentence outside of the advisory guideline system to which the government did not object
☐ defense motion for a sentence outside of the advisory guideline system to which the government objected

3 **Other**
☐ Other than a plea agreement or motion by the parties for a sentence outside of the advisory guideline system *(Check reason(s) below.)*:

C **Reason(s) for Sentence Outside the Advisory Guideline System** *(Check all that apply.)*

☐ the nature and circumstances of the offense and the history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1)
☐ to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))
☐ to afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))
☐ to protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))
☐ to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))
☐ to avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6))
☐ to provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))

D **Explain the facts justifying a sentence outside the advisory guideline system.** *(Use page 4 if necessary.)*

DEFENDANT:
CASE NUMBER:
DISTRICT:

STATEMENT OF REASONS
(Not for Public Disclosure)

VII COURT DETERMINATIONS OF RESTITUTION

A ☐ Restitution Not Applicable.

B Total Amount of Restitution: _____

C Restitution not ordered *(Check only one.)*:

1 ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).

2 ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).

3 ☐ For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).

4 ☐ Restitution is not ordered for other reasons. *(Explain.)*

D ☐ Partial restitution is ordered for these reasons *(18 U.S.C. § 3553(c))*:

VIII ADDITIONAL FACTS JUSTIFYING THE SENTENCE IN THIS CASE *(If applicable.)*

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony cases.

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

Defendant's Residence Address:

Defendant's Mailing Address:

Date of Imposition of Judgment

_____

Signature of Judge

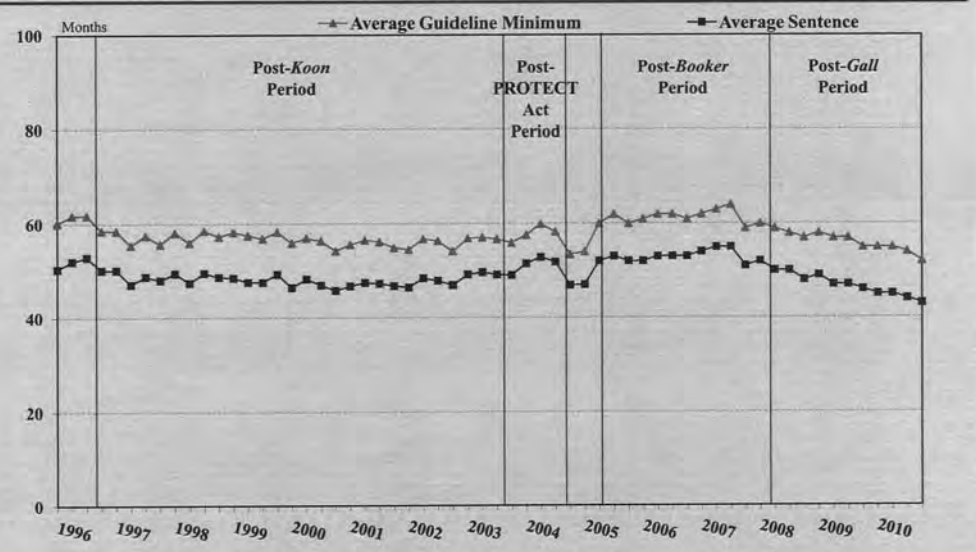
Name and Title of Judge

Date Signed _____

ATTACHMENT 4

Appendix B

Average Sentence Length and Average Guideline Minimum
Quarterly Data for All Cases
Fiscal Years 1996-2010



Cases with guideline minimums of life or probation were included in the guideline minimum average computations as 470 months and zero months, respectively. In turn, cases with sentences of 470 months or greater (including life) or probation were included in the sentence average computations as 470 months and zero months, respectively. In addition, the information presented in this table includes time of confinement as described in USSG §5C1.1. Guideline minimums account for applicable statutory mandatory penalties. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 1995-2010 Datafiles, USSCFY1996-USSCFY2010.

RESPONSE TO QUESTION 7

7. The Commission is required to analyze sentencing and to compile data on federal sentencing trends and practices. *See* 28 U.S.C. §§ 994(w)(3), 995. We hereby request the sentencing data for all individual Federal judges from 2001 to 2011.

Response: The Commission collects, analyzes, and reports data for all federal felony and Class A misdemeanor cases. Question 7 requests federal sentencing data for all individual federal judges for fiscal years 2001 through 2011. Question 8 poses a series of questions regarding the Commission's data collection, analysis, and reporting activities, including why the Commission does not release judge-specific information.

Questions 7 and 8 collectively raise two interests with respect to sentencing data: (1) the use of sentencing data for purposes of policymaking, and (2) the use of sentencing data for research and analysis purposes. Among the Commission's duties under the SRA is to "establish sentencing policies and practices for the Federal criminal justice system that reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process,"[1] the policymaking aspect of the Commission's statutory obligations. Congress also envisioned that the Commission would "serv[e] as a clearinghouse and information center for the collection, preparation, and dissemination of information on Federal sentencing practices,"[2] the research and analysis aspect of its statutory obligations. The Commission historically has not released information to the public that would identify a specific judge (or a specific case) because it has not needed to do so to fulfill the statutory duties given to it by Congress under the SRA.

The Commission's independent determination to not release judge-specific identifying information is consistent with a practice established by the Administrative Office of the United States Courts (AO) dating back to 1974 under which the provision of statistics regarding individual judicial workloads to the public were done on an "impersonal basis." In 1988, the Commission and the AO entered into a Memorandum of Understanding (MOU) that embodies the practice of maintaining confidentiality of judge-specific identifying information.[3] The Commission notes in its *Public Access to Sentencing Commission Documents and Data* that "[p]roviding public access to non-confidential sentencing information is consistent both with the letter and the spirit of the Sentencing Reform Act of 1984."

The Commission believes that the release of judge-specific sentencing information is not necessary to fulfill its statutory requirements, even after enactment of the PROTECT Act or the *Booker* decision. First, knowing the identity of an individual judge is irrelevant to the analyses undertaken by the Commission or the formulation of guideline amendments specifically, or sentencing policy generally.[4] Second, the identity of a specific judge does not further the Commission's mandate to act as a clearinghouse and information center for the collection,

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[1] 28 U.S.C. § 991(b)(1)(C).
[2] 28 U.S.C. § 995(a)(12)(A).
[3] The MOU is available on the Commission's website, www.ussc.gov.
[4] *See* 28 U.S.C. § 991(b)(1)(C) requiring the Commission to "establish sentencing policies and practices for the Federal criminal justice system that reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process." Compliance with this directive is not furthered by knowing the identity of a specific judge.

preparation, and dissemination of information on federal sentencing practices.[5] Third, the Commission believes that releasing such information publically[6] could lead to the possibility of misinterpretation because sentencing decisions often are based on facts and circumstances not appropriate for public release (for example, the sentencing decision may reflect the degree to which the defendant cooperated with the government).

The Commission recognizes that Congress does have a legitimate legislative purpose for requesting data at the individual district court level. As such, the Commission is assisting Congress by providing data at the individual district court level. The Commission is providing Congress with data on all individual federal judges who imposed a felony or Class A misdemeanor sentence between fiscal years 2001-2011 but is not disclosing the identity of the individual judge. As detailed below, the Commission is providing this data in two formats.

Tables 1 and 2 present individualized sentencing data for all federal judges who have sentenced at least one Class A misdemeanor or felony offender at any time from the beginning of fiscal year 2001 through the end of fiscal year 2011.[7] All federal judges are assigned a unique identifier that is used for both tables. Both tables present the individualized sentencing data sorted by district and provided by state in alphabetical order. The tables differ, however, in how the sentencing data is reported by time period.

Table 1 presents the individualized sentencing data **by fiscal year**. Each page contains individualized sentencing data for judges from the same district for a single fiscal year, beginning in fiscal year 2001 and ending in fiscal year 2011. If a judge sentenced a case during that fiscal year individualized sentencing data for that judge is reported. If a judge did not sentence any cases during a fiscal year, that judge will not be included in the table providing individualized sentencing data for that fiscal year. For example, "Judge A" sentenced offenders in fiscal years 2001 through 2005, did not sentence any offenders during fiscal years 2006 and 2007, and then resumed sentencing offenders in fiscal years 2008 through 2011. Judge A's individualized sentencing data will be reported by the same unique identification number for fiscal years 2001, 2002, 2003, 2004, 2005, 2008, 2009, 2010, and 2011. Judge A will not be included for the tables reporting individualized sentencing data for fiscal years 2006 and 2007.

Sentencing data for fiscal year 2005 is reported on two different pages because two different data collection methodologies were used to collect data during that fiscal year due to *Booker* having been decided in the middle of the fiscal year. Prior to the *Booker* decision (including fiscal years 2001 through January 11, 2005), the Commission reported sentences relative to the guideline range using four to six types of sentence imposed: four categories in fiscal years 2001 and 2002:

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[5] *See* 28 U.S.C. § 995(a)(12)(A).

[6] Question 8 and its subparts ask about issues associated with *public* release of judge-specific identifying information. This is different than release contemplated by the provisions added to 28 U.S.C. § 994(w) which contemplate requests for identifying documents and underlying data by Congress or the Attorney General. As such, the Commission is responding to your questions based on *public* release of judge-specific identifying information.

[7] October 1, 2000, through September 30, 2011. Data for Fiscal Year 2011 is preliminary and includes all cases received, coded, and edited as of January 30, 2012.

(1) within the guideline range;
(2) upward departure (Above Range);
(3) government sponsored substantial assistance departure (5K1.1 Substantial Assistance); and
(4) downward departure (Downward Departure).

In fiscal year 2004 and fiscal year 2005 up through January 12, 2005, the Commission added an additional category – 5K3.1, Early Disposition departures (5K3.1 Early Disposition). For fiscal year 2005, the Commission added a new category – other government sponsored departures (Other Government Sponsored).

After the *Booker* decision (January 12, 2005, forward), the Commission began to analyze and report sentences imposed relative to the guideline range in new manner to reflect the Court's decision. The new methodology implemented in response to *Booker* uses 12 categories designed to collect and report the sentencing practices under the advisory guideline system (See *Booker* report p vi):

(1) within the guideline range (within range in the Table);
(2) upward departure (upward departure);
(3) upward departure but additionally citing a *Booker* reason (upward departure with *Booker*);
(4) above the range citing only a *Booker* reason (above range w *Booker*)(a "variance");
(5) above the range but no reason provided (remaining above range);
(6) 5K1.1 departure for substantial assistance to authorities (5K1.1 substantial assistance);
(7) 5K3.1 departure for participation in the Early Disposition Program (5K3.1 Early Disposition);
(8) a departure sponsored by the government for any other reason (other government sponsored);
(9) downward departure (downward departure);
(10) downward departure also citing a *Booker* reason (downward departure w Booker);
(11) below the range citing only a *Booker* reason (below range w Booker) (a "variance"); and
(12) below the range but no reason provided (remaining below range).

Table 2 provides individualized sentencing data over the same time frame (fiscal year 2001 through fiscal year 2011), but instead of providing the data by fiscal year, it is reported by **four distinct time periods**:

(1) Post-*Koon* – October 1, 2000,[8] through April 30, 2003;
(2) Post-PROTECT Act – May 1, 2003, through June 24, 2004;[9]

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[8] Congress requests information for fiscal years 2001-2011, thus the Post-*Koon* period for purposes of this response begins with fiscal year 2001.
[9] Consistent with the Commission testimony and with the Commission's previous Report to Congress on Booker, data following the Supreme Court's June 24, 2004, decision in *Blakely v. Washington*, 452 U.S. 296 (2004) but prior to its decision in *Booker* is excluded from this time period analysis.

(3) Post-*Booker* – January 12, 2005, through December 10, 2007; and
(4) Post-*Gall* – December 11, 2007, through September 30, 2001.

In order to facilitate comparisons over time for purposes of this response, the 12 categories used by the Commission to report sentencing relative to the guideline range since *Booker* are collapsed into four categories:

(1) within range;
(2) above range (regardless of whether a departure or variance);
(3) government sponsored (including 5K1.1, EDP, and all other government sponsored departures); and
(4) non-government sponsored below range (regardless of whether a departure or a variance).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Columbia

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	964	65.4	0.4	26.3	7.9	593	60.7	0.7	33.7	4.9	1,369	48.1	2.2	35.7	14.0	1,423	37.0	1.6	41.3	20.1
Judge 100	21	85.7	0.0	14.3	0.0	43	81.4	0.0	9.3	9.3	81	56.8	4.9	32.1	6.2	107	37.4	0.9	46.7	15.0
Judge 1027	55	72.7	1.8	23.6	1.8	42	71.4	0.0	26.2	2.4	86	60.5	2.3	31.4	5.8	87	48.3	1.1	40.2	10.3
Judge 1049	67	38.8	0.0	55.2	6.0	26	26.9	0.0	69.2	3.8	86	52.3	1.2	41.9	4.7	105	21.9	1.9	65.7	10.5
Judge 1097	14	85.7	0.0	14.3	0.0	17	82.4	0.0	11.8	5.9	89	41.6	4.5	33.7	20.2	65	50.8	4.6	30.8	13.8
Judge 1414	5	60.0	0.0	0.0	40.0	--	--	--	--	--	2	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 1467	19	63.2	0.0	21.1	15.8	5	60.0	20.0	20.0	0.0	22	63.6	0.0	18.2	18.2	--	--	--	--	--
Judge 1578	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 1580	66	72.7	1.5	18.2	7.6	33	36.4	0.0	60.6	3.0	111	30.6	0.9	49.5	18.9	113	28.3	0.0	43.4	28.3
Judge 1582	62	66.1	1.6	29.0	3.2	44	59.1	0.0	40.9	0.0	110	34.5	3.6	41.8	20.0	64	39.1	0.0	39.1	21.9
Judge 1584	16	100.0	0.0	0.0	0.0	7	100.0	0.0	0.0	0.0	6	83.3	0.0	16.7	0.0	11	81.8	0.0	0.0	18.2
Judge 1825	71	77.5	0.0	14.1	8.5	33	75.8	0.0	18.2	6.1	67	64.2	1.5	23.9	10.4	100	44.0	1.0	30.0	25.0

(Continued)

There was one case missing information on the sentencing judge from the District of Columbia.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Columbia

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1907	106	61.3	0.0	34.0	4.7	54	63.0	0.0	27.8	9.3	81	40.7	3.7	34.6	21.0	90	23.3	5.6	46.7	24.4
Judge 1955	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 1960	28	85.7	0.0	14.3	0.0	35	65.7	0.0	31.4	2.9	109	60.6	4.6	29.4	5.5	122	40.2	1.6	48.4	9.8
Judge 2017	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	25.0	25.0	0.0	50.0
Judge 370	--	--	--	--	--	23	82.6	4.3	8.7	4.3	99	49.5	3.0	33.3	14.1	95	31.6	2.1	49.5	16.8
Judge 559	12	91.7	0.0	8.3	0.0	8	100.0	0.0	0.0	0.0	11	90.9	0.0	0.0	9.1	16	87.5	0.0	0.0	12.5
Judge 596	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 619	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 620	6	50.0	0.0	50.0	0.0	--	--	--	--	--	7	57.1	0.0	0.0	42.9	1	0.0	0.0	0.0	100.0
Judge 622	77	58.4	1.3	26.0	14.3	35	71.4	0.0	22.9	5.7	78	50.0	1.3	20.5	28.2	98	38.8	0.0	20.4	40.8
Judge 716	7	42.9	0.0	42.9	14.3	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There was one case missing information on the sentencing judge from the District of Columbia.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Columbia

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 767	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 819	44	61.4	0.0	31.8	6.8	26	46.2	0.0	46.2	7.7	66	22.7	0.0	72.7	4.5	65	33.8	1.5	47.7	16.9
Judge 850	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	5	40.0	0.0	60.0	0.0
Judge 873	70	71.4	0.0	18.6	10.0	46	34.8	2.2	63.0	0.0	84	52.4	1.2	34.5	11.9	123	34.1	1.6	43.1	21.1
Judge 884	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 888	73	41.1	0.0	43.8	15.1	28	42.9	3.6	42.9	10.7	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 906	2	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 908	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0	1	0.0	100.0	0.0	0.0
Judge 960	8	100.0	0.0	0.0	0.0	6	100.0	0.0	0.0	0.0	7	100.0	0.0	0.0	0.0	15	93.3	0.0	0.0	6.7
Judge 985	75	61.3	0.0	24.0	14.7	38	39.5	0.0	47.4	13.2	101	35.6	0.0	44.6	19.8	92	30.4	1.1	38.0	30.4
Judge 992	--	--	--	--	--	2	100.0	0.0	0.0	0.0	7	85.7	0.0	14.3	0.0	--	--	--	--	--

(Continued)

There was one case missing information on the sentencing judge from the District of Columbia.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Columbia

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 993	58	75.9	0.0	17.2	6.9	42	69.0	0.0	31.0	0.0	53	56.6	0.0	26.4	17.0	39	35.9	0.0	46.2	17.9

There was one case missing information on the sentencing judge from the District of Columbia.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Maine

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	492	73.6	0.2	22.8	3.5	229	67.7	1.3	27.9	3.1	599	70.6	0.8	19.9	8.7	752	49.2	1.3	30.7	18.8
Judge 1038	20	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0	6	66.7	0.0	16.7	16.7	5	80.0	0.0	0.0	20.0
Judge 1318	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1571	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	100.0	0.0	0.0	0.0
Judge 1732	169	87.0	0.0	9.5	3.6	80	66.3	0.0	30.0	3.8	151	63.6	0.0	24.5	11.9	232	40.9	2.2	37.1	19.8
Judge 1763	--	--	--	--	--	--	--	--	--	--	2	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 2048	--	--	--	--	--	47	83.0	0.0	14.9	2.1	260	81.2	0.8	13.1	5.0	263	65.0	1.1	21.3	12.5
Judge 298	156	52.6	0.0	41.7	5.8	27	66.7	0.0	29.6	3.7	3	66.7	0.0	0.0	33.3	--	--	--	--	--
Judge 353	19	94.7	0.0	0.0	5.3	3	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 839	127	74.0	0.8	24.4	0.8	67	55.2	4.5	37.3	3.0	173	61.8	1.7	27.2	9.2	247	38.5	0.8	36.0	24.7
Judge 840	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 87	--	--	--	--	--	1	100.0	0.0	0.0	0.0	2	50.0	0.0	0.0	50.0	--	--	--	--	--

There were zero cases missing information on the sentencing judge from the District of Maine.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Massachusetts

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,426	62.3	0.6	17.5	19.5	581	75.9	1.0	11.2	11.9	1,520	54.7	1.3	14.1	29.9	1,853	37.7	2.5	24.8	35.0
Judge 1064	33	78.8	0.0	9.1	12.1	17	88.2	0.0	5.9	5.9	39	20.5	0.0	15.4	64.1	--	--	--	--	--
Judge 1113	84	76.2	0.0	11.9	11.9	36	77.8	0.0	5.6	16.7	126	51.6	1.6	15.1	31.7	7	57.1	0.0	28.6	14.3
Judge 1211	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1364	--	--	--	--	--	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1413	112	66.1	1.8	17.0	15.2	40	77.5	2.5	12.5	7.5	88	55.7	2.3	9.1	33.0	155	52.9	1.9	20.6	24.5
Judge 1501	80	47.5	1.3	23.8	27.5	56	76.8	0.0	5.4	17.9	161	47.2	1.2	17.4	34.2	116	32.8	2.6	15.5	49.1
Judge 1640	95	61.1	1.1	18.9	18.9	41	75.6	0.0	14.6	9.8	137	67.9	1.5	15.3	15.3	149	46.3	2.0	22.8	28.9
Judge 1642	--	--	--	--	--	--	--	--	--	--	91	65.9	2.2	6.6	25.3	142	45.8	3.5	21.8	28.9
Judge 174	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	1	0.0	0.0	100.0	0.0	1	0.0	0.0	100.0	0.0
Judge 1772	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1796	95	53.7	1.1	16.8	28.4	39	89.7	2.6	2.6	5.1	100	59.0	1.0	16.0	24.0	174	35.1	1.1	27.6	36.2

(Continued)

There was one case missing information on the sentencing judge from the District of Massachusetts.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Massachusetts

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1832	1	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1841	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1844	97	52.6	0.0	32.0	15.5	39	66.7	2.6	20.5	10.3	91	53.8	0.0	6.6	39.6	165	26.1	3.6	17.0	53.3
Judge 2042	112	59.8	0.9	17.9	21.4	52	69.2	0.0	11.5	19.2	99	62.6	0.0	14.1	23.2	120	36.7	5.8	28.3	29.2
Judge 2049	113	62.8	0.0	13.3	23.9	43	81.4	0.0	9.3	9.3	134	55.2	2.2	16.4	26.1	147	38.1	4.1	25.9	32.0
Judge 2065	151	64.9	0.0	23.8	11.3	47	68.1	4.3	12.8	14.9	113	46.9	1.8	18.6	32.7	152	37.5	2.0	34.2	26.3
Judge 2075	82	69.5	0.0	9.8	20.7	42	78.6	0.0	14.3	7.1	130	47.7	0.0	11.5	40.8	109	33.0	0.9	19.3	46.8
Judge 23	1	100.0	0.0	0.0	0.0	--	--	--	--	--	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 303	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 354	--	--	--	--	--	6	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 365	--	--	--	--	--	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--

(Continued)

There was one case missing information on the sentencing judge from the District of Massachusetts.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Massachusetts

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 465	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	6	50.0	0.0	16.7	33.3
Judge 616	31	67.7	0.0	6.5	25.8	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--
Judge 663	101	47.5	1.0	24.8	26.7	41	58.5	2.4	17.1	22.0	98	44.9	1.0	15.3	38.8	212	24.1	0.9	27.8	47.2
Judge 705	114	77.2	0.9	13.2	8.8	44	86.4	0.0	11.4	2.3	85	75.3	3.5	10.6	10.6	147	53.7	3.4	29.3	13.6
Judge 766	37	73.0	2.7	8.1	16.2	7	42.9	0.0	42.9	14.3	12	33.3	0.0	16.7	50.0	46	13.0	2.2	37.0	47.8
Judge 789	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 806	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 969	83	54.2	0.0	10.8	34.9	23	78.3	0.0	8.7	13.0	10	50.0	0.0	40.0	10.0	--	--	--	--	--

There was one case missing information on the sentencing judge from the District of Massachusetts.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of New Hampshire

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	373	59.0	1.6	29.5	9.9	250	56.8	2.4	36.4	4.4	627	54.5	2.2	32.1	11.2	816	43.6	2.9	31.9	21.6
Judge 1057	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	115	47.8	3.5	31.3	17.4
Judge 1213	126	57.9	0.8	31.7	9.5	88	59.1	0.0	37.5	3.4	209	53.6	1.9	34.0	10.5	291	48.8	2.4	31.6	17.2
Judge 1216	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 1338	7	100.0	0.0	0.0	0.0	3	33.3	0.0	66.7	0.0	11	100.0	0.0	0.0	0.0	2	50.0	0.0	0.0	50.0
Judge 1614	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1732	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	6	0.0	33.3	16.7	50.0
Judge 479	117	60.7	0.9	28.2	10.3	75	46.7	5.3	45.3	2.7	192	58.3	1.0	33.9	6.8	121	43.8	5.8	33.9	16.5
Judge 87	123	56.1	3.3	30.1	10.6	84	64.3	2.4	26.2	7.1	214	49.5	3.7	30.4	16.4	279	36.9	1.4	32.3	29.4

There were zero cases missing information on the sentencing judge from the District of New Hampshire.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Puerto Rico

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,868	87.8	0.1	7.7	4.3	734	90.6	0.3	7.1	2.0	1,857	81.0	1.6	8.4	8.9	3,173	73.1	1.3	13.9	11.7
Judge 1046	210	85.7	0.0	8.6	5.7	58	91.4	0.0	6.9	1.7	116	81.9	3.4	9.5	5.2	--	--	--	--	--
Judge 1124	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	2	50.0	0.0	0.0	50.0
Judge 1234	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	9	88.9	0.0	0.0	11.1
Judge 136	--	--	--	--	--	--	--	--	--	--	48	89.6	0.0	6.3	4.2	387	71.6	1.3	16.8	10.3
Judge 1471	403	89.8	0.5	5.7	4.0	158	93.7	0.6	4.4	1.3	274	81.4	3.3	9.5	5.8	299	77.6	1.3	12.0	9.0
Judge 1732	--	--	--	--	--	7	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1838	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1928	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 301	256	82.4	0.0	11.7	5.9	109	86.2	0.0	9.2	4.6	67	61.2	4.5	16.4	17.9	2	0.0	0.0	0.0	100.0
Judge 306	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 318	283	90.5	0.0	6.7	2.8	74	89.2	1.4	6.8	2.7	265	84.2	0.8	6.0	9.1	329	86.3	0.6	9.4	3.6

(Continued)

There were nine cases missing information on the sentencing judge from the District of Puerto Rico.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Puerto Rico

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 458	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 466	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 467	--	--	--	--	--	1	100.0	0.0	0.0	0.0	141	83.0	0.7	8.5	7.8	500	68.2	1.2	12.8	17.8
Judge 479	--	--	--	--	--	5	80.0	0.0	20.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 490	255	86.3	0.0	7.1	6.7	77	84.4	0.0	13.0	2.6	277	80.1	1.1	5.8	13.0	424	70.8	1.4	13.4	14.4
Judge 51	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 526	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 631	306	87.6	0.0	9.5	2.9	104	95.2	0.0	4.8	0.0	374	83.7	1.3	8.8	6.1	504	80.6	2.2	8.7	8.5
Judge 649	117	93.2	0.0	4.3	2.6	125	89.6	0.0	8.0	2.4	247	74.9	1.2	10.5	13.4	362	70.7	0.3	19.3	9.7
Judge 659	--	--	--	--	--	1	100.0	0.0	0.0	0.0	36	86.1	0.0	5.6	8.3	344	61.3	1.7	20.1	16.9
Judge 663	--	--	--	--	--	--	--	--	--	--	4	100.0	0.0	0.0	0.0	2	0.0	0.0	50.0	50.0

(Continued)

There were nine cases missing information on the sentencing judge from the District of Puerto Rico.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Puerto Rico

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 7	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 839	32	93.8	0.0	3.1	3.1	12	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 87	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	5	0.0	0.0	80.0	20.0

There were nine cases missing information on the sentencing judge from the District of Puerto Rico.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Rhode Island

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	299	81.6	1.3	7.7	9.4	145	85.5	0.7	9.0	4.8	390	63.3	2.8	7.2	26.7	537	49.2	0.6	10.1	40.2
Judge 1047	97	79.4	2.1	9.3	9.3	28	85.7	0.0	10.7	3.6	9	66.7	0.0	33.3	0.0	--	--	--	--	--
Judge 1116	98	83.7	1.0	5.1	10.2	41	82.9	0.0	12.2	4.9	123	69.9	0.8	4.9	24.4	257	53.7	0.8	7.8	37.7
Judge 1183	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1212	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 1221	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	33.3	0.0	33.3	33.3
Judge 1763	--	--	--	--	--	34	91.2	0.0	2.9	5.9	135	55.6	3.7	8.1	32.6	259	43.6	0.4	12.4	43.6
Judge 1879	104	81.7	1.0	8.7	8.7	42	83.3	2.4	9.5	4.8	123	65.0	4.1	6.5	24.4	15	66.7	0.0	6.7	26.7
Judge 27	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0

There were zero cases missing information on the sentencing judge from the District of Rhode Island.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Connecticut

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	826	52.4	1.0	11.4	35.2	449	56.8	2.0	19.2	22.0	1,143	46.4	1.4	21.3	31.0	1,507	39.5	1.1	20.3	39.0
Judge 1038	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 1039	--	--	--	--	--	--	--	--	--	--	128	46.1	0.8	20.3	32.8	150	29.3	0.0	21.3	49.3
Judge 1169	2	50.0	0.0	0.0	50.0	1	100.0	0.0	0.0	0.0	10	90.0	10.0	0.0	0.0	3	100.0	0.0	0.0	0.0
Judge 1185	5	60.0	0.0	0.0	40.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 1370	81	53.1	2.5	16.0	28.4	18	22.2	5.6	38.9	33.3	63	42.9	3.2	22.2	31.7	34	17.6	0.0	41.2	41.2
Judge 1481	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1761	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 1783	79	45.6	0.0	15.2	39.2	18	38.9	0.0	16.7	44.4	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 1856	64	57.8	1.6	7.8	32.8	65	63.1	3.1	29.2	4.6	54	55.6	1.9	18.5	24.1	168	38.7	0.6	27.4	33.3
Judge 1858	2	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1859	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were zero cases missing information on the sentencing judge from the District of Connecticut.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Connecticut

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1902	79	46.8	1.3	8.9	43.0	51	58.8	5.9	9.8	25.5	124	33.1	2.4	31.5	33.1	149	30.9	0.7	24.2	44.3
Judge 233	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	75	68.0	4.0	14.7	13.3
Judge 250	86	60.5	0.0	8.1	31.4	39	41.0	5.1	17.9	35.9	120	47.5	0.8	18.3	33.3	157	45.2	0.0	22.9	31.8
Judge 325	89	51.7	1.1	14.6	32.6	35	57.1	0.0	17.1	25.7	105	41.9	1.0	26.7	30.5	111	35.1	3.6	12.6	48.6
Judge 405	53	54.7	1.9	9.4	34.0	27	59.3	0.0	14.8	25.9	77	67.5	1.3	7.8	23.4	62	67.7	0.0	9.7	22.6
Judge 495	63	38.1	1.6	15.9	44.4	49	42.9	2.0	16.3	38.8	92	38.0	0.0	9.8	52.2	144	30.6	0.0	16.7	52.8
Judge 502	73	37.0	0.0	12.3	50.7	47	70.2	0.0	8.5	21.3	99	56.6	0.0	22.2	21.2	132	53.8	1.5	12.9	31.8
Judge 526	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 530	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	40	55.0	0.0	7.5	37.5
Judge 593	4	75.0	0.0	0.0	25.0	1	100.0	0.0	0.0	0.0	4	50.0	0.0	0.0	50.0	1	100.0	0.0	0.0	0.0
Judge 61	51	62.7	0.0	7.8	29.4	43	60.5	0.0	25.6	14.0	121	49.6	3.3	21.5	25.6	124	34.7	1.6	22.6	41.1

(Continued)

There were zero cases missing information on the sentencing judge from the District of Connecticut.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Connecticut

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 652	--	--	--	--	--	4	100.0	0.0	0.0	0.0	5	60.0	0.0	0.0	40.0	--	--	--	--	--
Judge 745	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	5	40.0	0.0	0.0	60.0
Judge 748	92	65.2	1.1	8.7	25.0	50	68.0	0.0	24.0	8.0	138	39.1	0.7	29.0	31.2	149	30.9	2.7	26.2	40.3
Judge 779	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

There were zero cases missing information on the sentencing judge from the District of Connecticut.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of New York

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	3,618	53.8	0.2	18.8	27.1	1,793	54.0	0.6	25.0	20.4	3,367	39.5	1.6	27.9	30.9	4,397	33.8	1.2	27.6	37.5
Judge 1030	263	47.1	0.0	23.6	29.3	104	58.7	1.0	16.3	24.0	216	46.8	0.9	19.0	33.3	180	28.3	1.1	35.0	35.6
Judge 1103	3	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	3	33.3	0.0	0.0	66.7
Judge 1112	--	--	--	--	--	5	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1160	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	6	83.3	0.0	0.0	16.7
Judge 1184	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1200	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0	106	36.8	0.0	8.5	54.7
Judge 1204	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	43	65.1	0.0	4.7	30.2
Judge 1214	1	0.0	0.0	100.0	0.0	2	0.0	0.0	50.0	50.0	--	--	--	--	--	--	--	--	--	--
Judge 1298	9	55.6	0.0	22.2	22.2	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1319	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1339	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were 15 cases missing information on the sentencing judge from the Eastern District of New York.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of New York

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1353	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1375	42	61.9	0.0	19.0	19.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 138	--	--	--	--	--	--	--	--	--	--	17	88.2	0.0	5.9	5.9	84	46.4	1.2	33.3	19.0
Judge 1419	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	4	75.0	0.0	0.0	25.0
Judge 1420	2	50.0	0.0	0.0	50.0	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 144	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1492	26	92.3	0.0	3.8	3.8	51	66.7	0.0	29.4	3.9	89	42.7	3.4	42.7	11.2	79	26.6	3.8	54.4	15.2
Judge 1494	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	1	0.0	0.0	0.0	100.0	5	60.0	0.0	0.0	40.0
Judge 1497	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--	5	20.0	0.0	0.0	80.0
Judge 1515	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--
Judge 1533	244	57.0	0.4	18.4	24.2	7	14.3	14.3	57.1	14.3	--	--	--	--	--	--	--	--	--	--

(Continued)

There were 15 cases missing information on the sentencing judge from the Eastern District of New York.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of New York

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1566	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 158	111	57.7	0.0	10.8	31.5	135	42.2	1.5	12.6	43.7	208	30.3	2.9	23.1	43.8	231	26.8	0.9	22.5	49.8
Judge 1604	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1611	249	54.2	0.4	20.5	24.9	132	62.9	0.0	17.4	19.7	193	29.5	0.0	25.4	45.1	286	30.1	0.7	25.9	43.4
Judge 1632	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1673	1	100.0	0.0	0.0	0.0	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1693	107	51.4	0.0	33.6	15.0	58	39.7	0.0	48.3	12.1	118	28.0	2.5	48.3	21.2	119	21.8	2.5	47.9	27.7
Judge 1726	212	65.1	0.0	4.7	30.2	95	61.1	0.0	24.2	14.7	78	55.1	3.8	11.5	29.5	49	42.9	0.0	18.4	38.8
Judge 1740	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1776	58	63.8	0.0	25.9	10.3	66	51.5	1.5	43.9	3.0	121	35.5	1.7	38.8	24.0	120	36.7	0.8	35.8	26.7
Judge 180	--	--	--	--	--	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--

(Continued)

There were 15 cases missing information on the sentencing judge from the Eastern District of New York.
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** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of New York

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1837	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 1845	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1868	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1876	--	--	--	--	--	--	--	--	--	--	2	0.0	0.0	0.0	100.0	3	100.0	0.0	0.0	0.0
Judge 188	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 1881	--	--	--	--	--	--	--	--	--	--	100	70.0	2.0	13.0	15.0	229	45.4	2.6	27.9	24.0
Judge 1882	249	43.4	0.0	18.5	38.2	116	47.4	0.0	19.0	33.6	166	30.1	0.0	28.3	41.6	108	11.1	0.0	51.9	37.0
Judge 1890	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1936	--	--	--	--	--	--	--	--	--	--	28	67.9	3.6	0.0	28.6	165	54.5	1.2	13.3	30.9
Judge 1952	--	--	--	--	--	1	100.0	0.0	0.0	0.0	4	50.0	0.0	0.0	50.0	--	--	--	--	--
Judge 1956	--	--	--	--	--	--	--	--	--	--	2	0.0	0.0	0.0	100.0	1	100.0	0.0	0.0	0.0

(Continued)

There were 15 cases missing information on the sentencing judge from the Eastern District of New York.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of New York

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1983	5	0.0	0.0	40.0	60.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1985	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 1986	220	39.5	0.0	17.3	43.2	74	44.6	0.0	16.2	39.2	166	31.3	1.2	24.1	43.4	268	20.5	0.4	31.3	47.8
Judge 1997	166	53.6	0.0	33.7	12.7	70	42.9	0.0	38.6	18.6	95	38.9	8.4	29.5	23.2	114	22.8	1.8	50.9	24.6
Judge 264	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 285	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 33	146	65.1	0.7	14.4	19.9	92	62.0	0.0	16.3	21.7	228	45.6	1.3	23.7	29.4	216	31.9	0.9	19.9	47.2
Judge 331	--	--	--	--	--	3	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 334	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 351	--	--	--	--	--	--	--	--	--	--	32	46.9	0.0	18.8	34.4	208	30.3	1.4	22.1	46.2
Judge 457	268	39.9	0.4	19.4	40.3	120	40.8	0.0	35.8	23.3	231	28.6	0.4	33.8	37.2	232	25.4	1.3	31.0	42.2

(Continued)

There were 15 cases missing information on the sentencing judge from the Eastern District of New York.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of New York

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 581	--	--	--	--	--	1	0.0	0.0	0.0	100.0	47	38.3	10.6	29.8	21.3	134	39.6	1.5	34.3	24.6
Judge 642	171	48.0	0.0	14.0	38.0	138	50.7	0.0	27.5	21.7	269	40.9	0.4	31.6	27.1	238	37.0	0.4	27.7	34.9
Judge 644	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 660	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 662	226	54.4	0.9	14.6	30.1	94	57.4	1.1	18.1	23.4	196	40.3	0.5	27.6	31.6	150	32.7	0.7	24.7	42.0
Judge 679	240	56.7	0.0	18.8	24.6	72	61.1	0.0	27.8	11.1	136	30.9	1.5	22.1	45.6	170	31.8	0.0	21.2	47.1
Judge 681	221	56.6	0.9	19.5	23.1	122	53.3	2.5	27.0	17.2	207	31.9	1.4	31.4	35.3	236	28.0	2.1	18.2	51.7
Judge 682	3	66.7	0.0	0.0	33.3	9	100.0	0.0	0.0	0.0	6	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 687	2	50.0	0.0	0.0	50.0	1	100.0	0.0	0.0	0.0	1	0.0	0.0	0.0	100.0	2	100.0	0.0	0.0	0.0
Judge 738	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 75	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	1	0.0	0.0	0.0	100.0	1	0.0	0.0	0.0	100.0

(Continued)

There were 15 cases missing information on the sentencing judge from the Eastern District of New York.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of New York

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 867	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 869	108	65.7	0.0	21.3	13.0	60	51.7	0.0	41.7	6.7	122	33.6	2.5	46.7	17.2	105	30.5	1.0	33.3	35.2
Judge 880	--	--	--	--	--	--	--	--	--	--	100	62.0	3.0	18.0	17.0	264	46.2	3.0	24.6	26.1
Judge 904	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	2	0.0	0.0	50.0	50.0	--	--	--	--	--
Judge 907	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 908	248	62.9	0.4	21.0	15.7	144	69.9	0.7	27.8	7.6	170	50.0	0.0	35.9	14.1	228	45.6	0.0	25.0	29.4
Judge 966	--	--	--	--	--	2	50.0	0.0	0.0	50.0	--	--	--	--	--	--	--	--	--	--

There were 15 cases missing information on the sentencing judge from the Eastern District of New York.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of New York

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,056	51.7	1.0	29.8	17.4	495	64.0	0.2	22.8	12.9	1,257	54.2	0.5	31.1	14.2	1,935	57.6	0.6	21.6	20.3
Judge 1042	6	100.0	0.0	0.0	0.0	6	100.0	0.0	0.0	0.0	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 109	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 1128	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1129	--	--	--	--	--	2	100.0	0.0	0.0	0.0	11	100.0	0.0	0.0	0.0	39	97.4	0.0	0.0	2.6
Judge 1144	8	37.5	0.0	25.0	37.5	--	--	--	--	--	2	50.0	0.0	50.0	0.0	--	--	--	--	--
Judge 1214	278	36.0	0.0	28.8	35.3	101	52.5	0.0	32.7	14.9	247	48.2	0.0	35.2	16.6	341	48.4	0.3	22.3	29.0
Judge 1226	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	0.0	50.0	2	50.0	0.0	0.0	50.0
Judge 1319	125	60.8	1.6	32.0	5.6	110	70.9	0.9	19.1	9.1	187	56.7	0.5	32.6	10.2	315	60.0	0.6	30.8	8.6
Judge 1345	41	46.3	2.4	31.7	19.5	18	50.0	0.0	27.8	22.2	31	54.8	0.0	38.7	6.5	--	--	--	--	--
Judge 1466	6	100.0	0.0	0.0	0.0	19	100.0	0.0	0.0	0.0	11	100.0	0.0	0.0	0.0	30	93.3	0.0	0.0	6.7
Judge 1533	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were six cases missing information on the sentencing judge from the Northern District of New York.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of New York

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1673	162	50.6	1.9	30.9	16.7	69	52.2	0.0	36.2	11.6	205	54.1	0.5	28.3	17.1	245	51.8	0.4	23.3	24.5
Judge 1707	7	71.4	0.0	14.3	14.3	12	91.7	0.0	8.3	0.0	128	65.6	1.6	24.2	8.6	277	52.0	0.4	21.7	26.0
Judge 1740	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1757	18	94.4	0.0	0.0	5.6	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1823	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	214	75.2	1.4	13.1	10.3
Judge 1831	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1882	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1886	8	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0	7	100.0	0.0	0.0	0.0	7	100.0	0.0	0.0	0.0
Judge 1915	5	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1956	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1986	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were six cases missing information on the sentencing judge from the Northern District of New York.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of New York

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 203	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 429	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 478	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	4	100.0	0.0	0.0	0.0
Judge 634	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 662	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 832	20	95.0	0.0	5.0	0.0	4	100.0	0.0	0.0	0.0	15	93.3	0.0	0.0	6.7	15	100.0	0.0	0.0	0.0
Judge 867	184	52.2	0.5	32.1	15.2	58	55.2	0.0	10.3	34.5	266	42.1	0.4	39.5	18.0	322	48.4	0.6	23.6	27.3
Judge 869	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 945	181	54.1	2.2	37.6	6.1	90	68.9	0.0	23.3	7.8	143	60.1	0.7	25.2	14.0	117	62.4	0.9	19.7	17.1

There were six cases missing information on the sentencing judge from the Northern District of New York.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of New York

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	3,739	73.7	0.3	15.9	10.2	1,847	76.9	0.5	14.6	8.0	5,069	56.0	0.5	16.5	26.9	5,242	38.6	0.4	17.2	43.8
Judge 1017	7	71.4	0.0	28.6	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1024	85	70.6	0.0	16.5	12.9	55	87.3	0.0	9.1	3.6	127	55.1	0.0	16.5	28.3	157	35.0	0.0	15.3	49.7
Judge 1037	74	83.8	1.4	5.4	9.5	23	87.0	0.0	13.0	0.0	26	65.4	0.0	26.9	7.7	5	20.0	0.0	60.0	20.0
Judge 105	88	71.6	0.0	21.6	6.8	35	68.6	5.7	22.9	2.9	145	68.3	0.0	11.7	20.0	174	48.3	0.0	14.4	37.4
Judge 1092	2	100.0	0.0	0.0	0.0	5	80.0	0.0	20.0	0.0	7	71.4	14.3	0.0	14.3	1	100.0	0.0	0.0	0.0
Judge 1125	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1137	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 1139	55	81.8	0.0	3.6	14.5	55	74.5	1.8	9.1	14.5	146	52.1	0.0	20.5	27.4	107	47.7	0.9	26.2	25.2
Judge 1143	6	83.3	0.0	0.0	16.7	2	100.0	0.0	0.0	0.0	9	55.6	0.0	22.2	22.2	6	100.0	0.0	0.0	0.0
Judge 1146	6	66.7	0.0	16.7	16.7	5	80.0	0.0	20.0	0.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1172	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--

(Continued)

There were six cases missing information on the sentencing judge from the Southern District of New York.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of New York

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1173	80	85.0	0.0	7.5	7.5	52	76.9	0.0	11.5	11.5	159	48.4	0.6	17.0	34.0	189	33.3	0.0	12.7	54.0
Judge 1180	13	61.5	0.0	7.7	30.8	6	66.7	0.0	33.3	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1182	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1184	163	62.6	0.6	22.1	14.7	41	68.3	0.0	19.5	12.2	--	--	--	--	--	--	--	--	--	--
Judge 1214	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1242	118	71.2	0.0	12.7	16.1	32	53.1	0.0	25.0	21.9	104	26.9	0.0	24.0	49.0	63	19.0	0.0	14.3	66.7
Judge 1251	124	79.0	0.0	12.1	8.9	57	82.5	0.0	12.3	5.3	130	66.2	0.0	12.3	21.5	220	49.1	0.0	16.4	34.5
Judge 1277	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 132	106	84.9	0.0	11.3	3.8	50	84.0	0.0	12.0	4.0	134	67.9	0.0	16.4	15.7	160	36.9	0.6	20.6	41.9
Judge 1339	127	65.4	0.0	26.0	8.7	33	78.8	0.0	12.1	9.1	103	61.2	0.0	11.7	27.2	--	--	--	--	--
Judge 1343	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0

(Continued)

There were six cases missing information on the sentencing judge from the Southern District of New York.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of New York

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1353	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1431	14	57.1	0.0	21.4	21.4	13	76.9	0.0	15.4	7.7	35	37.1	2.9	25.7	34.3	1	0.0	0.0	100.0	0.0
Judge 1445	29	75.9	0.0	6.9	17.2	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1446	11	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1455	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	9	0.0	0.0	11.1	88.9
Judge 1456	75	58.7	0.0	17.3	24.0	47	72.3	0.0	10.6	17.0	121	43.0	0.0	16.5	40.5	194	32.0	0.5	12.4	55.2
Judge 1458	108	88.0	0.0	9.3	2.8	56	80.4	0.0	17.9	1.8	172	69.8	0.6	17.4	12.2	170	39.4	0.0	20.0	40.6
Judge 1465	3	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	7	85.7	0.0	0.0	14.3	3	66.7	0.0	0.0	33.3
Judge 1476	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 1488	3	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	10	70.0	0.0	0.0	30.0	7	85.7	0.0	0.0	14.3
Judge 1515	179	63.7	0.0	22.3	14.0	51	66.7	0.0	19.6	13.7	195	49.2	1.0	17.4	32.3	174	39.1	0.0	17.8	43.1

(Continued)

There were six cases missing information on the sentencing judge from the Southern District of New York.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of New York

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1535	145	73.1	0.7	18.6	7.6	54	66.7	1.9	16.7	14.8	214	41.6	0.5	17.3	40.7	188	21.3	0.5	13.8	64.4
Judge 1588	--	--	--	--	--	34	73.5	0.0	26.5	0.0	144	61.1	2.8	6.9	29.2	105	47.6	2.9	13.3	36.2
Judge 1632	27	63.0	0.0	37.0	0.0	17	82.4	0.0	17.6	0.0	47	83.0	0.0	8.5	8.5	46	63.0	0.0	13.0	23.9
Judge 1643	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1645	146	59.6	0.7	17.8	21.9	63	71.4	0.0	14.3	14.3	179	45.8	0.0	20.1	34.1	177	28.8	0.0	18.1	53.1
Judge 1662	179	78.8	0.0	12.3	8.9	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1681	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	36	33.3	0.0	0.0	66.7
Judge 1740	--	--	--	--	--	2	50.0	0.0	50.0	0.0	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 1754	5	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1773	7	14.3	0.0	42.9	42.9	--	--	--	--	--	2	0.0	0.0	50.0	50.0	--	--	--	--	--
Judge 1782	38	78.9	0.0	21.1	0.0	37	86.5	0.0	10.8	2.7	92	69.6	0.0	14.1	16.3	5	60.0	0.0	40.0	0.0

(Continued)

There were six cases missing information on the sentencing judge from the Southern District of New York.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of New York

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1793	4	50.0	0.0	25.0	25.0	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1801	122	72.1	0.0	16.4	11.5	61	77.0	0.0	13.1	9.8	131	52.7	0.0	24.4	22.9	171	32.2	0.0	18.1	49.7
Judge 1826	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	161	45.3	1.9	14.9	37.9
Judge 1831	51	88.2	0.0	2.0	9.8	40	85.0	0.0	12.5	2.5	151	57.0	0.0	20.5	22.5	129	34.1	0.0	24.0	41.9
Judge 1835	26	92.3	0.0	3.8	3.8	42	85.7	0.0	7.1	7.1	118	36.4	0.0	20.3	43.2	80	31.3	1.3	26.3	41.3
Judge 1890	2	100.0	0.0	0.0	0.0	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--
Judge 1964	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1966	5	60.0	0.0	40.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 203	104	74.0	1.0	15.4	9.6	61	78.7	1.6	11.5	8.2	125	52.0	0.8	16.0	31.2	2	50.0	0.0	0.0	50.0
Judge 2046	129	64.3	0.0	23.3	12.4	69	71.0	1.4	17.4	10.1	170	53.5	0.0	12.4	34.1	93	28.0	0.0	33.3	38.7
Judge 2058	6	83.3	0.0	0.0	16.7	3	66.7	0.0	0.0	33.3	6	66.7	0.0	0.0	33.3	1	100.0	0.0	0.0	0.0

(Continued)

There were six cases missing information on the sentencing judge from the Southern District of New York.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of New York

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 238	70	78.6	0.0	14.3	7.1	73	75.3	1.4	17.8	5.5	153	54.2	0.7	13.1	32.0	172	22.7	0.0	22.1	55.2
Judge 299	34	82.4	2.9	14.7	0.0	34	85.3	0.0	14.7	0.0	6	66.7	0.0	33.3	0.0	4	75.0	0.0	25.0	0.0
Judge 302	113	75.2	2.7	16.8	5.3	58	86.2	0.0	13.8	0.0	99	82.8	1.0	5.1	11.1	--	--	--	--	--
Judge 308	--	--	--	--	--	4	100.0	0.0	0.0	0.0	128	71.9	3.1	17.2	7.8	182	49.5	0.0	14.8	35.7
Judge 316	25	72.0	0.0	16.0	12.0	14	71.4	0.0	14.3	14.3	21	57.1	0.0	4.8	38.1	13	46.2	0.0	23.1	30.8
Judge 33	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 331	129	77.5	0.0	14.7	7.8	47	72.3	2.1	14.9	10.6	138	53.6	1.4	18.8	26.1	180	38.9	1.1	15.6	44.4
Judge 384	2	50.0	0.0	50.0	0.0	1	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 401	141	65.2	0.0	28.4	6.4	44	68.2	0.0	18.2	13.6	197	65.5	0.5	18.8	15.2	172	60.5	0.6	16.9	22.1
Judge 419	--	--	--	--	--	--	--	--	--	--	39	61.5	0.0	5.1	33.3	133	30.8	0.0	18.0	51.1
Judge 435	--	--	--	--	--	--	--	--	--	--	2	0.0	0.0	100.0	0.0	--	--	--	--	--

(Continued)

There were six cases missing information on the sentencing judge from the Southern District of New York.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of New York

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 437	62	80.6	0.0	8.1	11.3	37	78.4	0.0	8.1	13.5	190	40.0	0.0	19.5	40.5	213	26.8	0.0	15.5	57.7
Judge 44	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 489	3	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	8	87.5	0.0	0.0	12.5	5	60.0	0.0	20.0	20.0
Judge 508	56	85.7	0.0	12.5	1.8	30	83.3	3.3	3.3	10.0	23	56.5	0.0	21.7	21.7	13	53.8	0.0	23.1	23.1
Judge 520	7	71.4	0.0	14.3	14.3	1	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0	7	71.4	0.0	0.0	28.6
Judge 530	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	9	66.7	0.0	0.0	33.3
Judge 537	5	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	6	100.0	0.0	0.0	0.0	13	84.6	0.0	7.7	7.7
Judge 579	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 610	6	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	8	75.0	0.0	0.0	25.0	14	78.6	0.0	7.1	14.3
Judge 611	5	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0	10	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 612	3	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0	16	56.3	0.0	6.3	37.5

(Continued)

There were six cases missing information on the sentencing judge from the Southern District of New York.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of New York

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 617	2	100.0	0.0	0.0	0.0	4	75.0	0.0	0.0	25.0	8	87.5	0.0	0.0	12.5	6	83.3	0.0	0.0	16.7
Judge 634	--	--	--	--	--	2	50.0	0.0	0.0	50.0	--	--	--	--	--	--	--	--	--	--
Judge 65	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 650	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	58	44.8	0.0	6.9	48.3
Judge 688	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	2	50.0	50.0	0.0	0.0
Judge 703	5	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	4	75.0	0.0	0.0	25.0
Judge 722	105	66.7	1.0	20.0	12.4	39	71.8	0.0	12.8	15.4	77	44.2	1.3	19.5	35.1	82	31.7	1.2	19.5	47.6
Judge 745	7	71.4	0.0	14.3	14.3	1	100.0	0.0	0.0	0.0	6	83.3	0.0	16.7	0.0	--	--	--	--	--
Judge 78	117	76.1	0.0	13.7	10.3	58	81.0	0.0	15.5	3.4	95	36.8	0.0	31.6	31.6	142	35.2	0.0	24.6	40.1
Judge 784	91	74.7	0.0	7.7	17.6	46	76.1	0.0	17.4	6.5	191	60.7	1.6	19.9	17.8	184	45.1	0.5	15.8	38.6
Judge 831	--	--	--	--	--	1	100.0	0.0	0.0	0.0	92	64.1	0.0	6.5	29.3	190	29.5	0.0	12.6	57.9

(Continued)

There were six cases missing information on the sentencing judge from the Southern District of New York.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of New York

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 835	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 851	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 914	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	0.0	0.0	50.0	50.0
Judge 915	100	78.0	0.0	16.0	6.0	81	75.3	0.0	18.5	6.2	178	51.1	0.0	14.6	34.3	169	22.5	0.0	21.9	55.6
Judge 950	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	66.7	0.0	0.0	33.3
Judge 951	105	81.0	1.0	11.4	6.7	59	89.8	0.0	10.2	0.0	173	64.7	0.6	13.9	20.8	167	52.7	0.6	18.0	28.7
Judge 952	--	--	--	--	--	--	--	--	--	--	73	69.9	1.4	13.7	15.1	113	54.0	1.8	19.5	24.8
Judge 956	7	100.0	0.0	0.0	0.0	4	75.0	0.0	0.0	25.0	9	55.6	0.0	33.3	11.1	16	68.8	0.0	12.5	18.8
Judge 966	58	67.2	0.0	24.1	8.6	77	66.2	0.0	23.4	10.4	103	51.5	0.0	21.4	27.2	116	45.7	0.9	16.4	37.1

There were six cases missing information on the sentencing judge from the Southern District of New York.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of New York

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,151	55.5	0.7	33.6	10.2	589	57.7	1.4	34.3	6.6	1,944	55.4	1.1	33.4	10.1	2,682	53.5	1.1	30.6	14.8
Judge 1059	133	46.6	1.5	29.3	22.6	73	46.6	4.1	31.5	17.8	315	53.3	3.2	28.3	15.2	466	48.7	3.2	23.8	24.2
Judge 106	8	75.0	0.0	0.0	25.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1214	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1219	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0	31	87.1	0.0	3.2	9.7
Judge 1462	--	--	--	--	--	8	87.5	0.0	12.5	0.0	14	85.7	0.0	14.3	0.0	17	88.2	0.0	0.0	11.8
Judge 1507	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1658	20	75.0	0.0	20.0	5.0	10	100.0	0.0	0.0	0.0	40	85.0	0.0	12.5	2.5	38	86.8	0.0	10.5	2.6
Judge 1667	29	89.7	0.0	6.9	3.4	15	100.0	0.0	0.0	0.0	83	89.2	0.0	3.6	7.2	51	86.3	0.0	5.9	7.8
Judge 1735	93	76.3	1.1	12.9	9.7	64	57.8	0.0	34.4	7.8	248	61.3	1.6	26.6	10.5	473	63.2	1.3	22.2	13.3
Judge 1740	230	57.8	0.9	35.2	6.1	108	54.6	1.9	36.1	7.4	385	48.1	0.3	37.1	14.5	783	43.8	0.8	38.4	17.0
Judge 1850	114	42.1	0.9	36.8	20.2	43	67.4	0.0	23.3	9.3	48	62.5	0.0	22.9	14.6	--	--	--	--	--

(Continued)

There was one case missing information on the sentencing judge from the Western District of New York.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of New York

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1896	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 4	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 49	260	50.8	0.8	41.9	6.5	138	55.1	1.4	41.3	2.2	452	46.2	1.1	48.5	4.2	794	53.0	0.3	37.3	9.4
Judge 533	231	51.1	0.0	41.1	7.8	103	47.6	1.0	46.6	4.9	319	55.8	0.3	34.5	9.4	--	--	--	--	--
Judge 573	11	72.7	0.0	9.1	18.2	7	85.7	0.0	0.0	14.3	11	81.8	0.0	0.0	18.2	29	86.2	0.0	0.0	13.8
Judge 607	18	88.9	0.0	11.1	0.0	20	90.0	0.0	10.0	0.0	24	87.5	0.0	4.2	8.3	--	--	--	--	--
Judge 801	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

There was one case missing information on the sentencing judge from the Western District of New York.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Vermont

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	378	50.3	0.8	22.8	26.2	230	57.0	1.3	30.4	11.3	521	46.1	1.0	32.4	20.5	658	36.3	0.8	24.9	38.0
Judge 1353	152	50.7	0.7	17.1	31.6	89	56.2	1.1	29.2	13.5	204	41.7	0.0	33.3	25.0	226	29.2	1.8	27.9	41.2
Judge 1378	2	100.0	0.0	0.0	0.0	--	--	--	--	--	6	83.3	0.0	0.0	16.7	1	0.0	0.0	0.0	100.0
Judge 1560	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	75	38.7	0.0	17.3	44.0
Judge 1689	224	49.6	0.9	26.8	22.8	140	57.9	1.4	31.4	9.3	311	48.2	1.6	32.5	17.7	355	40.3	0.3	24.8	34.6
Judge 380	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 87	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--

There were zero cases missing information on the sentencing judge from the District of Vermont.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Delaware

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	229	71.6	0.0	16.6	11.8	153	65.4	0.7	20.9	13.1	356	63.5	0.0	9.6	27.0	526	40.9	2.1	16.5	40.5
Judge 1241	23	78.3	0.0	17.4	4.3	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1583	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 1587	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1589	78	62.8	0.0	21.8	15.4	35	71.4	0.0	20.0	8.6	89	62.9	0.0	13.5	23.6	185	45.4	0.5	20.5	33.5
Judge 1742	61	70.5	0.0	13.1	16.4	34	50.0	0.0	23.5	26.5	92	55.4	0.0	9.8	34.8	180	28.3	2.8	12.8	56.1
Judge 1794	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	38	50.0	0.0	23.7	26.3
Judge 1865	20	95.0	0.0	0.0	5.0	26	84.6	0.0	11.5	3.8	15	86.7	0.0	0.0	13.3	6	83.3	0.0	0.0	16.7
Judge 564	44	75.0	0.0	18.2	6.8	39	53.8	2.6	33.3	10.3	103	55.3	0.0	7.8	36.9	116	48.3	4.3	13.8	33.6
Judge 935	--	--	--	--	--	19	78.9	0.0	5.3	15.8	57	86.0	0.0	8.8	5.3	--	--	--	--	--
Judge 993	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

There were six cases missing information on the sentencing judge from the District of Delaware.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of New Jersey

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	2,139	61.6	0.4	27.5	10.5	970	65.9	0.2	27.6	6.3	2,825	52.1	0.7	31.3	16.0	3,293	48.3	0.9	30.0	20.7
Judge 1043	12	91.7	0.0	8.3	0.0	36	77.8	0.0	19.4	2.8	115	64.3	1.7	27.8	6.1	125	56.0	1.6	25.6	16.8
Judge 105	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1077	46	78.3	0.0	17.4	4.3	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1084	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1107	108	62.0	0.9	25.0	12.0	60	68.3	0.0	30.0	1.7	79	40.5	0.0	43.0	16.5	--	--	--	--	--
Judge 1110	--	--	--	--	--	23	78.3	0.0	17.4	4.3	139	54.7	0.0	31.7	13.7	173	50.9	0.6	36.4	12.1
Judge 1190	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 1191	--	--	--	--	--	28	64.3	0.0	21.4	14.3	164	43.9	0.0	34.1	22.0	167	28.7	1.8	32.9	36.5
Judge 1192	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1205	37	100.0	0.0	0.0	0.0	22	100.0	0.0	0.0	0.0	46	97.8	0.0	0.0	2.2	55	94.5	0.0	0.0	5.5
Judge 132	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There was one case missing information on the sentencing judge from the District of New Jersey.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of New Jersey

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 142	104	55.8	0.0	36.5	7.7	53	50.9	0.0	45.3	3.8	31	41.9	3.2	32.3	22.6	--	--	--	--	--
Judge 1421	143	62.2	0.7	28.7	8.4	6	50.0	0.0	33.3	16.7	--	--	--	--	--	--	--	--	--	--
Judge 1487	95	72.6	0.0	18.9	8.4	40	65.0	0.0	22.5	12.5	127	55.1	0.0	33.1	11.8	153	53.6	1.3	25.5	19.6
Judge 1495	70	65.7	0.0	25.7	8.6	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1594	35	40.0	0.0	48.6	11.4	10	40.0	0.0	60.0	0.0	66	59.1	1.5	25.8	13.6	102	52.9	0.0	28.4	18.6
Judge 1605	8	87.5	0.0	0.0	12.5	9	88.9	0.0	11.1	0.0	3	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1627	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0
Judge 1654	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	0.0	50.0
Judge 167	--	--	--	--	--	4	100.0	0.0	0.0	0.0	6	83.3	0.0	0.0	16.7	6	66.7	0.0	16.7	16.7
Judge 1713	--	--	--	--	--	--	--	--	--	--	15	60.0	0.0	40.0	0.0	168	53.6	0.6	31.0	14.9
Judge 1718	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	7	85.7	0.0	0.0	14.3

(Continued)

There was one case missing information on the sentencing judge from the District of New Jersey.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of New Jersey

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1724	--	--	--	--	--	--	--	--	--	--	5	100.0	0.0	0.0	0.0	15	80.0	0.0	0.0	20.0
Judge 1728	148	56.8	1.4	35.8	6.1	53	66.0	0.0	26.4	7.5	146	70.5	0.0	17.1	12.3	138	47.1	0.0	39.1	13.8
Judge 1856	1	0.0	0.0	100.0	0.0	--	--	--	--	--	7	28.6	0.0	0.0	71.4	--	--	--	--	--
Judge 1857	96	52.1	0.0	29.2	18.8	35	57.1	0.0	25.7	17.1	110	36.4	1.8	20.0	41.8	147	30.6	2.0	27.9	39.5
Judge 1952	--	--	--	--	--	--	--	--	--	--	3	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 1953	104	66.3	0.0	16.3	17.3	58	50.0	0.0	41.4	8.6	124	56.5	1.6	29.8	12.1	174	54.0	0.0	28.7	17.2
Judge 2013	8	100.0	0.0	0.0	0.0	2	50.0	0.0	0.0	50.0	26	69.2	0.0	26.9	3.8	169	47.3	1.8	37.3	13.6
Judge 2023	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 2043	11	72.7	0.0	18.2	9.1	35	80.0	0.0	14.3	5.7	122	39.3	0.0	35.2	25.4	159	44.7	0.0	31.4	23.9
Judge 2044	97	58.8	1.0	33.0	7.2	20	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 218	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--

(Continued)

There was one case missing information on the sentencing judge from the District of New Jersey.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of New Jersey

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 220	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 221	111	55.0	0.9	32.4	11.7	42	78.6	0.0	21.4	0.0	143	49.7	1.4	39.9	9.1	130	51.5	0.0	35.4	13.1
Judge 244	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	99	55.6	3.0	22.2	19.2
Judge 312	71	78.9	0.0	15.5	5.6	42	71.4	0.0	21.4	7.1	163	49.1	0.0	43.6	7.4	158	49.4	0.6	29.7	20.3
Judge 313	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 315	--	--	--	--	--	--	--	--	--	--	3	66.7	0.0	0.0	33.3	6	100.0	0.0	0.0	0.0
Judge 328	9	88.9	0.0	0.0	11.1	10	60.0	0.0	40.0	0.0	115	57.4	1.7	24.3	16.5	190	46.8	1.1	35.3	16.8
Judge 393	--	--	--	--	--	--	--	--	--	--	3	66.7	0.0	33.3	0.0	--	--	--	--	--
Judge 395	83	59.0	0.0	24.1	16.9	45	62.2	0.0	31.1	6.7	104	47.1	0.0	36.5	16.3	126	40.5	0.8	29.4	29.4
Judge 453	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 461	86	64.0	0.0	26.7	9.3	30	60.0	0.0	23.3	16.7	93	52.7	0.0	29.0	18.3	95	40.0	0.0	32.6	27.4

(Continued)

There was one case missing information on the sentencing judge from the District of New Jersey.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of New Jersey

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 477	--	--	--	--	--	--	--	--	--	--	1	0.0	100.0	0.0	0.0	--	--	--	--	--
Judge 492	--	--	--	--	--	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	2	50.0	0.0	0.0	50.0
Judge 5	60	66.7	1.7	31.7	0.0	24	54.2	0.0	41.7	4.2	38	39.5	10.5	36.8	13.2	12	75.0	0.0	0.0	25.0
Judge 54	14	71.4	0.0	14.3	14.3	5	80.0	0.0	20.0	0.0	7	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0
Judge 562	2	100.0	0.0	0.0	0.0	4	75.0	0.0	0.0	25.0	14	64.3	0.0	0.0	35.7	7	42.9	0.0	0.0	57.1
Judge 698	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 717	109	55.0	1.8	35.8	7.3	56	64.3	3.6	30.4	1.8	168	48.2	0.0	38.1	13.7	87	60.9	4.6	24.1	10.3
Judge 741	1	0.0	0.0	0.0	100.0	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 756	8	100.0	0.0	0.0	0.0	16	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 774	135	52.6	0.0	30.4	17.0	65	58.5	0.0	35.4	6.2	186	41.9	0.0	33.3	24.7	171	42.7	0.6	28.1	28.7
Judge 782	6	66.7	0.0	33.3	0.0	1	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--

(Continued)

There was one case missing information on the sentencing judge from the District of New Jersey.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of New Jersey

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 804	--	--	--	--	--	--	--	--	--	--	13	92.3	0.0	7.7	0.0	111	53.2	0.9	33.3	12.6
Judge 814	60	56.7	0.0	23.3	20.0	56	67.9	0.0	28.6	3.6	130	56.9	0.0	32.3	10.8	136	52.2	0.7	25.0	22.1
Judge 859	3	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0	11	81.8	0.0	9.1	9.1	1	100.0	0.0	0.0	0.0
Judge 879	129	48.8	0.0	34.9	16.3	33	60.6	0.0	18.2	21.2	206	49.0	0.5	29.1	21.4	191	34.6	0.0	36.1	29.3
Judge 96	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 98	123	63.4	0.0	27.6	8.9	41	65.9	0.0	31.7	2.4	80	41.3	1.3	45.0	12.5	--	--	--	--	--

There was one case missing information on the sentencing judge from the District of New Jersey.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Pennsylvania

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	2,428	51.5	0.8	40.2	7.5	1,123	54.7	0.8	38.7	5.8	2,492	42.0	1.6	34.8	21.6	3,319	39.1	1.7	34.2	25.1
Judge 1043	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 111	8	75.0	0.0	25.0	0.0	39	59.0	0.0	38.5	2.6	111	50.5	1.8	40.5	7.2	175	44.0	4.0	35.4	16.6
Judge 1134	61	44.3	0.0	45.9	9.8	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 115	1	0.0	0.0	0.0	100.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1249	84	57.1	1.2	34.5	7.1	36	50.0	0.0	47.2	2.8	134	47.8	0.0	37.3	14.9	155	43.9	0.6	32.9	22.6
Judge 1250	4	50.0	0.0	25.0	25.0	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1362	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1371	97	53.6	1.0	41.2	4.1	24	75.0	0.0	20.8	4.2	4	75.0	0.0	25.0	0.0	--	--	--	--	--
Judge 1411	5	80.0	0.0	20.0	0.0	1	0.0	0.0	0.0	100.0	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 1435	108	54.6	0.0	33.3	12.0	60	60.0	5.0	31.7	3.3	111	30.6	4.5	31.5	33.3	74	25.7	5.4	37.8	31.1
Judge 1472	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0

(Continued)

There were seven cases missing information on the sentencing judge from the Eastern District of Pennsylvania.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Pennsylvania

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1498	16	56.3	0.0	43.8	0.0	12	16.7	8.3	66.7	8.3	17	41.2	0.0	17.6	41.2	29	31.0	6.9	31.0	31.0
Judge 1509	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 1512	--	--	--	--	--	--	--	--	--	--	83	36.1	2.4	34.9	26.5	153	32.0	1.3	38.6	28.1
Judge 1554	8	50.0	0.0	37.5	12.5	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1561	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1565	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 1569	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1590	109	55.0	1.8	39.4	3.7	33	72.7	0.0	24.2	3.0	91	61.5	1.1	27.5	9.9	160	33.1	2.5	40.6	23.8
Judge 1594	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1616	12	91.7	0.0	8.3	0.0	43	53.5	0.0	34.9	11.6	112	28.6	0.9	42.0	28.6	132	33.3	0.8	34.8	31.1
Judge 1631	--	--	--	--	--	--	--	--	--	--	78	61.5	1.3	34.6	2.6	127	52.0	2.4	35.4	10.2

(Continued)

There were seven cases missing information on the sentencing judge from the Eastern District of Pennsylvania.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Pennsylvania

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1641	3	66.7	0.0	33.3	0.0	25	56.0	0.0	40.0	4.0	104	22.1	0.0	39.4	38.5	141	13.5	0.0	35.5	51.1
Judge 1649	84	46.4	3.6	41.7	8.3	66	45.5	0.0	48.5	6.1	103	45.6	2.9	33.0	18.4	160	37.5	0.0	35.6	26.9
Judge 1672	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1702	2	50.0	0.0	0.0	50.0	--	--	--	--	--	22	18.2	0.0	36.4	45.5	56	33.9	0.0	30.4	35.7
Judge 1736	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 1743	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	65	46.2	0.0	27.7	26.2
Judge 1802	--	--	--	--	--	--	--	--	--	--	76	36.8	1.3	35.5	26.3	150	42.7	1.3	28.7	27.3
Judge 1817	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	3	66.7	0.0	0.0	33.3
Judge 1828	71	60.6	0.0	32.4	7.0	56	57.1	0.0	35.7	7.1	119	34.5	5.0	37.0	23.5	158	30.4	3.8	34.8	31.0
Judge 1893	107	56.1	0.9	35.5	7.5	53	60.4	0.0	28.3	11.3	118	34.7	0.0	39.0	26.3	113	33.6	2.7	32.7	31.0
Judge 1916	120	56.7	0.0	38.3	5.0	29	75.9	0.0	24.1	0.0	--	--	--	--	--	--	--	--	--	--

(Continued)

There were seven cases missing information on the sentencing judge from the Eastern District of Pennsylvania.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Pennsylvania

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1945	97	55.7	1.0	40.2	3.1	2	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1984	7	71.4	0.0	28.6	0.0	3	66.7	0.0	33.3	0.0	--	--	--	--	--	--	--	--	--	--
Judge 2060	123	55.3	0.0	30.1	14.6	61	54.1	3.3	36.1	6.6	34	52.9	5.9	29.4	11.8	30	36.7	0.0	26.7	36.7
Judge 2071	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 211	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 212	142	45.1	0.0	45.1	9.9	46	60.9	0.0	39.1	0.0	130	43.1	0.8	43.1	13.1	103	27.2	0.0	35.0	37.9
Judge 213	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 242	83	49.4	1.2	41.0	8.4	45	48.9	0.0	44.4	6.7	38	23.7	0.0	36.8	39.5	4	0.0	0.0	25.0	75.0
Judge 281	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 384	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 433	124	49.2	1.6	46.0	3.2	51	58.8	0.0	37.3	3.9	106	47.2	3.8	33.0	16.0	159	47.2	1.9	35.8	15.1

(Continued)

There were seven cases missing information on the sentencing judge from the Eastern District of Pennsylvania.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Pennsylvania

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 448	17	58.8	0.0	35.3	5.9	60	61.7	1.7	30.0	6.7	143	42.7	1.4	33.6	22.4	133	45.9	2.3	33.8	18.0
Judge 477	--	--	--	--	--	--	--	--	--	--	75	65.3	2.7	28.0	4.0	158	55.1	1.9	36.7	6.3
Judge 484	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 505	115	35.7	1.7	50.4	12.2	45	40.0	0.0	46.7	13.3	84	35.7	1.2	38.1	25.0	124	33.9	0.8	27.4	37.9
Judge 628	44	45.5	0.0	38.6	15.9	20	45.0	0.0	40.0	15.0	57	35.1	1.8	21.1	42.1	70	30.0	0.0	47.1	22.9
Judge 651	--	--	--	--	--	23	60.9	0.0	39.1	0.0	101	42.6	1.0	40.6	15.8	136	56.6	2.2	25.0	16.2
Judge 674	47	59.6	4.3	29.8	6.4	34	50.0	0.0	47.1	2.9	63	36.5	1.6	30.2	31.7	31	41.9	0.0	32.3	25.8
Judge 689	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	68	54.4	0.0	26.5	19.1
Judge 691	--	--	--	--	--	--	--	--	--	--	8	12.5	12.5	50.0	25.0	40	42.5	0.0	37.5	20.0
Judge 768	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 871	81	56.8	1.2	40.7	1.2	23	56.5	4.3	30.4	8.7	--	--	--	--	--	--	--	--	--	--

(Continued)

There were seven cases missing information on the sentencing judge from the Eastern District of Pennsylvania.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Pennsylvania

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 917	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	48	47.9	4.2	29.2	18.8
Judge 940	136	60.3	0.7	36.8	2.2	63	52.4	1.6	41.3	4.8	89	52.8	0.0	34.8	12.4	145	49.0	2.1	33.8	15.2
Judge 955	74	54.1	0.0	40.5	5.4	20	70.0	0.0	30.0	0.0	58	44.8	1.7	31.0	22.4	6	50.0	0.0	50.0	0.0
Judge 957	123	50.4	0.8	35.0	13.8	66	36.4	0.0	53.0	10.6	105	36.2	0.0	31.4	32.4	40	32.5	0.0	35.0	32.5
Judge 97	151	45.0	0.0	47.0	7.9	47	66.0	0.0	29.8	4.3	68	47.1	2.9	26.5	23.5	97	27.8	3.1	40.2	28.9
Judge 972	2	50.0	0.0	0.0	50.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 977	23	26.1	0.0	65.2	8.7	11	36.4	0.0	63.6	0.0	--	--	--	--	--	--	--	--	--	--
Judge 981	134	40.3	0.0	53.7	6.0	22	27.3	0.0	72.7	0.0	40	52.5	0.0	32.5	15.0	69	30.4	0.0	31.9	37.7

There were seven cases missing information on the sentencing judge from the Eastern District of Pennsylvania.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Middle District of Pennsylvania

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	946	58.9	1.7	32.1	7.3	527	63.8	0.9	32.8	2.5	1,672	48.1	1.4	37.9	12.6	2,108	47.7	1.4	31.3	19.6
Judge 1033	74	29.7	0.0	56.8	13.5	37	56.8	0.0	43.2	0.0	140	25.7	0.7	54.3	19.3	198	32.8	1.5	52.5	13.1
Judge 1163	11	90.9	0.0	9.1	0.0	3	33.3	0.0	66.7	0.0	11	63.6	0.0	18.2	18.2	19	89.5	0.0	0.0	10.5
Judge 1175	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--
Judge 1220	70	61.4	4.3	22.9	11.4	29	62.1	6.9	24.1	6.9	90	61.1	0.0	25.6	13.3	108	55.6	1.9	25.0	17.6
Judge 1337	51	88.2	2.0	3.9	5.9	25	80.0	0.0	20.0	0.0	78	50.0	3.8	29.5	16.7	74	50.0	2.7	37.8	9.5
Judge 1343	68	54.4	0.0	42.6	2.9	37	43.2	0.0	56.8	0.0	178	35.4	0.6	58.4	5.6	179	44.1	1.1	45.8	8.9
Judge 1362	65	52.3	0.0	38.5	9.2	11	63.6	0.0	27.3	9.1	68	33.8	0.0	55.9	10.3	75	50.7	1.3	40.0	8.0
Judge 1536	127	63.8	3.9	26.0	6.3	66	63.6	3.0	33.3	0.0	142	58.5	0.0	28.2	13.4	205	58.5	0.5	22.9	18.0
Judge 156	16	93.8	0.0	6.3	0.0	2	100.0	0.0	0.0	0.0	16	75.0	0.0	6.3	18.8	22	81.8	0.0	4.5	13.6
Judge 1743	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	0.0	0.0	50.0	50.0
Judge 1765	13	100.0	0.0	0.0	0.0	6	100.0	0.0	0.0	0.0	32	93.8	0.0	3.1	3.1	27	96.3	0.0	0.0	3.7

(Continued)

There was one case missing information on the sentencing judge from the Middle District of Pennsylvania.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Middle District of Pennsylvania

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1802	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1917	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1918	78	46.2	2.6	42.3	9.0	42	45.2	0.0	54.8	0.0	95	29.5	1.1	46.3	23.2	111	42.3	0.9	32.4	24.3
Judge 267	122	58.2	2.5	27.9	11.5	73	74.0	1.4	19.2	5.5	196	56.6	1.5	30.1	11.7	201	53.2	2.0	18.4	26.4
Judge 280	107	45.8	0.0	50.5	3.7	36	66.7	0.0	33.3	0.0	157	32.5	2.5	43.9	21.0	150	26.0	3.3	43.3	27.3
Judge 283	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 284	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 371	31	51.6	0.0	45.2	3.2	19	57.9	0.0	36.8	5.3	32	53.1	0.0	34.4	12.5	62	50.0	0.0	40.3	9.7
Judge 376	2	100.0	0.0	0.0	0.0	40	72.5	0.0	25.0	2.5	160	61.9	1.3	31.3	5.6	231	42.9	1.3	29.9	26.0
Judge 433	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 48	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	9	66.7	0.0	11.1	22.2

(Continued)

There was one case missing information on the sentencing judge from the Middle District of Pennsylvania.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Middle District of Pennsylvania

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 64	8	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	8	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 923	--	--	--	--	--	23	43.5	0.0	52.2	4.3	103	48.5	2.9	35.9	12.6	259	41.3	1.9	27.4	29.3
Judge 948	102	72.5	2.0	19.6	5.9	74	73.0	0.0	24.3	2.7	166	56.0	3.0	33.7	7.2	173	61.3	0.0	20.8	17.9

There was one case missing information on the sentencing judge from the Middle District of Pennsylvania.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Pennsylvania

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	811	73.6	0.4	19.1	6.9	412	73.1	0.5	23.1	3.4	1,415	70.6	1.6	12.4	15.3	1,845	57.7	0.7	15.3	26.3
Judge 1051	72	79.2	0.0	13.9	6.9	35	71.4	0.0	17.1	11.4	98	68.4	0.0	10.2	21.4	156	52.6	0.6	16.0	30.8
Judge 1079	38	78.9	0.0	13.2	7.9	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1096	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	2	100.0	0.0	0.0	0.0
Judge 110	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1175	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1248	8	75.0	0.0	12.5	12.5	1	100.0	0.0	0.0	0.0	6	66.7	0.0	33.3	0.0	--	--	--	--	--
Judge 1250	50	62.0	2.0	32.0	4.0	30	63.3	3.3	33.3	0.0	99	85.9	2.0	7.1	5.1	193	81.9	1.0	4.1	13.0
Judge 1258	5	80.0	0.0	0.0	20.0	40	70.0	0.0	25.0	5.0	120	62.5	1.7	13.3	22.5	169	63.3	0.6	17.8	18.3
Judge 1299	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 143	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 1475	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0

(Continued)

There were eight cases missing information on the sentencing judge from the Western District of Pennsylvania.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Pennsylvania

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 157	84	77.4	0.0	16.7	6.0	29	93.1	0.0	3.4	3.4	126	88.9	0.8	3.2	7.1	152	71.1	2.0	15.1	11.8
Judge 1661	--	--	--	--	--	23	65.2	0.0	34.8	0.0	93	63.4	8.6	8.6	19.4	121	53.7	1.7	15.7	28.9
Judge 1748	50	76.0	0.0	12.0	12.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1791	72	77.8	0.0	13.9	8.3	29	72.4	0.0	17.2	10.3	19	73.7	10.5	0.0	15.8	--	--	--	--	--
Judge 2071	52	73.1	0.0	26.9	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 246	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 317	1	100.0	0.0	0.0	0.0	22	68.2	0.0	27.3	4.5	129	67.4	0.0	9.3	23.3	154	45.5	0.0	17.5	37.0
Judge 32	71	74.6	0.0	14.1	11.3	53	83.0	0.0	15.1	1.9	120	76.7	0.0	12.5	10.8	136	56.6	0.0	21.3	22.1
Judge 335	80	78.8	0.0	15.0	6.3	34	50.0	2.9	44.1	2.9	--	--	--	--	--	--	--	--	--	--
Judge 355	157	66.2	1.3	28.0	4.5	56	62.5	0.0	37.5	0.0	134	67.9	3.0	14.9	14.2	140	74.3	0.0	4.3	21.4
Judge 381	2	100.0	0.0	0.0	0.0	30	86.7	0.0	10.0	3.3	148	69.6	0.0	19.6	10.8	177	36.7	1.1	20.3	41.8

(Continued)

There were eight cases missing information on the sentencing judge from the Western District of Pennsylvania.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Pennsylvania

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 476	66	69.7	0.0	19.7	10.6	25	96.0	0.0	4.0	0.0	116	69.0	0.0	13.8	17.2	165	57.0	0.6	12.1	30.3
Judge 588	--	--	--	--	--	--	--	--	--	--	23	56.5	0.0	8.7	34.8	124	43.5	0.8	17.7	37.9
Judge 590	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	50.0	0.0	0.0	50.0
Judge 670	--	--	--	--	--	3	66.7	0.0	33.3	0.0	80	65.0	0.0	26.3	8.8	149	49.0	0.0	24.8	26.2
Judge 763	--	--	--	--	--	--	--	--	--	--	102	62.7	3.9	13.7	19.6	--	--	--	--	--

There were eight cases missing information on the sentencing judge from the Western District of Pennsylvania.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of the Virgin Islands

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	228	78.1	1.8	14.5	5.7	99	70.7	4.0	21.2	4.0	316	77.5	1.9	8.9	11.7	271	63.5	5.9	16.2	14.4
Judge 1311	1	0.0	100.0	0.0	0.0	2	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1315	134	85.8	0.7	7.5	6.0	64	75.0	0.0	18.8	6.3	--	--	--	--	--	--	--	--	--	--
Judge 1344	6	50.0	16.7	33.3	0.0	--	--	--	--	--	2	50.0	0.0	50.0	0.0	--	--	--	--	--
Judge 1563	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1631	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	13	84.6	0.0	15.4	0.0
Judge 1641	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	10	0.0	0.0	70.0	30.0
Judge 1857	--	--	--	--	--	--	--	--	--	--	9	66.7	11.1	22.2	0.0	3	100.0	0.0	0.0	0.0
Judge 217	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 277	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	0.0	50.0	1	100.0	0.0	0.0	0.0
Judge 564	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 584	83	67.5	1.2	25.3	6.0	31	64.5	9.7	25.8	0.0	145	76.6	0.7	8.3	14.5	96	62.5	1.0	16.7	19.8

(Continued)

There was one case missing information on the sentencing judge from the District of the Virgin Islands.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of the Virgin Islands

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 674	--	--	--	--	--	--	--	--	--	--	17	23.5	0.0	17.6	58.8	2	0.0	0.0	50.0	50.0
Judge 695	--	--	--	--	--	--	--	--	--	--	127	88.2	2.4	7.9	1.6	139	68.3	8.6	12.9	10.1
Judge 92	1	100.0	0.0	0.0	0.0	1	0.0	100.0	0.0	0.0	4	75.0	0.0	0.0	25.0	1	100.0	0.0	0.0	0.0
Judge 923	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 97	--	--	--	--	--	--	--	--	--	--	7	57.1	14.3	0.0	28.6	5	0.0	60.0	0.0	40.0

There was one case missing information on the sentencing judge from the District of the Virgin Islands.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Maryland

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,436	56.8	0.9	29.7	12.7	586	65.4	0.7	22.5	11.4	1,951	51.1	1.6	29.9	17.4	2,843	45.7	3.0	31.2	20.2
Judge 1069	10	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1087	98	44.9	0.0	42.9	12.2	59	69.5	0.0	20.3	10.2	138	42.8	2.9	37.7	16.7	172	29.1	2.9	33.7	34.3
Judge 1155	50	48.0	0.0	34.0	18.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 127	--	--	--	--	--	20	75.0	5.0	5.0	15.0	223	44.4	1.8	33.2	20.6	332	32.5	6.9	37.7	22.9
Judge 1272	197	69.0	0.5	26.9	3.6	71	64.8	0.0	32.4	2.8	130	58.5	0.8	30.0	10.8	205	60.5	2.0	27.3	10.2
Judge 1333	127	48.0	3.1	31.5	17.3	96	59.4	0.0	26.0	14.6	214	45.8	1.4	36.4	16.4	306	40.5	2.9	35.0	21.6
Judge 1375	17	35.3	0.0	29.4	35.3	3	33.3	0.0	66.7	0.0	5	40.0	0.0	0.0	60.0	--	--	--	--	--
Judge 1376	111	45.9	0.0	40.5	13.5	20	40.0	0.0	40.0	20.0	47	46.8	6.4	27.7	19.1	107	44.9	0.9	23.4	30.8
Judge 149	3	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 152	99	60.6	1.0	24.2	14.1	44	65.9	0.0	9.1	25.0	216	44.0	0.9	35.6	19.4	343	38.8	3.2	35.9	22.2
Judge 1529	2	0.0	0.0	100.0	0.0	38	63.2	0.0	26.3	10.5	224	54.9	1.3	33.0	10.7	412	57.8	2.7	29.4	10.2

(Continued)

There were 53 cases missing information on the sentencing judge from the District of Maryland.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Maryland

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1660	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0
Judge 1744	111	58.6	0.9	26.1	14.4	2	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1872	--	--	--	--	--	2	100.0	0.0	0.0	0.0	133	66.2	3.8	22.6	7.5	220	51.4	3.2	30.5	15.0
Judge 194	--	--	--	--	--	1	0.0	100.0	0.0	0.0	3	100.0	0.0	0.0	0.0	9	66.7	0.0	11.1	22.2
Judge 2020	182	62.1	0.5	26.9	10.4	61	59.0	0.0	27.9	13.1	143	55.9	0.7	22.4	21.0	226	50.9	1.8	28.3	19.0
Judge 323	135	70.4	0.7	21.5	7.4	58	79.3	3.4	15.5	1.7	136	57.4	0.7	23.5	18.4	252	43.3	2.0	34.5	20.2
Judge 375	1	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 441	118	55.1	2.5	28.0	14.4	45	82.2	0.0	6.7	11.1	225	40.9	1.8	30.7	26.7	120	41.7	4.2	29.2	25.0
Judge 456	1	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	21	100.0	0.0	0.0	0.0	10	100.0	0.0	0.0	0.0
Judge 481	4	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	38	97.4	0.0	0.0	2.6	52	96.2	1.9	0.0	1.9
Judge 558	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--

(Continued)

There were 53 cases missing information on the sentencing judge from the District of Maryland.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Maryland

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 632	1	0.0	0.0	100.0	0.0	--	--	--	--	--	2	50.0	0.0	0.0	50.0	--	--	--	--	--
Judge 643	161	42.2	0.6	35.4	21.7	51	51.0	0.0	33.3	15.7	45	35.6	0.0	31.1	33.3	62	9.7	0.0	25.8	64.5
Judge 657	--	--	--	--	--	1	0.0	0.0	0.0	100.0	2	50.0	0.0	0.0	50.0	2	100.0	0.0	0.0	0.0
Judge 664	3	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	3	100.0	0.0	0.0	0.0
Judge 701	3	100.0	0.0	0.0	0.0	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 725	--	--	--	--	--	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0
Judge 824	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	50.0	0.0

There were 53 cases missing information on the sentencing judge from the District of Maryland.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of North Carolina

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,438	66.2	1.7	27.4	4.7	659	60.1	1.4	33.2	5.3	1,875	58.5	2.0	32.3	7.3	2,698	55.4	4.0	32.5	8.0
Judge 1164	3	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1195	124	99.2	0.0	0.0	0.8	14	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1323	--	--	--	--	--	--	--	--	--	--	2	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 1401	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 181	33	66.7	0.0	21.2	12.1	14	35.7	0.0	35.7	28.6	19	42.1	0.0	42.1	15.8	--	--	--	--	--
Judge 1813	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 182	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1834	--	--	--	--	--	--	--	--	--	--	20	95.0	0.0	0.0	5.0	--	--	--	--	--
Judge 185	334	61.7	1.2	33.8	3.3	184	58.7	0.5	35.9	4.9	398	48.0	1.0	41.0	10.1	593	54.1	2.7	30.9	12.3
Judge 1977	17	100.0	0.0	0.0	0.0	12	100.0	0.0	0.0	0.0	16	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 2025	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were seven cases missing information on the sentencing judge from the Eastern District of North Carolina.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of North Carolina

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 209	91	78.0	3.3	13.2	5.5	39	66.7	2.6	23.1	7.7	98	62.2	4.1	28.6	5.1	226	60.2	1.8	27.9	10.2
Judge 435	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 469	--	--	--	--	--	1	100.0	0.0	0.0	0.0	30	96.7	0.0	0.0	3.3	--	--	--	--	--
Judge 471	15	93.3	0.0	6.7	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 473	--	--	--	--	--	3	100.0	0.0	0.0	0.0	232	69.0	2.6	24.1	4.3	562	53.4	6.4	34.2	6.0
Judge 474	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 558	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	50.0	0.0	2	50.0	50.0	0.0	0.0
Judge 595	1	0.0	0.0	0.0	100.0	43	62.8	2.3	34.9	0.0	360	59.2	1.7	35.0	4.2	612	52.9	4.4	37.3	5.4
Judge 609	331	62.8	3.6	29.0	4.5	142	58.5	3.5	33.1	4.9	378	61.4	4.0	28.0	6.6	442	50.7	5.2	36.2	7.9
Judge 611	7	28.6	14.3	57.1	0.0	2	50.0	50.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 655	--	--	--	--	--	--	--	--	--	--	5	100.0	0.0	0.0	0.0	--	--	--	--	--

(Continued)

There were seven cases missing information on the sentencing judge from the Eastern District of North Carolina.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of North Carolina

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 845	4	50.0	0.0	25.0	25.0	2	50.0	0.0	50.0	0.0	6	16.7	0.0	50.0	33.3	--	--	--	--	--
Judge 847	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 848	473	59.6	0.8	33.4	6.1	203	56.7	0.0	37.4	5.9	307	51.5	1.0	37.1	10.4	185	62.2	0.5	27.6	9.7
Judge 926	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	74	98.6	0.0	0.0	1.4

There were seven cases missing information on the sentencing judge from the Eastern District of North Carolina.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Middle District of North Carolina

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,064	83.1	1.5	12.7	2.7	417	87.3	1.0	10.8	1.0	1,281	76.0	0.9	14.6	8.4	1,776	72.1	2.1	14.0	11.8
Judge 114	221	88.7	0.0	9.0	2.3	93	88.2	1.1	10.8	0.0	364	74.2	0.3	18.1	7.4	381	75.6	0.0	16.0	8.4
Judge 1207	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1423	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1425	--	--	--	--	--	--	--	--	--	--	10	80.0	0.0	20.0	0.0	457	73.5	3.7	8.8	14.0
Judge 1426	330	75.5	2.1	18.8	3.6	91	87.9	1.1	8.8	2.2	433	76.2	0.9	13.6	9.2	--	--	--	--	--
Judge 1534	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1659	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	398	70.1	3.0	13.6	13.3
Judge 1706	7	85.7	0.0	0.0	14.3	--	--	--	--	--	3	66.7	0.0	0.0	33.3	8	75.0	0.0	0.0	25.0
Judge 185	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1867	258	84.9	2.7	10.1	2.3	132	83.3	1.5	14.4	0.8	326	78.2	2.1	13.5	6.1	488	70.3	1.6	17.6	10.5
Judge 1899	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0

(Continued)

There were two cases missing information on the sentencing judge from the Middle District of North Carolina.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Middle District of North Carolina

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 243	228	86.0	0.9	11.0	2.2	100	91.0	0.0	8.0	1.0	138	73.9	0.0	11.6	14.5	--	--	--	--	--
Judge 509	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 519	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	38	68.4	2.6	15.8	13.2
Judge 534	9	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	7	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 550	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 848	5	60.0	0.0	40.0	0.0	--	--	--	--	--	--	--	--	--	--	5	20.0	0.0	40.0	40.0

There were two cases missing information on the sentencing judge from the Middle District of North Carolina.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of North Carolina

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,374	59.6	0.4	34.9	5.1	570	64.2	0.2	32.3	3.3	2,196	65.2	0.8	26.5	7.4	2,129	58.2	1.7	28.9	11.2
Judge 1247	--	--	--	--	--	70	64.3	0.0	32.9	2.9	3	33.3	0.0	33.3	33.3	--	--	--	--	--
Judge 1340	312	61.9	0.3	30.8	7.1	118	61.9	0.0	34.7	3.4	227	53.7	0.4	26.9	18.9	16	43.8	0.0	12.5	43.8
Judge 1426	1	100.0	0.0	0.0	0.0	--	--	--	--	--	15	66.7	6.7	20.0	6.7	--	--	--	--	--
Judge 1507	10	60.0	0.0	40.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1558	--	--	--	--	--	--	--	--	--	--	4	100.0	0.0	0.0	0.0	382	60.2	2.6	27.0	10.2
Judge 17	6	50.0	0.0	16.7	33.3	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1819	5	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1848	1	100.0	0.0	0.0	0.0	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 185	2	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1862	411	67.9	0.7	26.5	4.9	241	65.1	0.0	30.3	4.6	661	63.4	1.2	28.3	7.1	316	63.0	0.9	30.1	6.0
Judge 1867	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--

(Continued)

There were 14 cases missing information on the sentencing judge from the Western District of North Carolina.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of North Carolina

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1909	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1938	16	62.5	0.0	31.3	6.3	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1939	572	49.8	0.3	45.6	4.2	122	60.7	0.8	36.9	1.6	531	63.1	0.0	30.9	6.0	398	48.7	1.3	32.7	17.3
Judge 2008	--	--	--	--	--	--	--	--	--	--	252	68.3	0.0	26.6	5.2	485	56.1	1.2	33.2	9.5
Judge 2025	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 2039	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 209	1	100.0	0.0	0.0	0.0	--	--	--	--	--	2	50.0	0.0	50.0	0.0	6	16.7	0.0	83.3	0.0
Judge 244	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 263	3	100.0	0.0	0.0	0.0	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 352	5	100.0	0.0	0.0	0.0	15	100.0	0.0	0.0	0.0	--	--	--	--	--	36	55.6	0.0	36.1	8.3
Judge 377	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0

(Continued)

There were 14 cases missing information on the sentencing judge from the Western District of North Carolina.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of North Carolina

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 379	--	--	--	--	--	--	--	--	--	--	466	72.1	1.7	21.0	5.2	444	64.9	2.0	22.1	11.0
Judge 471	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 538	--	--	--	--	--	--	--	--	--	--	4	50.0	0.0	0.0	50.0	26	42.3	11.5	30.8	15.4
Judge 550	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 558	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	50.0	0.0	--	--	--	--	--
Judge 609	--	--	--	--	--	3	66.7	0.0	33.3	0.0	--	--	--	--	--	--	--	--	--	--
Judge 741	4	75.0	0.0	0.0	25.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 838	16	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 848	4	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 851	--	--	--	--	--	--	--	--	--	--	21	100.0	0.0	0.0	0.0	15	86.7	0.0	0.0	13.3
Judge 921	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were 14 cases missing information on the sentencing judge from the Western District of North Carolina.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of North Carolina

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 968	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0

There were 14 cases missing information on the sentencing judge from the Western District of North Carolina.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of South Carolina

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	2,288	74.4	0.2	22.9	2.5	1,424	76.8	0.9	21.1	1.2	3,217	72.5	0.9	17.3	9.3	4,353	62.4	1.4	20.6	15.6
Judge 1034	3	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1167	8	87.5	0.0	12.5	0.0	5	60.0	0.0	40.0	0.0	6	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1223	14	92.9	7.1	0.0	0.0	3	66.7	0.0	33.3	0.0	3	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 1232	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0
Judge 1329	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 1340	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1393	152	82.2	0.0	9.9	7.9	90	72.2	2.2	21.1	4.4	239	74.5	0.4	13.8	11.3	209	67.0	1.9	13.9	17.2
Judge 1474	80	60.0	0.0	35.0	5.0	75	73.3	0.0	26.7	0.0	140	56.4	1.4	15.0	27.1	108	35.2	0.9	10.2	53.7
Judge 1485	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 154	144	70.8	0.0	25.7	3.5	76	73.7	0.0	19.7	6.6	118	45.8	0.0	23.7	30.5	171	46.2	1.2	22.8	29.8
Judge 1598	1	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	6	83.3	0.0	0.0	16.7	16	93.8	0.0	6.3	0.0

(Continued)

There were four cases missing information on the sentencing judge from the District of South Carolina.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of South Carolina

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1694	258	83.3	0.0	16.3	0.4	88	78.4	0.0	20.5	1.1	292	75.7	0.0	15.4	8.9	339	52.5	0.0	32.2	15.3
Judge 1695	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 1711	151	69.5	0.7	28.5	1.3	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1884	13	61.5	0.0	38.5	0.0	--	--	--	--	--	--	--	--	--	--	23	73.9	0.0	4.3	21.7
Judge 190	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1939	--	--	--	--	--	--	--	--	--	--	1	0.0	100.0	0.0	0.0	--	--	--	--	--
Judge 2018	6	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	45	48.9	2.2	17.8	31.1
Judge 2052	49	77.6	2.0	16.3	4.1	159	71.1	2.5	26.4	0.0	282	68.4	3.2	25.5	2.8	499	58.3	1.0	34.5	6.2
Judge 235	23	100.0	0.0	0.0	0.0	15	93.3	0.0	0.0	6.7	1	0.0	0.0	100.0	0.0	1	100.0	0.0	0.0	0.0
Judge 292	4	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0
Judge 310	2	100.0	0.0	0.0	0.0	--	--	--	--	--	10	40.0	40.0	0.0	20.0	37	89.2	0.0	5.4	5.4

(Continued)

There were four cases missing information on the sentencing judge from the District of South Carolina.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
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*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of South Carolina

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 330	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	32	84.4	0.0	3.1	12.5
Judge 35	3	100.0	0.0	0.0	0.0	5	80.0	0.0	20.0	0.0	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 36	243	87.2	0.8	10.7	1.2	198	85.4	0.0	14.6	0.0	344	83.1	0.0	9.0	7.8	292	78.4	1.0	8.9	11.6
Judge 38	114	83.3	0.0	14.9	1.8	55	74.5	1.8	23.6	0.0	182	73.1	1.1	19.2	6.6	405	60.2	0.7	18.8	20.2
Judge 389	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 426	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 428	226	73.0	0.0	26.1	0.9	179	81.6	1.7	16.8	0.0	324	73.1	1.2	20.4	5.2	411	58.2	1.0	20.9	20.0
Judge 509	171	63.7	0.0	29.2	7.0	115	74.8	0.0	23.5	1.7	254	61.4	0.8	26.4	11.4	300	61.7	3.7	14.0	20.7
Judge 53	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 598	--	--	--	--	--	64	87.5	3.1	7.8	1.6	367	79.6	0.3	13.6	6.5	546	67.8	0.4	17.9	13.9
Judge 661	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	16	81.3	0.0	6.3	12.5

(Continued)

There were four cases missing information on the sentencing judge from the District of South Carolina.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of South Carolina

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 7	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 71	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 763	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 771	--	--	--	--	--	--	--	--	--	--	261	71.3	0.8	17.2	10.7	494	53.2	4.5	31.0	11.3
Judge 773	20	75.0	0.0	15.0	10.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 788	--	--	--	--	--	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 789	242	79.3	0.0	17.4	3.3	152	78.9	0.0	19.7	1.3	374	78.3	0.5	15.5	5.6	391	81.3	1.0	9.7	7.9
Judge 841	357	58.5	0.0	40.9	0.6	137	62.8	0.7	35.8	0.7	7	14.3	0.0	42.9	42.9	5	60.0	0.0	0.0	40.0

There were four cases missing information on the sentencing judge from the District of South Carolina.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Virginia

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	3,088	89.3	0.3	6.8	3.6	1,719	90.4	0.8	6.1	2.7	4,142	78.8	2.4	6.2	12.6	6,939	74.4	2.0	6.0	17.6
Judge 1005	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1066	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	437	95.0	0.0	4.1	0.9
Judge 1078	--	--	--	--	--	--	--	--	--	--	3	33.3	0.0	0.0	66.7	--	--	--	--	--
Judge 1080	211	81.0	0.0	11.8	7.1	117	88.9	0.0	6.0	5.1	289	66.1	1.4	7.6	24.9	309	39.8	0.0	16.8	43.4
Judge 11	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1128	9	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1189	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1268	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1284	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	192	100.0	0.0	0.0	0.0
Judge 1291	22	100.0	0.0	0.0	0.0	10	100.0	0.0	0.0	0.0	17	100.0	0.0	0.0	0.0	307	98.7	0.0	0.3	1.0
Judge 1323	244	91.8	0.8	4.1	3.3	78	92.3	0.0	3.8	3.8	94	71.3	4.3	6.4	18.1	116	69.0	5.2	4.3	21.6

(Continued)

There were 31 cases missing information on the sentencing judge from the Eastern District of Virginia.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
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Eastern District of Virginia

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1405	1	100.0	0.0	0.0	0.0	31	100.0	0.0	0.0	0.0	43	97.7	0.0	2.3	0.0	284	66.5	1.8	8.8	22.9
Judge 1459	--	--	--	--	--	--	--	--	--	--	12	75.0	8.3	16.7	0.0	--	--	--	--	--
Judge 1460	162	100.0	0.0	0.0	0.0	128	99.2	0.0	0.8	0.0	377	82.2	5.0	5.6	7.2	447	73.4	7.4	3.8	15.4
Judge 1503	41	97.6	0.0	2.4	0.0	26	100.0	0.0	0.0	0.0	42	92.9	0.0	0.0	7.1	4	100.0	0.0	0.0	0.0
Judge 1519	4	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	4	100.0	0.0	0.0	0.0
Judge 1629	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1692	48	97.9	2.1	0.0	0.0	4	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1745	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1758	154	90.3	0.6	7.1	1.9	99	86.9	4.0	8.1	1.0	173	83.2	8.7	2.9	5.2	288	73.3	6.6	9.4	10.8
Judge 1778	352	88.1	0.0	5.4	6.5	184	81.0	1.6	9.8	7.6	380	82.9	0.8	5.0	11.3	448	69.9	2.5	3.6	24.1
Judge 1809	11	90.9	0.0	0.0	9.1	5	100.0	0.0	0.0	0.0	10	100.0	0.0	0.0	0.0	362	97.2	0.0	0.6	2.2

(Continued)

There were 31 cases missing information on the sentencing judge from the Eastern District of Virginia.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
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Eastern District of Virginia

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 187	15	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	6	100.0	0.0	0.0	0.0	84	96.4	0.0	0.0	3.6
Judge 1887	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	198	39.9	0.0	12.1	48.0
Judge 1896	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1997	22	90.9	0.0	4.5	4.5	38	60.5	0.0	34.2	5.3	52	67.3	0.0	5.8	26.9	--	--	--	--	--
Judge 2022	--	--	--	--	--	1	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 2025	169	97.6	0.0	0.6	1.8	122	98.4	0.8	0.8	0.0	276	86.2	2.9	3.3	7.6	298	79.2	1.7	3.4	15.8
Judge 2044	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 207	253	86.6	0.4	9.9	3.2	130	95.4	0.0	2.3	2.3	303	71.0	1.0	8.3	19.8	309	51.1	0.3	10.4	38.2
Judge 229	25	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 235	3	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 236	28	100.0	0.0	0.0	0.0	28	100.0	0.0	0.0	0.0	16	100.0	0.0	0.0	0.0	53	96.2	0.0	0.0	3.8

(Continued)

There were 31 cases missing information on the sentencing judge from the Eastern District of Virginia.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Virginia

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 263	214	84.6	0.5	12.1	2.8	104	92.3	1.0	4.8	1.9	217	85.3	0.5	8.8	5.5	250	68.0	0.0	8.8	23.2
Judge 306	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 37	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	75	97.3	0.0	1.3	1.3
Judge 445	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	84	94.0	0.0	1.2	4.8
Judge 450	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	194	73.2	1.0	8.8	17.0
Judge 488	6	83.3	0.0	0.0	16.7	1	100.0	0.0	0.0	0.0	5	60.0	0.0	20.0	20.0	103	92.2	0.0	2.9	4.9
Judge 497	96	86.5	0.0	6.3	7.3	32	90.6	0.0	6.3	3.1	112	88.4	0.9	8.0	2.7	245	77.6	2.9	11.0	8.6
Judge 535	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 537	6	83.3	0.0	16.7	0.0	3	100.0	0.0	0.0	0.0	11	90.9	0.0	0.0	9.1	1	100.0	0.0	0.0	0.0
Judge 538	196	87.8	0.0	4.6	7.7	112	83.0	0.9	7.1	8.9	312	70.8	0.6	5.8	22.8	293	59.4	0.3	6.1	34.1
Judge 60	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were 31 cases missing information on the sentencing judge from the Eastern District of Virginia.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Virginia

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 620	26	88.5	0.0	11.5	0.0	14	92.9	7.1	0.0	0.0	20	80.0	0.0	20.0	0.0	--	--	--	--	--
Judge 621	240	87.1	0.4	11.7	0.8	72	97.2	0.0	2.8	0.0	205	83.9	1.5	10.2	4.4	285	75.4	1.1	7.4	16.1
Judge 669	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	37	73.0	2.7	0.0	24.3
Judge 807	237	81.4	0.0	14.3	4.2	120	86.7	0.0	9.2	4.2	287	84.3	0.3	7.3	8.0	305	63.6	1.3	6.9	28.2
Judge 847	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 856	27	100.0	0.0	0.0	0.0	125	97.6	1.6	0.8	0.0	417	87.5	4.3	5.0	3.1	489	85.1	5.7	2.9	6.3
Judge 886	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	0.0	50.0	--	--	--	--	--
Judge 887	224	90.6	0.9	4.9	3.6	116	81.0	0.0	19.0	0.0	197	45.7	4.1	7.1	43.1	288	47.6	3.5	11.8	37.2
Judge 930	38	100.0	0.0	0.0	0.0	12	100.0	0.0	0.0	0.0	27	100.0	0.0	0.0	0.0	88	97.7	0.0	2.3	0.0
Judge 974	--	--	--	--	--	--	--	--	--	--	230	74.3	3.0	7.0	15.7	61	73.8	1.6	11.5	13.1

There were 31 cases missing information on the sentencing judge from the Eastern District of Virginia.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Virginia

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,030	71.2	0.5	25.4	2.9	605	75.0	1.7	21.8	1.5	1,767	64.9	1.6	25.5	8.0	1,535	53.9	3.3	23.8	19.0
Judge 1008	--	--	--	--	--	1	100.0	0.0	0.0	0.0	2	0.0	0.0	50.0	50.0	--	--	--	--	--
Judge 1011	86	76.7	0.0	20.9	2.3	46	76.1	0.0	23.9	0.0	145	65.5	0.7	24.8	9.0	147	62.6	0.0	17.7	19.7
Judge 114	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1275	162	59.9	1.2	37.7	1.2	42	57.1	2.4	38.1	2.4	4	75.0	0.0	25.0	0.0	--	--	--	--	--
Judge 1309	181	73.5	0.0	25.4	1.1	117	82.1	0.0	17.1	0.9	377	59.9	0.3	36.1	3.7	295	46.8	1.4	36.3	15.6
Judge 14	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 1638	4	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	6	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0
Judge 1896	125	67.2	0.0	29.6	3.2	99	70.7	2.0	27.3	0.0	157	58.0	1.9	22.3	17.8	131	46.6	0.8	31.3	21.4
Judge 1906	--	--	--	--	--	--	--	--	--	--	8	75.0	0.0	0.0	25.0	10	80.0	10.0	10.0	0.0
Judge 1991	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 2022	55	85.5	0.0	9.1	5.5	42	83.3	0.0	14.3	2.4	64	78.1	1.6	6.3	14.1	31	80.6	0.0	6.5	12.9

(Continued)

There was one case missing information on the sentencing judge from the Western District of Virginia.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Virginia

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 2028	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 2030	158	62.0	0.6	34.2	3.2	108	77.8	0.9	21.3	0.0	308	66.9	0.6	24.0	8.4	238	54.6	5.0	26.5	13.9
Judge 378	5	100.0	0.0	0.0	0.0	8	100.0	0.0	0.0	0.0	362	59.7	1.4	33.7	5.2	243	50.2	2.1	28.4	19.3
Judge 397	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 415	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0
Judge 921	253	78.3	0.8	16.2	4.7	141	70.9	4.3	20.6	4.3	329	73.6	4.9	12.5	9.1	432	56.5	6.3	13.0	24.3

There was one case missing information on the sentencing judge from the Western District of Virginia.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of West Virginia

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	596	88.4	1.2	6.2	4.2	288	86.5	0.7	11.1	1.7	980	81.1	1.0	8.9	9.0	1,327	60.8	1.5	18.0	19.7
Judge 1206	7	100.0	0.0	0.0	0.0	3	66.7	0.0	33.3	0.0	4	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1207	80	86.3	1.3	3.8	8.8	18	77.8	5.6	11.1	5.6	105	73.3	6.7	5.7	14.3	56	82.1	0.0	8.9	8.9
Judge 1682	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1790	175	93.1	0.6	5.7	0.6	72	87.5	0.0	11.1	1.4	244	81.1	0.4	13.9	4.5	249	65.9	1.2	22.1	10.8
Judge 2025	--	--	--	--	--	6	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 210	149	82.6	3.4	5.4	8.7	32	90.6	3.1	3.1	3.1	145	81.4	0.0	5.5	13.1	--	--	--	--	--
Judge 397	2	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 558	6	100.0	0.0	0.0	0.0	12	83.3	0.0	16.7	0.0	25	84.0	0.0	8.0	8.0	--	--	--	--	--
Judge 701	4	100.0	0.0	0.0	0.0	11	100.0	0.0	0.0	0.0	22	95.5	0.0	0.0	4.5	--	--	--	--	--
Judge 79	--	--	--	--	--	--	--	--	--	--	63	93.7	0.0	1.6	4.8	511	62.4	2.2	6.5	29.0
Judge 899	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--

(Continued)

There was one case missing information on the sentencing judge from the Northern District of West Virginia.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of West Virginia

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 958	--	--	--	--	--	--	--	--	--	--	3	33.3	0.0	0.0	66.7	6	83.3	0.0	0.0	16.7
Judge 965	172	89.0	0.0	8.7	2.3	133	85.0	0.0	13.5	1.5	369	80.2	0.5	9.8	9.5	505	54.1	1.2	28.9	15.8

There was one case missing information on the sentencing judge from the Northern District of West Virginia.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of West Virginia

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	705	88.9	0.9	7.9	2.3	342	95.9	0.3	2.0	1.8	830	82.9	1.4	8.9	6.7	1,042	57.0	1.8	10.5	30.7
Judge 131	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	90	67.8	2.2	10.0	20.0
Judge 1790	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1792	--	--	--	--	--	1	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0	1	0.0	0.0	0.0	100.0
Judge 1847	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1922	2	100.0	0.0	0.0	0.0	--	--	--	--	--	3	66.7	0.0	0.0	33.3	3	100.0	0.0	0.0	0.0
Judge 319	111	88.3	0.9	5.4	5.4	49	95.9	0.0	0.0	4.1	148	77.0	0.7	6.8	15.5	244	52.5	1.6	8.6	37.3
Judge 397	141	85.1	1.4	9.9	3.5	64	96.9	0.0	3.1	0.0	214	87.4	0.0	9.8	2.8	267	51.3	1.5	9.0	38.2
Judge 558	92	82.6	1.1	15.2	1.1	91	94.5	0.0	2.2	3.3	187	81.8	2.7	9.1	6.4	52	63.5	0.0	17.3	19.2
Judge 570	5	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 700	6	83.3	0.0	16.7	0.0	5	100.0	0.0	0.0	0.0	8	87.5	0.0	12.5	0.0	--	--	--	--	--
Judge 701	146	92.5	0.0	6.8	0.7	75	94.7	1.3	2.7	1.3	189	79.4	2.6	12.2	5.8	146	58.2	4.1	6.2	31.5

(Continued)

There were two cases missing information on the sentencing judge from the Southern District of West Virginia.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of West Virginia

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 741	199	92.0	1.0	5.5	1.5	57	98.2	0.0	1.8	0.0	--	--	--	--	--	--	--	--	--	--
Judge 911	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 912	--	--	--	--	--	--	--	--	--	--	77	92.2	1.3	2.6	3.9	238	61.3	1.3	15.5	21.8

There were two cases missing information on the sentencing judge from the Southern District of West Virginia.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Louisiana

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,154	80.9	0.5	12.0	6.6	467	85.7	1.7	10.3	2.4	1,168	76.1	3.5	13.6	6.8	1,574	70.7	4.4	12.7	12.1
Judge 1019	--	--	--	--	--	2	100.0	0.0	0.0	0.0	5	80.0	0.0	20.0	0.0	2	100.0	0.0	0.0	0.0
Judge 1093	102	82.4	0.0	10.8	6.9	48	89.6	0.0	4.2	6.3	103	67.0	2.9	13.6	16.5	132	72.7	0.8	11.4	15.2
Judge 1094	89	83.1	0.0	12.4	4.5	37	83.8	0.0	16.2	0.0	98	84.7	1.0	13.3	1.0	142	78.9	0.7	12.7	7.7
Judge 1119	4	75.0	0.0	0.0	25.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 119	2	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1254	40	85.0	0.0	5.0	10.0	7	85.7	0.0	14.3	0.0	19	78.9	0.0	10.5	10.5	26	53.8	30.8	11.5	3.8
Judge 1266	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 13	28	85.7	0.0	7.1	7.1	36	83.3	8.3	5.6	2.8	124	79.0	7.3	10.5	3.2	162	71.0	7.4	11.7	9.9
Judge 134	108	74.1	0.9	14.8	10.2	58	77.6	1.7	19.0	1.7	110	80.0	1.8	14.5	3.6	140	70.0	0.7	10.7	18.6
Judge 1504	76	78.9	0.0	14.5	6.6	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 158	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	8	37.5	0.0	0.0	62.5

(Continued)

There were four cases missing information on the sentencing judge from the Eastern District of Louisiana.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Louisiana

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1591	6	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1675	4	50.0	0.0	0.0	50.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1723	2	100.0	0.0	0.0	0.0	--	--	--	--	--	7	57.1	0.0	14.3	28.6	2	100.0	0.0	0.0	0.0
Judge 1921	79	87.3	1.3	7.6	3.8	52	88.5	0.0	7.7	3.8	94	79.8	1.1	16.0	3.2	147	74.8	2.0	16.3	6.8
Judge 2019	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	3	66.7	0.0	0.0	33.3
Judge 2067	79	73.4	0.0	19.0	7.6	38	86.8	2.6	10.5	0.0	89	62.9	9.0	16.9	11.2	113	62.8	10.6	12.4	14.2
Judge 324	1	100.0	0.0	0.0	0.0	--	--	--	--	--	8	87.5	12.5	0.0	0.0	6	100.0	0.0	0.0	0.0
Judge 342	95	80.0	2.1	15.8	2.1	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 515	5	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 516	101	83.2	0.0	6.9	9.9	32	93.8	0.0	6.3	0.0	79	78.5	0.0	13.9	7.6	98	73.5	1.0	12.2	13.3
Judge 540	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were four cases missing information on the sentencing judge from the Eastern District of Louisiana.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Louisiana

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 542	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 543	47	76.6	2.1	12.8	8.5	45	82.2	2.2	13.3	2.2	104	79.8	5.8	11.5	2.9	156	71.8	10.9	12.2	5.1
Judge 563	103	80.6	1.0	9.7	8.7	43	79.1	2.3	14.0	4.7	125	75.2	1.6	18.4	4.8	140	73.6	2.1	13.6	10.7
Judge 572	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 573	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	5	80.0	0.0	20.0	0.0	--	--	--	--	--
Judge 574	94	92.6	0.0	5.3	2.1	29	96.6	3.4	0.0	0.0	90	81.1	2.2	10.0	6.7	133	82.0	3.8	9.0	5.3
Judge 87	--	--	--	--	--	--	--	--	--	--	1	0.0	100.0	0.0	0.0	--	--	--	--	--
Judge 88	84	73.8	0.0	22.6	3.6	35	85.7	0.0	11.4	2.9	99	68.7	5.1	11.1	15.2	163	52.1	3.7	18.4	25.8
Judge 963	--	--	--	--	--	--	--	--	--	--	2	0.0	0.0	100.0	0.0	--	--	--	--	--

There were four cases missing information on the sentencing judge from the Eastern District of Louisiana.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Middle District of Louisiana

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	331	71.9	3.0	18.7	6.3	191	69.1	4.2	25.7	1.0	522	72.0	4.8	18.0	5.2	673	60.9	5.5	21.0	12.6
Judge 1244	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1261	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	75.0	0.0	0.0	25.0
Judge 134	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1387	--	--	--	--	--	4	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1446	1	100.0	0.0	0.0	0.0	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1450	93	64.5	2.2	26.9	6.5	27	81.5	0.0	18.5	0.0	76	72.4	1.3	21.1	5.3	54	61.1	0.0	27.8	11.1
Judge 1499	54	70.4	5.6	18.5	5.6	59	66.1	8.5	25.4	0.0	124	74.2	8.1	16.9	0.8	130	67.7	7.7	20.8	3.8
Judge 1573	1	100.0	0.0	0.0	0.0	2	50.0	0.0	0.0	50.0	1	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0
Judge 188	77	76.6	3.9	11.7	7.8	54	68.5	0.0	31.5	0.0	164	67.7	3.7	18.3	10.4	230	52.2	3.9	20.0	23.9
Judge 1900	98	77.6	1.0	16.3	5.1	45	64.4	6.7	26.7	2.2	146	72.6	5.5	18.5	3.4	213	63.4	8.5	22.5	5.6
Judge 342	2	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were zero cases missing information on the sentencing judge from the Middle District of Louisiana.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Middle District of Louisiana

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 430	2	50.0	50.0	0.0	0.0	--	--	--	--	--	6	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 487	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 675	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 885	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	39	71.8	0.0	12.8	15.4

There were zero cases missing information on the sentencing judge from the Middle District of Louisiana.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Louisiana

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	788	78.6	1.0	16.2	4.2	420	85.0	1.7	11.2	2.1	1,335	76.8	4.7	10.2	8.3	1,236	73.9	6.1	7.9	12.0
Judge 1005	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1009	2	100.0	0.0	0.0	0.0	7	85.7	14.3	0.0	0.0	22	90.9	0.0	0.0	9.1	3	100.0	0.0	0.0	0.0
Judge 1093	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 1118	59	83.1	0.0	6.8	10.2	16	87.5	0.0	0.0	12.5	20	90.0	0.0	0.0	10.0	--	--	--	--	--
Judge 1261	61	83.6	0.0	13.1	3.3	30	86.7	3.3	6.7	3.3	93	79.6	2.2	8.6	9.7	40	72.5	2.5	7.5	17.5
Judge 1274	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	0.0	50.0
Judge 1297	--	--	--	--	--	26	96.2	3.8	0.0	0.0	290	72.8	6.6	6.9	13.8	210	64.8	10.5	6.7	18.1
Judge 134	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1460	9	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1461	42	100.0	0.0	0.0	0.0	19	94.7	0.0	0.0	5.3	--	--	--	--	--	--	--	--	--	--
Judge 1499	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There was one case missing information on the sentencing judge from the Western District of Louisiana.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Louisiana

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1788	96	80.2	2.1	16.7	1.0	60	81.7	1.7	15.0	1.7	89	76.4	2.2	14.6	6.7	86	72.1	5.8	12.8	9.3
Judge 1888	62	77.4	0.0	16.1	6.5	7	71.4	0.0	28.6	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1956	128	71.9	3.9	22.7	1.6	57	75.4	3.5	15.8	5.3	78	66.7	12.8	9.0	11.5	93	66.7	10.8	11.8	10.8
Judge 2028	25	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 487	86	64.0	0.0	29.1	7.0	39	76.9	0.0	20.5	2.6	74	64.9	6.8	14.9	13.5	91	60.4	11.0	7.7	20.9
Judge 501	--	--	--	--	--	14	100.0	0.0	0.0	0.0	70	87.1	2.9	5.7	4.3	122	82.8	4.1	7.4	5.7
Judge 602	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	100.0	0.0	0.0	0.0
Judge 745	--	--	--	--	--	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 746	84	78.6	1.2	11.9	8.3	48	83.3	2.1	14.6	0.0	94	77.7	4.3	6.4	11.7	154	67.5	5.2	3.9	23.4
Judge 758	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	6	83.3	0.0	16.7	0.0
Judge 775	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0

(Continued)

There was one case missing information on the sentencing judge from the Western District of Louisiana.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Louisiana

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 797	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 799	--	--	--	--	--	39	82.1	0.0	17.9	0.0	192	67.2	8.3	17.2	7.3	174	72.4	6.9	16.1	4.6
Judge 802	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	7	85.7	0.0	0.0	14.3
Judge 840	--	--	--	--	--	--	--	--	--	--	117	100.0	0.0	0.0	0.0	97	93.8	2.1	0.0	4.1
Judge 883	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 890	132	76.5	0.0	19.7	3.8	53	94.3	0.0	5.7	0.0	190	78.4	1.6	17.4	2.6	133	87.2	0.8	6.0	6.0
Judge 961	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	8	100.0	0.0	0.0	0.0

There was one case missing information on the sentencing judge from the Western District of Louisiana.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Mississippi

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	412	62.4	0.7	30.3	6.6	183	57.9	0.0	39.3	2.7	540	57.0	3.3	35.4	4.3	627	60.3	4.5	26.8	8.5
Judge 1083	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1295	27	59.3	7.4	29.6	3.7	60	61.7	0.0	36.7	1.7	186	51.1	5.4	40.3	3.2	186	61.3	3.2	24.7	10.8
Judge 140	85	62.4	1.2	31.8	4.7	16	62.5	0.0	25.0	12.5	27	70.4	7.4	22.2	0.0	40	47.5	5.0	32.5	15.0
Judge 1469	123	64.2	0.0	28.5	7.3	54	46.3	0.0	50.0	3.7	181	54.7	1.7	40.9	2.8	184	60.3	4.3	27.7	7.6
Judge 162	1	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1634	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1688	14	57.1	0.0	35.7	7.1	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 24	4	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 439	154	60.4	0.0	32.5	7.1	47	59.6	0.0	40.4	0.0	145	64.8	2.1	24.8	8.3	55	56.4	1.8	29.1	12.7
Judge 446	3	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 666	1	0.0	0.0	0.0	100.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--

(Continued)

There were zero cases missing information on the sentencing judge from the Northern District of Mississippi.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Mississippi

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 74	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	160	63.8	6.9	26.3	3.1
Judge 908	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 933	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0

There were zero cases missing information on the sentencing judge from the Northern District of Mississippi.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Mississippi

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	978	79.3	0.4	15.6	4.6	473	81.2	0.4	17.1	1.3	1,117	80.8	2.5	9.8	6.8	1,265	79.0	2.1	8.1	10.8
Judge 1078	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1083	185	87.0	0.0	10.8	2.2	106	82.1	0.0	15.1	2.8	201	83.6	1.5	8.0	7.0	180	75.0	0.6	10.0	14.4
Judge 119	2	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1377	20	95.0	0.0	5.0	0.0	3	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 140	2	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1434	--	--	--	--	--	--	--	--	--	--	9	88.9	0.0	11.1	0.0	152	81.6	3.3	5.9	9.2
Judge 1451	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1482	123	61.8	0.8	24.4	13.0	41	58.5	2.4	39.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1555	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	6	83.3	0.0	0.0	16.7
Judge 1600	--	--	--	--	--	1	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	2	50.0	0.0	0.0	50.0
Judge 1688	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There was one case missing information on the sentencing judge from the Southern District of Mississippi.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Mississippi

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1795	--	--	--	--	--	--	--	--	--	--	144	79.9	2.8	9.0	8.3	157	58.6	1.9	17.2	22.3
Judge 1827	14	64.3	0.0	7.1	28.6	6	100.0	0.0	0.0	0.0	17	70.6	0.0	0.0	29.4	20	80.0	0.0	5.0	15.0
Judge 190	145	75.2	0.0	20.7	4.1	78	84.6	0.0	14.1	1.3	91	81.3	2.2	11.0	5.5	124	77.4	1.6	10.5	10.5
Judge 1949	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 2036	123	90.2	0.8	4.9	4.1	57	87.7	0.0	12.3	0.0	155	74.2	11.0	11.0	3.9	116	87.1	4.3	6.9	1.7
Judge 40	--	--	--	--	--	--	--	--	--	--	4	75.0	0.0	0.0	25.0	16	87.5	0.0	0.0	12.5
Judge 666	232	74.6	0.9	22.8	1.7	126	75.4	0.0	23.0	1.6	99	82.8	1.0	8.1	8.1	117	84.6	1.7	2.6	11.1
Judge 732	1	100.0	0.0	0.0	0.0	4	75.0	25.0	0.0	0.0	195	83.1	0.5	12.3	4.1	173	88.4	2.9	3.5	5.2
Judge 85	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	6	100.0	0.0	0.0	0.0
Judge 89	130	88.5	0.0	6.9	4.6	51	96.1	0.0	3.9	0.0	158	77.2	0.0	12.0	10.8	66	74.2	1.5	13.6	10.6
Judge 933	--	--	--	--	--	--	--	--	--	--	33	93.9	0.0	6.1	0.0	129	82.9	1.6	7.0	8.5

There was one case missing information on the sentencing judge from the Southern District of Mississippi.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Texas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,439	80.6	0.8	10.4	8.2	916	87.0	0.1	10.2	2.7	2,560	79.7	1.3	12.2	6.8	3,514	73.8	1.4	16.5	8.2
Judge 1126	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	8	75.0	0.0	12.5	12.5
Judge 1210	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1240	3	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1452	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1480	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1531	7	100.0	0.0	0.0	0.0	10	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1646	292	78.4	0.7	13.0	7.9	129	81.4	0.0	14.7	3.9	493	81.1	0.8	12.6	5.5	612	73.5	2.0	16.5	8.0
Judge 1655	--	--	--	--	--	1	100.0	0.0	0.0	0.0	499	80.2	1.2	13.6	5.0	496	66.7	1.4	23.8	8.1
Judge 1800	55	92.7	0.0	3.6	3.6	51	94.1	0.0	3.9	2.0	39	79.5	2.6	10.3	7.7	--	--	--	--	--
Judge 1965	75	73.3	1.3	14.7	10.7	51	82.4	0.0	13.7	3.9	74	70.3	0.0	17.6	12.2	89	62.9	2.2	16.9	18.0
Judge 220	2	100.0	0.0	0.0	0.0	--	--	--	--	--	2	0.0	50.0	0.0	50.0	--	--	--	--	--

(Continued)

There were eight cases missing information on the sentencing judge from the Eastern District of Texas.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Texas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 224	202	81.7	1.0	13.9	3.5	140	84.3	0.0	12.9	2.9	174	63.8	3.4	16.1	16.7	--	--	--	--	--
Judge 257	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0
Judge 264	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 336	--	--	--	--	--	112	95.5	0.0	3.6	0.9	293	84.6	3.1	8.5	3.8	413	73.6	2.2	13.1	11.1
Judge 347	252	77.0	2.4	9.9	10.7	35	85.7	2.9	8.6	2.9	7	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 397	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 413	1	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	6	83.3	0.0	16.7	0.0
Judge 418	--	--	--	--	--	13	92.3	0.0	7.7	0.0	265	90.6	0.8	7.5	1.1	811	84.5	1.1	12.8	1.6
Judge 423	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 449	32	81.3	0.0	12.5	6.3	162	84.0	0.0	14.2	1.9	252	72.2	0.8	19.4	7.5	374	67.9	1.1	18.7	12.3
Judge 556	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0

(Continued)

There were eight cases missing information on the sentencing judge from the Eastern District of Texas.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Texas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 565	3	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 601	71	85.9	0.0	8.5	5.6	53	71.7	0.0	17.0	11.3	132	68.2	0.0	15.2	16.7	275	68.0	0.7	23.3	8.0
Judge 668	--	--	--	--	--	1	100.0	0.0	0.0	0.0	9	100.0	0.0	0.0	0.0	14	71.4	0.0	14.3	14.3
Judge 734	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	5	80.0	0.0	20.0	0.0
Judge 759	192	81.3	0.0	10.4	8.3	58	91.4	0.0	6.9	1.7	--	--	--	--	--	--	--	--	--	--
Judge 780	239	82.4	0.4	5.9	11.3	82	96.3	0.0	2.4	1.2	312	83.7	0.3	7.7	8.3	397	72.8	1.3	12.6	13.4
Judge 808	8	87.5	0.0	0.0	12.5	12	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	6	100.0	0.0	0.0	0.0
Judge 936	2	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 944	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

There were eight cases missing information on the sentencing judge from the Eastern District of Texas.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Texas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	2,799	75.0	1.6	17.9	5.6	1,259	84.4	1.8	11.0	2.8	3,006	74.3	5.9	13.5	6.3	3,655	64.3	7.6	15.8	12.4
Judge 1006	2	100.0	0.0	0.0	0.0	40	90.0	0.0	10.0	0.0	174	57.5	1.1	27.6	13.8	203	26.1	0.0	22.7	51.2
Judge 1025	60	100.0	0.0	0.0	0.0	17	76.5	0.0	17.6	5.9	14	92.9	0.0	7.1	0.0	23	65.2	13.0	8.7	13.0
Judge 1053	7	100.0	0.0	0.0	0.0	3	66.7	33.3	0.0	0.0	5	100.0	0.0	0.0	0.0	12	75.0	0.0	16.7	8.3
Judge 1114	152	79.6	0.0	17.8	2.6	37	89.2	0.0	10.8	0.0	165	48.5	1.8	32.7	17.0	198	50.0	4.5	20.7	24.7
Judge 1142	129	66.7	0.8	27.1	5.4	61	75.4	0.0	23.0	1.6	141	63.1	0.7	23.4	12.8	195	51.8	3.6	20.0	24.6
Judge 1144	8	87.5	12.5	0.0	0.0	--	--	--	--	--	4	50.0	0.0	25.0	25.0	--	--	--	--	--
Judge 1151	36	69.4	2.8	8.3	19.4	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1157	32	65.6	0.0	34.4	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1215	308	78.9	6.8	9.7	4.5	136	80.1	8.8	8.8	2.2	303	77.9	8.6	8.9	4.6	416	62.5	17.3	12.0	8.2
Judge 1235	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1259	325	68.9	1.2	21.5	8.3	142	77.5	3.5	12.7	6.3	309	74.1	4.2	14.6	7.1	443	55.8	7.4	20.5	16.3

(Continued)

There were five cases missing information on the sentencing judge from the Northern District of Texas.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Texas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1404	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	188	67.6	4.8	15.4	12.2
Judge 1537	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 155	2	0.0	0.0	50.0	50.0	49	98.0	0.0	0.0	2.0	3	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 1586	199	92.5	2.0	4.5	1.0	130	92.3	1.5	4.6	1.5	249	69.5	26.1	2.8	1.6	256	69.9	24.2	2.7	3.1
Judge 1633	211	50.2	0.0	35.5	14.2	65	66.2	0.0	26.2	7.7	72	61.1	1.4	26.4	11.1	--	--	--	--	--
Judge 1678	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 168	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1762	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 177	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1771	171	55.0	2.3	35.1	7.6	65	76.9	3.1	13.8	6.2	124	62.9	5.6	20.2	11.3	257	48.6	3.1	33.1	15.2
Judge 1785	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0

(Continued)

There were five cases missing information on the sentencing judge from the Northern District of Texas.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Texas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1807	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	0.0	50.0
Judge 183	--	--	--	--	--	--	--	--	--	--	71	74.6	1.4	15.5	8.5	154	64.3	5.8	16.9	13.0
Judge 1875	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1926	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 237	202	68.8	1.0	23.8	6.4	50	94.0	0.0	6.0	0.0	171	74.9	0.6	21.6	2.9	8	50.0	0.0	50.0	0.0
Judge 306	1	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 423	538	93.3	0.4	3.5	2.8	289	96.5	0.0	2.8	0.7	790	90.9	6.3	1.0	1.8	823	88.3	6.2	3.8	1.7
Judge 424	--	--	--	--	--	--	--	--	--	--	1	0.0	100.0	0.0	0.0	--	--	--	--	--
Judge 425	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	50.0	0.0	0.0	50.0
Judge 589	142	71.1	0.0	23.2	5.6	63	76.2	1.6	17.5	4.8	131	60.3	2.3	26.7	10.7	37	67.6	0.0	24.3	8.1
Judge 591	4	25.0	0.0	75.0	0.0	2	50.0	0.0	50.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--

(Continued)

There were five cases missing information on the sentencing judge from the Northern District of Texas.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Texas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 594	134	66.4	0.0	27.6	6.0	40	72.5	0.0	27.5	0.0	123	81.3	0.0	15.4	3.3	212	71.2	2.4	23.1	3.3
Judge 630	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 684	9	88.9	0.0	11.1	0.0	58	62.1	0.0	31.0	6.9	146	65.1	1.4	24.7	8.9	208	55.3	3.4	30.8	10.6
Judge 73	9	100.0	0.0	0.0	0.0	7	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0	6	66.7	0.0	0.0	33.3
Judge 779	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 857	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 943	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	0.0	33.3	33.3	33.3
Judge 959	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 983	112	56.3	3.6	33.9	6.3	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--

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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Texas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	10,830	69.6	0.7	14.4	15.3	5,956	72.6	0.5	20.2	6.7	17,896	63.7	1.0	27.4	7.9	29,140	63.7	1.4	22.2	12.7
Judge 1005	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1016	--	--	--	--	--	6	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1048	270	73.7	3.3	13.3	9.6	45	68.9	2.2	22.2	6.7	155	61.9	3.9	26.5	7.7	380	66.1	3.4	20.3	10.3
Judge 1093	47	85.1	0.0	8.5	6.4	141	84.4	0.0	14.2	1.4	205	80.0	0.0	5.9	14.1	--	--	--	--	--
Judge 1214	7	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 125	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 1254	--	--	--	--	--	--	--	--	--	--	36	97.2	0.0	2.8	0.0	--	--	--	--	--
Judge 1261	3	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1285	--	--	--	--	--	--	--	--	--	--	43	81.4	2.3	9.3	7.0	424	63.2	1.4	9.7	25.7
Judge 1286	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 1294	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	4	0.0	0.0	0.0	100.0	1	100.0	0.0	0.0	0.0

(Continued)

There were 40 cases missing information on the sentencing judge from the Southern District of Texas.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Texas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 13	--	--	--	--	--	--	--	--	--	--	28	92.9	0.0	7.1	0.0	--	--	--	--	--
Judge 1313	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	56	71.4	7.1	0.0	21.4
Judge 1325	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 134	2	50.0	0.0	0.0	50.0	--	--	--	--	--	68	88.2	0.0	5.9	5.9	--	--	--	--	--
Judge 1380	1	0.0	100.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 139	1	0.0	100.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1395	15	93.3	0.0	6.7	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1422	1	100.0	0.0	0.0	0.0	--	--	--	--	--	16	93.8	0.0	0.0	6.3	17	100.0	0.0	0.0	0.0
Judge 1433	--	--	--	--	--	--	--	--	--	--	40	97.5	0.0	2.5	0.0	24	95.8	0.0	0.0	4.2
Judge 145	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 146	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Texas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1508	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1528	1	100.0	0.0	0.0	0.0	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--
Judge 1531	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1534	321	59.8	0.3	36.1	3.7	125	56.0	1.6	41.6	0.8	777	78.8	0.6	12.9	7.7	1,571	78.1	0.4	6.4	15.1
Judge 1538	9	100.0	0.0	0.0	0.0	11	100.0	0.0	0.0	0.0	21	95.2	0.0	0.0	4.8	22	95.5	0.0	4.5	0.0
Judge 1548	--	--	--	--	--	--	--	--	--	--	100	59.0	1.0	2.0	38.0	--	--	--	--	--
Judge 1550	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 1556	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	136	84.6	2.9	2.9	9.6
Judge 1610	288	74.0	0.0	18.1	8.0	88	79.5	3.4	15.9	1.1	190	66.3	1.1	19.5	13.2	357	59.1	1.1	10.6	29.1
Judge 1627	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1628	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	287	80.1	0.0	2.8	17.1

(Continued)

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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Texas

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Judge 1633	2	50.0	0.0	0.0	50.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 171	12	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1760	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1774	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1785	12	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0
Judge 1786	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1788	--	--	--	--	--	--	--	--	--	--	66	53.0	0.0	45.5	1.5	505	75.4	1.0	13.7	9.9
Judge 1837	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1838	967	64.0	0.4	18.2	17.4	579	58.5	0.0	38.2	3.3	1,646	51.1	0.2	46.4	2.3	2,629	54.9	0.3	39.5	5.2
Judge 188	--	--	--	--	--	11	81.8	0.0	9.1	9.1	--	--	--	--	--	--	--	--	--	--
Judge 19	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--

(Continued)

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Judge 1908	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1926	1,104	72.0	0.1	9.8	18.1	269	77.7	0.0	19.0	3.3	--	--	--	--	--	--	--	--	--	--
Judge 1935	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1956	24	75.0	0.0	8.3	16.7	16	81.3	6.3	12.5	0.0	263	61.2	1.9	28.5	8.4	100	78.0	3.0	8.0	11.0
Judge 1958	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1992	282	75.2	3.2	14.9	6.7	62	77.4	4.8	17.7	0.0	183	54.1	8.2	28.4	9.3	201	65.7	11.9	12.4	10.0
Judge 2067	24	75.0	0.0	20.8	4.2	19	73.7	0.0	15.8	10.5	139	76.3	1.4	5.8	16.5	--	--	--	--	--
Judge 2077	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	112	63.4	0.9	25.0	10.7
Judge 269	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 306	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 31	--	--	--	--	--	--	--	--	--	--	2,582	73.2	0.5	20.9	5.4	3,589	77.5	1.8	13.9	6.7

(Continued)

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Judge 347	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 396	5	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 412	293	51.9	0.0	6.5	41.6	707	61.2	0.7	14.4	23.6	1,799	46.5	0.6	44.9	8.0	3,684	48.6	0.6	37.6	13.2
Judge 413	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 418	4	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 423	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 444	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 455	--	--	--	--	--	24	66.7	0.0	29.2	4.2	--	--	--	--	--	--	--	--	--	--
Judge 50	14	92.9	0.0	0.0	7.1	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 515	30	90.0	0.0	6.7	3.3	--	--	--	--	--	86	70.9	0.0	3.5	25.6	--	--	--	--	--
Judge 516	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--

(Continued)

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Judge 526	3	66.7	0.0	0.0	33.3	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 535	18	88.9	0.0	5.6	5.6	3	100.0	0.0	0.0	0.0	45	100.0	0.0	0.0	0.0	20	100.0	0.0	0.0	0.0
Judge 539	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 540	1,722	73.9	0.2	8.9	17.0	1,025	83.3	0.0	14.3	2.3	246	68.3	2.4	13.0	16.3	391	51.4	1.3	20.7	26.6
Judge 620	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 625	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 665	--	--	--	--	--	--	--	--	--	--	174	75.3	0.0	17.8	6.9	--	--	--	--	--
Judge 676	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	25.0	0.0	50.0	25.0
Judge 677	290	71.7	1.4	16.9	10.0	86	73.3	1.2	17.4	8.1	139	62.6	4.3	15.8	17.3	308	63.6	1.9	15.9	18.5
Judge 68	251	67.3	0.0	14.3	18.3	73	65.8	1.4	12.3	20.5	361	57.9	0.3	31.3	10.5	480	50.8	0.4	14.8	34.0
Judge 739	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0

(Continued)

There were 40 cases missing information on the sentencing judge from the Southern District of Texas.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Texas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 741	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 756	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 757	219	62.6	0.0	32.4	5.0	517	58.6	0.2	38.5	2.7	1,612	54.3	0.2	43.8	1.7	2,877	60.4	0.2	35.0	4.3
Judge 765	311	77.8	2.9	14.5	4.8	71	80.3	0.0	18.3	1.4	191	65.4	2.6	30.4	1.6	362	77.9	2.5	14.4	5.2
Judge 779	547	75.7	0.9	14.3	9.1	247	83.0	2.4	12.1	2.4	763	84.0	2.4	8.8	4.8	1,601	80.0	2.1	5.6	12.3
Judge 799	--	--	--	--	--	15	93.3	0.0	6.7	0.0	41	92.7	2.4	2.4	2.4	--	--	--	--	--
Judge 801	1	0.0	100.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 803	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 810	1,314	59.1	0.3	14.2	26.4	629	75.8	0.0	12.4	11.8	1,679	51.1	0.6	40.9	7.4	3,139	49.3	0.9	33.3	16.5
Judge 811	270	75.9	3.3	16.7	4.1	54	83.3	0.0	14.8	1.9	204	67.6	7.8	21.1	3.4	281	70.8	8.2	11.7	9.3
Judge 835	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	806	58.9	0.4	12.7	28.0

(Continued)

There were 40 cases missing information on the sentencing judge from the Southern District of Texas.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Texas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 853	227	70.5	0.4	12.3	16.7	58	72.4	0.0	19.0	8.6	155	64.5	0.0	17.4	18.1	320	56.6	1.6	17.5	24.4
Judge 857	--	--	--	--	--	8	100.0	0.0	0.0	0.0	62	88.7	0.0	3.2	8.1	29	96.6	0.0	0.0	3.4
Judge 859	18	55.6	0.0	22.2	22.2	4	25.0	0.0	75.0	0.0	15	26.7	13.3	33.3	26.7	--	--	--	--	--
Judge 860	230	73.0	1.3	14.8	10.9	83	55.4	1.2	33.7	9.6	136	57.4	3.7	19.9	19.1	307	28.7	4.2	17.6	49.5
Judge 88	--	--	--	--	--	--	--	--	--	--	53	88.7	0.0	5.7	5.7	--	--	--	--	--
Judge 883	502	69.7	1.4	22.3	6.6	278	77.7	1.8	19.4	1.1	1,185	78.3	1.5	12.7	7.4	1,763	83.1	2.1	9.3	5.5
Judge 905	7	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	1	0.0	0.0	0.0	100.0
Judge 959	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 960	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 963	1,074	73.1	0.1	11.1	15.7	667	79.2	0.0	15.9	4.9	2,262	63.9	1.2	19.6	15.3	2,337	64.3	3.1	15.1	17.4
Judge 988	71	52.1	2.8	40.8	4.2	24	83.3	0.0	16.7	0.0	112	83.0	4.5	5.4	7.1	--	--	--	--	--

There were 40 cases missing information on the sentencing judge from the Southern District of Texas.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Texas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	12,079	66.8	0.6	13.0	19.5	5,717	82.7	1.0	13.6	2.7	17,077	79.4	1.7	11.8	7.1	29,770	78.9	2.1	8.9	10.1
Judge 1073	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	6	100.0	0.0	0.0	0.0
Judge 1078	1	100.0	0.0	0.0	0.0	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1093	12	83.3	0.0	8.3	8.3	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1133	74	60.8	4.1	32.4	2.7	698	75.4	2.9	19.3	2.4	2,141	68.5	5.1	17.1	9.3	4,772	79.1	6.6	7.1	7.2
Judge 1134	1	100.0	0.0	0.0	0.0	5	60.0	0.0	40.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1165	43	100.0	0.0	0.0	0.0	61	98.4	0.0	1.6	0.0	182	87.9	1.6	0.0	10.4	190	92.6	0.5	0.5	6.3
Judge 1181	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1185	--	--	--	--	--	--	--	--	--	--	9	100.0	0.0	0.0	0.0	3	66.7	0.0	0.0	33.3
Judge 1187	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1188	813	91.1	0.5	3.9	4.4	1,001	93.3	0.6	3.4	2.7	2,064	93.1	0.3	1.9	4.7	3,200	84.1	1.2	3.5	11.3
Judge 1189	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--

(Continued)

There were 73 cases missing information on the sentencing judge from the Western District of Texas.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Texas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1191	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 1196	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1197	26	100.0	0.0	0.0	0.0	24	95.8	0.0	4.2	0.0	52	96.2	0.0	0.0	3.8	29	93.1	3.4	3.4	0.0
Judge 1214	3	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1215	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1230	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 1231	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1233	19	100.0	0.0	0.0	0.0	14	100.0	0.0	0.0	0.0	139	100.0	0.0	0.0	0.0	301	100.0	0.0	0.0	0.0
Judge 1254	3	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1259	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 126	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were 73 cases missing information on the sentencing judge from the Western District of Texas.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Texas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1261	34	82.4	0.0	5.9	11.8	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1271	28	100.0	0.0	0.0	0.0	24	95.8	0.0	4.2	0.0	149	100.0	0.0	0.0	0.0	229	99.6	0.0	0.0	0.4
Judge 1277	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1304	--	--	--	--	--	197	95.4	0.0	2.0	2.5	2,111	86.8	2.1	3.6	7.4	3,299	83.8	1.1	3.3	11.8
Judge 134	11	54.5	0.0	18.2	27.3	15	86.7	0.0	13.3	0.0	--	--	--	--	--	--	--	--	--	--
Judge 139	1,035	41.2	1.1	25.9	31.9	176	55.1	4.0	25.0	15.9	426	58.2	2.1	29.8	9.9	1,023	61.1	1.0	19.0	19.0
Judge 1397	14	92.9	0.0	0.0	7.1	15	100.0	0.0	0.0	0.0	51	94.1	0.0	3.9	2.0	34	91.2	2.9	0.0	5.9
Judge 1399	288	71.2	0.7	22.2	5.9	51	82.4	0.0	15.7	2.0	5	40.0	0.0	20.0	40.0	176	87.5	0.6	4.0	8.0
Judge 1464	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 1489	--	--	--	--	--	1	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	4	75.0	0.0	0.0	25.0
Judge 1490	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were 73 cases missing information on the sentencing judge from the Western District of Texas.
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TABLE 2
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Western District of Texas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1491	11	100.0	0.0	0.0	0.0	--	--	--	--	--	5	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 1492	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1496	2	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1508	1,342	25.2	0.4	11.0	63.4	113	58.4	0.0	31.9	9.7	2	100.0	0.0	0.0	0.0	16	87.5	0.0	6.3	6.3
Judge 1518	26	92.3	0.0	3.8	3.8	23	95.7	0.0	4.3	0.0	41	92.7	2.4	4.9	0.0	41	82.9	14.6	0.0	2.4
Judge 1530	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1564	8	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1586	--	--	--	--	--	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1595	--	--	--	--	--	57	84.2	0.0	15.8	0.0	373	64.3	0.3	26.5	8.8	1,002	56.9	0.5	22.9	19.8
Judge 1609	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1646	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were 73 cases missing information on the sentencing judge from the Western District of Texas.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Texas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1745	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1757	24	50.0	0.0	37.5	12.5	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1759	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1762	522	56.7	1.1	39.5	2.7	315	62.5	1.0	34.0	2.5	694	63.7	2.9	14.7	18.7	1,027	72.8	2.3	8.2	16.7
Judge 1774	379	73.4	5.0	15.3	6.3	170	72.9	7.1	17.6	2.4	432	60.2	8.3	17.6	13.9	1,137	74.5	5.7	12.1	7.7
Judge 1775	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1822	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1853	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	169	85.2	4.1	1.8	8.9
Judge 188	8	62.5	0.0	25.0	12.5	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 19	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1926	16	62.5	0.0	25.0	12.5	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were 73 cases missing information on the sentencing judge from the Western District of Texas.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Texas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1956	32	37.5	0.0	34.4	28.1	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1965	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 2004	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	100.0	0.0	0.0
Judge 203	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 2034	2	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 2059	--	--	--	--	--	51	84.3	0.0	13.7	2.0	420	64.5	1.9	19.3	14.3	1,204	75.6	1.0	12.6	10.8
Judge 2067	--	--	--	--	--	16	87.5	0.0	12.5	0.0	--	--	--	--	--	--	--	--	--	--
Judge 2072	4	75.0	0.0	0.0	25.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 208	3,090	88.2	0.2	4.2	7.4	1,033	95.0	0.1	2.9	2.0	2,059	92.6	0.6	3.5	3.3	3,192	90.7	0.4	4.2	4.7
Judge 279	11	81.8	0.0	0.0	18.2	4	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 281	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0

(Continued)

There were 73 cases missing information on the sentencing judge from the Western District of Texas.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Texas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 282	--	--	--	--	--	239	96.2	0.0	2.9	0.8	2,001	89.9	0.2	3.2	6.6	3,253	84.8	0.2	3.5	11.6
Judge 307	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	12	100.0	0.0	0.0	0.0
Judge 366	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 404	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0
Judge 442	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 449	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 455	--	--	--	--	--	3	100.0	0.0	0.0	0.0	10	60.0	0.0	20.0	20.0	61	80.3	0.0	3.3	16.4
Judge 513	36	25.0	0.0	0.0	75.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 515	16	93.8	0.0	6.3	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 516	45	64.4	0.0	2.2	33.3	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 523	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were 73 cases missing information on the sentencing judge from the Western District of Texas.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Texas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 529	5	100.0	0.0	0.0	0.0	8	100.0	0.0	0.0	0.0	7	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 530	--	--	--	--	--	3	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 545	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 563	36	19.4	0.0	0.0	80.6	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 577	63	74.6	0.0	19.0	6.3	7	71.4	0.0	28.6	0.0	2	50.0	0.0	50.0	0.0	--	--	--	--	--
Judge 619	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 630	1,442	76.9	0.3	15.9	6.9	105	65.7	1.0	30.5	2.9	367	71.7	1.1	21.8	5.4	279	59.1	0.0	33.0	7.9
Judge 644	--	--	--	--	--	--	--	--	--	--	4	50.0	0.0	0.0	50.0	--	--	--	--	--
Judge 645	111	72.1	0.0	17.1	10.8	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 647	746	40.3	1.2	28.6	29.9	184	71.2	0.5	20.1	8.2	363	53.2	1.7	24.8	20.4	1,277	57.0	1.0	18.8	23.2
Judge 648	--	--	--	--	--	7	100.0	0.0	0.0	0.0	11	81.8	9.1	0.0	9.1	--	--	--	--	--

(Continued)

There were 73 cases missing information on the sentencing judge from the Western District of Texas.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
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**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Texas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 653	23	100.0	0.0	0.0	0.0	24	100.0	0.0	0.0	0.0	149	99.3	0.0	0.0	0.7	234	98.7	0.0	0.0	1.3
Judge 671	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 683	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	10	100.0	0.0	0.0	0.0
Judge 69	19	94.7	0.0	0.0	5.3	4	100.0	0.0	0.0	0.0	9	77.8	0.0	0.0	22.2	7	14.3	0.0	28.6	57.1
Judge 715	33	93.9	0.0	6.1	0.0	11	90.9	9.1	0.0	0.0	3	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 727	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	100.0	0.0	0.0	0.0
Judge 765	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 779	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 810	1	100.0	0.0	0.0	0.0	1	0.0	0.0	100.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 856	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 857	841	85.1	0.1	6.5	8.2	71	85.9	0.0	14.1	0.0	114	71.9	0.9	21.9	5.3	190	76.8	1.1	11.6	10.5

(Continued)

There were 73 cases missing information on the sentencing judge from the Western District of Texas.
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** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Texas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 860	1	100.0	0.0	0.0	0.0	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 88	54	40.7	0.0	3.7	55.6	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 942	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	66.7	33.3	0.0	0.0
Judge 943	74	73.0	1.4	23.0	2.7	658	78.4	0.6	20.5	0.5	1,824	70.4	1.4	27.2	1.0	3,273	71.2	2.3	20.8	5.7
Judge 944	626	41.7	0.0	9.1	49.2	321	67.0	0.0	29.6	3.4	836	64.4	0.0	25.0	10.6	100	91.0	0.0	1.0	8.0
Judge 963	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 98	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

There were 73 cases missing information on the sentencing judge from the Western District of Texas.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Kentucky

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,226	67.4	0.3	29.9	2.4	591	61.4	0.7	36.9	1.0	1,584	50.1	1.6	39.0	9.3	2,465	46.3	1.9	40.9	10.9
Judge 1005	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 135	13	46.2	0.0	53.8	0.0	--	--	--	--	--	71	53.5	4.2	38.0	4.2	13	46.2	0.0	38.5	15.4
Judge 1455	1	100.0	0.0	0.0	0.0	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1541	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1556	58	81.0	0.0	15.5	3.4	82	67.1	1.2	31.7	0.0	297	57.6	3.7	34.3	4.4	319	60.8	5.0	27.3	6.9
Judge 1620	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1774	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1829	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 1853	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	221	56.6	2.7	36.7	4.1
Judge 187	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1873	--	--	--	--	--	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	7	100.0	0.0	0.0	0.0

(Continued)

There were 12 cases missing information on the sentencing judge from the Eastern District of Kentucky.
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Eastern District of Kentucky

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	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1905	10	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1914	--	--	--	--	--	--	--	--	--	--	29	72.4	0.0	24.1	3.4	312	53.2	3.2	36.9	6.7
Judge 1981	4	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0
Judge 2012	--	--	--	--	--	--	--	--	--	--	8	37.5	0.0	12.5	50.0	4	25.0	0.0	0.0	75.0
Judge 2014	169	56.8	1.2	39.6	2.4	10	80.0	0.0	20.0	0.0	7	57.1	0.0	0.0	42.9	7	57.1	0.0	42.9	0.0
Judge 245	16	81.3	0.0	18.8	0.0	97	67.0	1.0	32.0	0.0	305	54.1	0.7	37.0	8.2	429	44.8	0.9	42.9	11.4
Judge 266	70	72.9	0.0	25.7	1.4	94	63.8	0.0	36.2	0.0	199	51.3	2.0	28.1	18.6	288	29.5	2.4	44.8	23.3
Judge 342	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 349	279	66.7	0.4	30.1	2.9	108	56.5	0.9	38.9	3.7	163	43.6	0.6	41.7	14.1	257	42.0	0.4	45.9	11.7
Judge 604	306	62.7	0.0	35.0	2.3	117	47.9	0.9	49.6	1.7	231	34.2	0.9	55.0	10.0	281	40.9	0.4	48.8	10.0
Judge 67	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	9	88.9	0.0	11.1	0.0

(Continued)

There were 12 cases missing information on the sentencing judge from the Eastern District of Kentucky.
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Judge 795	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 835	289	72.3	0.3	24.9	2.4	79	68.4	0.0	31.6	0.0	266	49.6	0.8	43.6	6.0	313	40.9	0.6	47.0	11.5
Judge 877	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 902	4	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 944	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0

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Western District of Kentucky

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	923	80.6	0.5	13.4	5.4	433	82.2	0.5	12.7	4.6	1,313	72.0	0.2	18.7	9.1	1,692	59.6	0.9	26.3	13.2
Judge 1000	3	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1005	266	99.6	0.0	0.0	0.4	96	100.0	0.0	0.0	0.0	441	98.9	0.0	0.7	0.5	422	98.3	0.0	1.2	0.5
Judge 1238	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1245	144	72.2	1.4	19.4	6.9	61	73.8	1.6	14.8	9.8	232	50.4	0.4	32.8	16.4	309	37.9	0.6	35.3	26.2
Judge 1335	13	100.0	0.0	0.0	0.0	14	100.0	0.0	0.0	0.0	6	83.3	0.0	16.7	0.0	8	75.0	0.0	25.0	0.0
Judge 1539	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1618	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1619	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	5	60.0	0.0	20.0	20.0	--	--	--	--	--
Judge 1620	179	71.5	1.1	17.9	9.5	101	66.3	0.0	28.7	5.0	215	64.7	0.5	22.8	12.1	441	48.1	1.8	35.6	14.5
Judge 1731	69	66.7	0.0	27.5	5.8	25	88.0	0.0	8.0	4.0	125	68.0	0.8	24.8	6.4	204	52.0	1.0	33.3	13.7
Judge 2000	--	--	--	--	--	--	--	--	--	--	4	100.0	0.0	0.0	0.0	8	100.0	0.0	0.0	0.0

(Continued)

There were zero cases missing information on the sentencing judge from the Western District of Kentucky.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Kentucky

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 306	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 349	35	85.7	0.0	8.6	5.7	7	57.1	0.0	42.9	0.0	124	47.6	0.0	35.5	16.9	121	37.2	1.7	44.6	16.5
Judge 356	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	50.0	0.0	--	--	--	--	--
Judge 640	10	90.0	0.0	0.0	10.0	22	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 685	6	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	6	100.0	0.0	0.0	0.0	23	87.0	0.0	8.7	4.3
Judge 795	92	71.7	1.1	23.9	3.3	40	85.0	0.0	5.0	10.0	102	56.9	0.0	28.4	14.7	156	50.6	1.3	30.8	17.3
Judge 913	104	70.2	0.0	18.3	11.5	60	76.7	1.7	15.0	6.7	47	61.7	0.0	21.3	17.0	--	--	--	--	--
Judge 963	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 997	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--

There were zero cases missing information on the sentencing judge from the Western District of Kentucky.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Michigan

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,840	66.9	0.4	25.8	7.0	849	70.3	0.2	23.2	6.2	2,229	52.9	1.1	28.6	17.4	2,820	49.6	1.2	22.7	26.5
Judge 102	84	72.6	0.0	19.0	8.3	48	72.9	0.0	22.9	4.2	127	49.6	0.8	34.6	15.0	141	39.0	1.4	27.0	32.6
Judge 1028	2	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1070	98	81.6	0.0	16.3	2.0	72	84.7	0.0	12.5	2.8	93	63.4	1.1	17.2	18.3	158	32.9	0.6	25.9	40.5
Judge 1093	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1132	--	--	--	--	--	--	--	--	--	--	49	85.7	0.0	10.2	4.1	265	81.9	0.4	6.0	11.7
Judge 1154	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	3	66.7	0.0	0.0	33.3
Judge 121	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1326	6	83.3	0.0	16.7	0.0	3	100.0	0.0	0.0	0.0	2	0.0	0.0	0.0	100.0	1	100.0	0.0	0.0	0.0
Judge 1351	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	51	66.7	0.0	11.8	21.6
Judge 1363	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 1409	147	68.0	0.0	25.9	6.1	62	69.4	0.0	25.8	4.8	138	56.5	0.0	27.5	15.9	123	38.2	1.6	32.5	27.6

(Continued)

There was one case missing information on the sentencing judge from the Eastern District of Michigan.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Michigan

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 141	5	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0	11	81.8	0.0	0.0	18.2	7	100.0	0.0	0.0	0.0
Judge 1468	4	50.0	0.0	0.0	50.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1530	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1540	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0
Judge 1581	75	72.0	0.0	17.3	10.7	42	76.2	0.0	19.0	4.8	145	49.0	1.4	34.5	15.2	146	39.7	0.7	30.1	29.5
Judge 1604	108	66.7	2.8	28.7	1.9	29	72.4	3.4	17.2	6.9	119	55.5	5.0	31.1	8.4	183	44.8	0.5	31.7	23.0
Judge 1644	2	100.0	0.0	0.0	0.0	1	0.0	0.0	0.0	100.0	2	100.0	0.0	0.0	0.0	6	66.7	0.0	0.0	33.3
Judge 169	118	60.2	0.8	28.8	10.2	42	69.0	0.0	16.7	14.3	133	54.9	0.0	29.3	15.8	143	54.5	1.4	24.5	19.6
Judge 1797	94	70.2	0.0	23.4	6.4	55	60.0	0.0	27.3	12.7	108	41.7	1.9	37.0	19.4	157	40.1	0.6	33.1	26.1
Judge 1842	109	57.8	0.9	22.0	19.3	57	57.9	0.0	31.6	10.5	113	33.6	0.9	31.0	34.5	118	33.1	0.8	19.5	46.6
Judge 1845	12	50.0	0.0	41.7	8.3	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--

(Continued)

There was one case missing information on the sentencing judge from the Eastern District of Michigan.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Michigan

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1998	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	6	66.7	0.0	0.0	33.3
Judge 2050	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 2070	57	71.9	0.0	22.8	5.3	25	68.0	4.0	20.0	8.0	110	56.4	3.6	21.8	18.2	74	70.3	2.7	12.2	14.9
Judge 278	2	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 284	7	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 341	93	67.7	1.1	28.0	3.2	43	72.1	0.0	23.3	4.7	119	58.0	4.2	29.4	8.4	133	53.4	4.5	29.3	12.8
Judge 356	106	67.0	0.0	24.5	8.5	86	64.0	0.0	29.1	7.0	177	36.2	0.6	37.3	26.0	234	31.2	1.3	23.5	44.0
Judge 357	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 388	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 389	45	62.2	0.0	26.7	11.1	26	61.5	0.0	38.5	0.0	53	62.3	0.0	32.1	5.7	102	52.0	1.0	30.4	16.7
Judge 408	--	--	--	--	--	--	--	--	--	--	30	66.7	0.0	16.7	16.7	229	59.0	1.3	23.1	16.6

(Continued)

There was one case missing information on the sentencing judge from the Eastern District of Michigan.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Michigan

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 512	75	68.0	0.0	26.7	5.3	26	69.2	0.0	23.1	7.7	123	64.2	0.0	24.4	11.4	105	43.8	0.0	22.9	33.3
Judge 527	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 528	100	66.0	0.0	27.0	7.0	40	57.5	0.0	35.0	7.5	119	44.5	0.8	31.1	23.5	168	39.9	1.8	21.4	36.9
Judge 545	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 569	42	64.3	0.0	28.6	7.1	27	55.6	0.0	40.7	3.7	56	51.8	0.0	41.1	7.1	3	66.7	0.0	33.3	0.0
Judge 620	127	62.2	0.8	30.7	6.3	41	80.5	0.0	14.6	4.9	107	48.6	0.9	27.1	23.4	53	60.4	5.7	3.8	30.2
Judge 633	210	72.4	0.0	25.7	1.9	78	82.1	0.0	15.4	2.6	189	68.3	0.0	20.1	11.6	22	63.6	0.0	22.7	13.6
Judge 692	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 694	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	55	87.3	0.0	5.5	7.3
Judge 812	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0
Judge 834	105	48.6	0.0	41.0	10.5	38	71.1	0.0	23.7	5.3	101	38.6	0.0	28.7	32.7	127	45.7	0.0	22.0	32.3

There was one case missing information on the sentencing judge from the Eastern District of Michigan.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Michigan

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	959	61.4	1.9	27.9	8.8	453	74.8	0.9	19.6	4.6	1,268	61.4	3.0	19.2	16.3	1,849	61.2	4.9	14.1	19.8
Judge 1070	--	--	--	--	--	--	--	--	--	--	5	40.0	0.0	0.0	60.0	--	--	--	--	--
Judge 1156	--	--	--	--	--	--	--	--	--	--	22	81.8	0.0	13.6	4.5	335	67.8	3.6	13.4	15.2
Judge 1157	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 121	251	57.4	4.0	29.5	9.2	109	78.0	0.0	16.5	5.5	481	57.2	4.4	18.1	20.4	460	63.5	5.9	12.6	18.0
Judge 1238	240	69.2	0.8	23.3	6.7	112	76.8	0.0	17.0	6.3	84	73.8	0.0	23.8	2.4	--	--	--	--	--
Judge 1280	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1363	--	--	--	--	--	--	--	--	--	--	10	70.0	0.0	0.0	30.0	385	55.6	7.8	11.7	24.9
Judge 1409	--	--	--	--	--	--	--	--	--	--	7	42.9	0.0	14.3	42.9	--	--	--	--	--
Judge 1530	252	55.6	1.2	32.5	10.7	124	78.2	1.6	18.5	1.6	315	57.5	2.9	24.1	15.6	99	56.6	4.0	22.2	17.2
Judge 1670	13	84.6	0.0	7.7	7.7	3	100.0	0.0	0.0	0.0	13	69.2	0.0	15.4	15.4	16	81.3	0.0	12.5	6.3
Judge 169	--	--	--	--	--	--	--	--	--	--	8	50.0	0.0	50.0	0.0	--	--	--	--	--

(Continued)

There was one case missing information on the sentencing judge from the Western District of Michigan.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Michigan

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1797	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 1829	--	--	--	--	--	--	--	--	--	--	4	75.0	0.0	25.0	0.0	--	--	--	--	--
Judge 198	16	81.3	0.0	12.5	6.3	5	100.0	0.0	0.0	0.0	11	100.0	0.0	0.0	0.0	11	90.9	0.0	0.0	9.1
Judge 1989	--	--	--	--	--	--	--	--	--	--	13	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 2077	--	--	--	--	--	--	--	--	--	--	24	66.7	0.0	20.8	12.5	2	0.0	0.0	50.0	50.0
Judge 286	9	88.9	0.0	11.1	0.0	9	100.0	0.0	0.0	0.0	18	66.7	5.6	0.0	27.8	6	66.7	0.0	0.0	33.3
Judge 341	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 356	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 526	18	72.2	0.0	16.7	11.1	9	0.0	0.0	88.9	11.1	77	66.2	5.2	26.0	2.6	117	70.1	2.6	15.4	12.0
Judge 545	148	56.1	2.0	33.1	8.8	82	65.9	2.4	25.6	6.1	150	60.0	2.0	14.7	23.3	6	66.7	16.7	0.0	16.7
Judge 714	11	90.9	0.0	0.0	9.1	--	--	--	--	--	7	100.0	0.0	0.0	0.0	3	66.7	0.0	0.0	33.3

(Continued)

There was one case missing information on the sentencing judge from the Western District of Michigan.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Michigan

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 931	--	--	--	--	--	--	--	--	--	--	17	82.4	0.0	17.6	0.0	406	55.7	3.2	17.0	24.1

There was one case missing information on the sentencing judge from the Western District of Michigan.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Ohio

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	2,183	66.2	0.5	23.9	9.5	886	67.0	0.1	24.0	8.8	2,798	57.4	0.9	24.7	17.0	2,651	52.2	1.7	24.9	21.3
Judge 1018	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 107	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0
Judge 1109	2	50.0	0.0	0.0	50.0	--	--	--	--	--	5	100.0	0.0	0.0	0.0	6	66.7	0.0	16.7	16.7
Judge 1115	--	--	--	--	--	--	--	--	--	--	10	80.0	0.0	10.0	10.0	234	61.5	0.9	22.2	15.4
Judge 1164	92	82.6	1.1	9.8	6.5	34	67.6	0.0	26.5	5.9	49	57.1	0.0	34.7	8.2	--	--	--	--	--
Judge 1198	113	52.2	0.0	40.7	7.1	33	63.6	0.0	36.4	0.0	20	50.0	0.0	30.0	20.0	--	--	--	--	--
Judge 122	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 1237	--	--	--	--	--	--	--	--	--	--	3	66.7	0.0	0.0	33.3	3	100.0	0.0	0.0	0.0
Judge 1351	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1402	271	75.6	0.0	18.5	5.9	67	71.6	0.0	26.9	1.5	214	59.3	0.9	28.0	11.7	199	60.8	1.0	24.1	14.1
Judge 1408	150	66.0	0.7	22.0	11.3	44	72.7	0.0	11.4	15.9	192	59.4	0.5	20.3	19.8	209	56.0	0.5	26.3	17.2

(Continued)

There were three cases missing information on the sentencing judge from the Northern District of Ohio.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Ohio

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1416	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1417	168	61.9	0.6	34.5	3.0	85	62.4	0.0	28.2	9.4	223	48.0	0.0	27.4	24.7	162	38.9	1.2	26.5	33.3
Judge 1463	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	7	28.6	0.0	42.9	28.6
Judge 1470	1	100.0	0.0	0.0	0.0	--	--	--	--	--	2	50.0	0.0	0.0	50.0	5	60.0	0.0	0.0	40.0
Judge 1500	174	66.7	0.6	23.0	9.8	76	56.6	0.0	34.2	9.2	193	51.8	1.0	32.1	15.0	154	52.6	0.0	28.6	18.8
Judge 1506	17	64.7	0.0	11.8	23.5	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 178	--	--	--	--	--	--	--	--	--	--	180	73.9	1.7	21.7	2.8	176	59.7	2.8	26.1	11.4
Judge 1818	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1925	2	50.0	0.0	50.0	0.0	1	100.0	0.0	0.0	0.0	3	66.7	0.0	0.0	33.3	3	100.0	0.0	0.0	0.0
Judge 1989	157	70.1	1.3	24.2	4.5	64	76.6	0.0	20.3	3.1	177	60.5	0.0	24.3	15.3	148	46.6	0.0	36.5	16.9
Judge 2005	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0

(Continued)

There were three cases missing information on the sentencing judge from the Northern District of Ohio.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Ohio

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 2077	--	--	--	--	--	--	--	--	--	--	40	57.5	0.0	15.0	27.5	128	49.2	3.1	9.4	38.3
Judge 21	78	60.3	0.0	34.6	5.1	34	61.8	0.0	29.4	8.8	107	46.7	0.9	30.8	21.5	85	58.8	0.0	20.0	21.2
Judge 290	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	2	0.0	50.0	0.0	50.0
Judge 291	125	64.8	0.8	14.4	20.0	63	68.3	0.0	11.1	20.6	133	56.4	2.3	17.3	24.1	139	36.7	1.4	18.0	43.9
Judge 292	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 499	125	60.8	0.8	16.0	22.4	82	80.5	0.0	9.8	9.8	147	51.0	2.7	25.9	20.4	138	38.4	1.4	29.7	30.4
Judge 518	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 523	158	72.2	0.6	23.4	3.8	34	67.6	0.0	29.4	2.9	255	52.5	0.8	26.3	20.4	160	58.1	1.9	21.9	18.1
Judge 56	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 58	10	90.0	0.0	10.0	0.0	--	--	--	--	--	8	87.5	0.0	0.0	12.5	10	100.0	0.0	0.0	0.0
Judge 637	5	100.0	0.0	0.0	0.0	--	--	--	--	--	4	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0

(Continued)

There were three cases missing information on the sentencing judge from the Northern District of Ohio.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Ohio

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 656	155	65.8	0.0	32.9	1.3	47	80.9	0.0	19.1	0.0	261	65.1	0.0	21.8	13.0	214	58.4	1.4	28.0	12.1
Judge 728	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 738	199	72.4	0.5	24.1	3.0	67	68.7	0.0	28.4	3.0	210	55.7	0.0	30.0	14.3	159	48.4	1.9	23.9	25.8
Judge 785	1	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 9	--	--	--	--	--	73	60.3	1.4	37.0	1.4	197	60.4	3.0	24.9	11.7	217	44.2	5.1	31.8	18.9
Judge 954	174	44.3	0.0	24.1	31.6	76	48.7	0.0	21.1	30.3	159	52.8	0.0	17.0	30.2	77	44.2	3.9	20.8	31.2

There were three cases missing information on the sentencing judge from the Northern District of Ohio.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Ohio

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,027	58.1	0.7	31.8	9.3	548	60.9	0.7	30.8	7.5	1,901	45.1	1.2	35.8	17.9	2,491	36.3	2.0	36.2	25.5
Judge 1001	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1003	3	66.7	0.0	33.3	0.0	1	0.0	0.0	100.0	0.0	12	83.3	0.0	8.3	8.3	1	0.0	0.0	100.0	0.0
Judge 1007	18	44.4	0.0	44.4	11.1	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1117	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	66.7	0.0	0.0	33.3
Judge 1166	111	49.5	0.9	41.4	8.1	52	65.4	0.0	25.0	9.6	166	36.1	1.2	41.0	21.7	198	33.3	1.5	28.3	36.9
Judge 117	65	63.1	3.1	27.7	6.2	51	74.5	2.0	19.6	3.9	118	49.2	1.7	39.8	9.3	131	48.1	3.1	35.1	13.7
Judge 1270	14	100.0	0.0	0.0	0.0	8	100.0	0.0	0.0	0.0	50	100.0	0.0	0.0	0.0	34	88.2	0.0	0.0	11.8
Judge 1430	1	100.0	0.0	0.0	0.0	6	100.0	0.0	0.0	0.0	22	86.4	0.0	0.0	13.6	10	80.0	0.0	10.0	10.0
Judge 148	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	39	59.0	0.0	15.4	25.6
Judge 1547	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1552	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--

(Continued)

There was one case missing information on the sentencing judge from the Southern District of Ohio.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Ohio

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1569	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1570	229	60.7	0.0	24.0	15.3	112	60.7	0.0	28.6	10.7	237	48.5	3.4	21.9	26.2	269	40.1	3.0	20.8	36.1
Judge 1601	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1602	12	91.7	0.0	8.3	0.0	44	54.5	0.0	25.0	20.5	231	44.2	0.9	30.3	24.7	274	28.5	1.8	47.4	22.3
Judge 1603	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 1639	93	51.6	2.2	37.6	8.6	62	37.1	0.0	54.8	8.1	178	36.0	0.0	41.0	23.0	220	30.0	2.3	44.5	23.2
Judge 1714	5	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1751	85	55.3	1.2	36.5	7.1	14	42.9	7.1	42.9	7.1	80	46.3	2.5	37.5	13.8	111	35.1	1.8	40.5	22.5
Judge 1752	2	50.0	0.0	50.0	0.0	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 1780	51	64.7	2.0	27.5	5.9	38	60.5	0.0	31.6	7.9	168	49.4	0.0	43.5	7.1	105	46.7	0.0	36.2	17.1
Judge 1973	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0

(Continued)

There was one case missing information on the sentencing judge from the Southern District of Ohio.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Ohio

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1974	--	--	--	--	--	--	--	--	--	--	129	38.8	0.0	46.5	14.7	190	32.6	1.1	39.5	26.8
Judge 1979	5	60.0	0.0	40.0	0.0	2	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1980	84	53.6	0.0	38.1	8.3	26	65.4	0.0	30.8	3.8	24	41.7	0.0	29.2	29.2	90	45.6	0.0	32.2	22.2
Judge 2	2	100.0	0.0	0.0	0.0	--	--	--	--	--	3	100.0	0.0	0.0	0.0	4	50.0	0.0	25.0	25.0
Judge 209	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 245	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 356	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	100.0	0.0	0.0
Judge 460	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	0.0	0.0	100.0	0.0
Judge 486	66	56.1	0.0	34.8	9.1	30	56.7	0.0	40.0	3.3	91	39.6	0.0	45.1	15.4	147	36.1	1.4	27.2	35.4
Judge 499	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 523	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--	24	25.0	0.0	41.7	33.3

(Continued)

There was one case missing information on the sentencing judge from the Southern District of Ohio.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Ohio

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 626	--	--	--	--	--	20	75.0	0.0	25.0	0.0	143	42.0	0.0	46.9	11.2	211	31.8	1.9	41.7	24.6
Judge 709	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 710	21	71.4	0.0	28.6	0.0	4	75.0	0.0	0.0	25.0	23	43.5	13.0	26.1	17.4	--	--	--	--	--
Judge 711	85	45.9	0.0	42.4	11.8	37	62.2	5.4	32.4	0.0	92	47.8	1.1	33.7	17.4	167	25.7	6.6	41.3	26.3
Judge 751	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 818	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 820	9	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0
Judge 829	56	60.7	0.0	30.4	8.9	34	64.7	0.0	35.3	0.0	80	31.3	0.0	38.8	30.0	53	39.6	1.9	41.5	17.0
Judge 94	--	--	--	--	--	--	--	--	--	--	36	30.6	5.6	52.8	11.1	194	34.5	0.5	44.8	20.1
Judge 982	3	66.7	0.0	33.3	0.0	1	100.0	0.0	0.0	0.0	7	42.9	0.0	57.1	0.0	8	87.5	0.0	0.0	12.5

There was one case missing information on the sentencing judge from the Southern District of Ohio.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Tennessee

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,488	70.4	0.1	25.5	4.0	722	66.2	0.1	31.2	2.5	1,693	64.1	1.6	26.0	8.3	2,835	59.2	1.4	26.3	13.1
Judge 1082	--	--	--	--	--	--	--	--	--	--	6	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 1201	--	--	--	--	--	--	--	--	--	--	122	78.7	0.8	18.0	2.5	578	64.5	0.2	19.6	15.7
Judge 1352	7	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1382	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1480	5	80.0	0.0	0.0	20.0	70	62.9	0.0	32.9	4.3	171	56.1	1.2	29.8	12.9	377	59.2	1.9	30.0	9.0
Judge 1719	7	85.7	0.0	14.3	0.0	3	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	4	50.0	0.0	0.0	50.0
Judge 1791	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1873	1	100.0	0.0	0.0	0.0	1	0.0	0.0	100.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1874	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1923	--	--	--	--	--	38	73.7	0.0	23.7	2.6	164	70.7	0.0	19.5	9.8	332	60.5	2.1	32.2	5.1
Judge 300	12	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0

(Continued)

There were five cases missing information on the sentencing judge from the Eastern District of Tennessee.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Tennessee

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 363	403	69.0	0.0	27.0	4.0	159	76.7	0.0	21.4	1.9	398	68.8	1.5	24.6	5.0	541	71.5	1.1	15.9	11.5
Judge 526	392	72.7	0.0	24.5	2.8	173	73.4	0.0	26.0	0.6	230	74.3	3.0	17.0	5.7	69	56.5	0.0	30.4	13.0
Judge 604	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 720	--	--	--	--	--	84	78.6	1.2	17.9	2.4	319	56.1	2.5	32.9	8.5	552	54.0	3.3	24.3	18.5
Judge 736	--	--	--	--	--	2	50.0	0.0	50.0	0.0	12	100.0	0.0	0.0	0.0	12	91.7	0.0	0.0	8.3
Judge 800	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 861	20	85.0	0.0	15.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 862	206	78.6	0.5	17.0	3.9	33	42.4	0.0	51.5	6.1	--	--	--	--	--	--	--	--	--	--
Judge 878	4	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	3	66.7	0.0	0.0	33.3	2	100.0	0.0	0.0	0.0
Judge 891	3	66.7	0.0	33.3	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 892	214	61.7	0.0	31.3	7.0	69	36.2	0.0	60.9	2.9	96	46.9	0.0	37.5	15.6	--	--	--	--	--

(Continued)

There were five cases missing information on the sentencing judge from the Eastern District of Tennessee.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Tennessee

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 932	--	--	--	--	--	--	--	--	--	--	3	66.7	0.0	33.3	0.0	--	--	--	--	--
Judge 934	5	80.0	0.0	20.0	0.0	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 936	205	63.4	0.5	31.7	4.4	82	48.8	0.0	46.3	4.9	159	49.1	1.9	34.6	14.5	364	37.9	0.0	47.5	14.6
Judge 937	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--

There were five cases missing information on the sentencing judge from the Eastern District of Tennessee.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Middle District of Tennessee

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	674	60.1	0.3	33.7	5.9	337	76.0	0.6	20.5	3.0	903	59.2	1.1	22.3	17.4	1,143	45.1	2.6	26.5	25.8
Judge 1005	15	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0	15	86.7	0.0	0.0	13.3	16	100.0	0.0	0.0	0.0
Judge 1020	2	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1217	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1382	50	82.0	0.0	18.0	0.0	24	95.8	0.0	4.2	0.0	51	39.2	0.0	19.6	41.2	56	32.1	3.6	25.0	39.3
Judge 1383	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1620	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1705	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0
Judge 1883	136	69.1	0.0	28.7	2.2	62	74.2	0.0	22.6	3.2	201	54.2	1.5	23.9	20.4	286	38.1	2.1	25.5	34.3
Judge 2038	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	50.0	0.0	25.0	25.0
Judge 2039	70	47.1	1.4	47.1	4.3	18	72.2	0.0	22.2	5.6	36	52.8	2.8	19.4	25.0	60	43.3	3.3	13.3	40.0
Judge 223	--	--	--	--	--	--	--	--	--	--	5	100.0	0.0	0.0	0.0	3	33.3	0.0	0.0	66.7

(Continued)

There were zero cases missing information on the sentencing judge from the Middle District of Tennessee.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Middle District of Tennessee

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 272	2	50.0	0.0	50.0	0.0	--	--	--	--	--	5	60.0	0.0	0.0	40.0	--	--	--	--	--
Judge 275	94	74.5	0.0	21.3	4.3	74	75.7	0.0	21.6	2.7	197	67.0	0.0	23.9	9.1	263	55.9	1.5	32.3	10.3
Judge 522	111	58.6	0.0	30.6	10.8	57	75.4	0.0	17.5	7.0	180	64.4	2.8	26.7	6.1	158	33.5	1.3	33.5	31.6
Judge 724	5	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	8	100.0	0.0	0.0	0.0	6	83.3	0.0	0.0	16.7
Judge 777	82	54.9	1.2	40.2	3.7	67	71.6	3.0	23.9	1.5	190	52.1	0.5	19.5	27.9	286	46.5	4.9	24.1	24.5
Judge 800	106	31.1	0.0	54.7	14.2	28	71.4	0.0	28.6	0.0	13	69.2	0.0	30.8	0.0	1	100.0	0.0	0.0	0.0

There were zero cases missing information on the sentencing judge from the Middle District of Tennessee.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Tennessee

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,106	67.1	1.2	26.5	5.2	574	75.1	0.5	22.3	2.1	1,626	56.2	1.8	26.6	15.4	2,383	51.4	2.1	24.1	22.4
Judge 1209	117	72.6	0.9	23.9	2.6	119	76.5	0.0	22.7	0.8	325	59.7	1.2	28.0	11.1	462	52.6	2.2	24.5	20.8
Judge 1217	129	68.2	1.6	26.4	3.9	121	72.7	1.7	22.3	3.3	339	63.7	2.4	24.8	9.1	453	64.9	3.5	15.5	16.1
Judge 1224	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1238	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1382	3	66.7	0.0	33.3	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1409	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1479	--	--	--	--	--	3	100.0	0.0	0.0	0.0	--	--	--	--	--	4	100.0	0.0	0.0	0.0
Judge 1500	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1508	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1762	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1873	115	67.0	2.6	25.2	5.2	39	64.1	0.0	33.3	2.6	63	69.8	0.0	20.6	9.5	--	--	--	--	--

(Continued)

There were six cases missing information on the sentencing judge from the Western District of Tennessee.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Tennessee

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1874	92	65.2	5.4	27.2	2.2	58	67.2	0.0	32.8	0.0	251	57.4	1.6	31.1	10.0	131	49.6	0.0	37.4	13.0
Judge 1930	2	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 195	3	33.3	0.0	66.7	0.0	108	78.7	0.9	17.6	2.8	316	58.2	1.3	25.3	15.2	566	40.1	1.6	37.1	21.2
Judge 2039	4	50.0	25.0	25.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 208	3	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 25	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 291	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 339	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	66.7	0.0	33.3	0.0
Judge 341	16	62.5	0.0	37.5	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 43	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	294	51.4	2.4	17.7	28.6
Judge 455	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--

(Continued)

There were six cases missing information on the sentencing judge from the Western District of Tennessee.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Tennessee

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 491	288	70.5	0.0	22.2	7.3	115	78.3	0.0	19.1	2.6	328	39.0	2.7	26.5	31.7	468	50.9	1.5	16.9	30.8
Judge 512	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 620	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 667	315	62.2	0.3	31.4	6.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 741	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 800	4	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 846	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 857	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 913	3	66.7	0.0	33.3	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 943	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0

There were six cases missing information on the sentencing judge from the Western District of Tennessee.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Central District of Illinois

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	834	63.2	0.7	31.1	5.0	418	70.1	1.2	23.4	5.3	1,070	58.3	1.1	23.2	17.4	1,382	54.0	0.9	23.8	21.3
Judge 1170	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 1227	179	52.5	1.7	43.0	2.8	84	71.4	0.0	27.4	1.2	245	64.1	0.8	25.7	9.4	282	62.8	0.4	27.7	9.2
Judge 1228	192	60.4	0.0	30.2	9.4	117	69.2	0.9	20.5	9.4	271	54.2	1.5	17.0	27.3	347	48.7	1.2	20.7	29.4
Judge 1278	180	63.9	1.1	28.9	6.1	93	75.3	3.2	12.9	8.6	234	47.4	1.3	24.8	26.5	361	45.2	0.6	19.9	34.3
Judge 1296	88	69.3	1.1	27.3	2.3	25	56.0	0.0	44.0	0.0	31	64.5	0.0	32.3	3.2	109	61.5	2.8	22.9	12.8
Judge 133	2	50.0	0.0	50.0	0.0	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 1354	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	5	100.0	0.0	0.0	0.0
Judge 1547	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1668	183	71.6	0.0	25.7	2.7	90	66.7	1.1	30.0	2.2	280	64.6	1.1	25.4	8.9	241	57.7	0.8	32.8	8.7
Judge 1697	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	21	52.4	4.8	14.3	28.6
Judge 1717	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0

(Continued)

There were zero cases missing information on the sentencing judge from the Central District of Illinois.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Central District of Illinois

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 422	--	--	--	--	--	2	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0
Judge 704	6	83.3	0.0	0.0	16.7	3	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	9	88.9	0.0	0.0	11.1
Judge 791	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 82	3	100.0	0.0	0.0	0.0	2	50.0	0.0	50.0	0.0	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0

There were zero cases missing information on the sentencing judge from the Central District of Illinois.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Illinois

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	2,577	66.1	1.2	23.4	9.3	1,321	67.2	0.8	27.2	4.8	2,957	54.4	0.9	22.8	21.9	3,388	43.9	1.9	17.6	36.6
Judge 1010	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1023	95	69.5	1.1	23.2	6.3	21	47.6	0.0	47.6	4.8	26	42.3	0.0	15.4	42.3	64	48.4	0.0	18.8	32.8
Judge 1030	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--
Judge 1086	82	69.5	1.2	22.0	7.3	45	62.2	0.0	28.9	8.9	62	50.0	1.6	14.5	33.9	122	23.8	0.8	14.8	60.7
Judge 1091	110	56.4	0.0	29.1	14.5	60	76.7	0.0	16.7	6.7	138	49.3	0.0	23.2	27.5	148	39.2	0.0	19.6	41.2
Judge 1102	8	100.0	0.0	0.0	0.0	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1111	39	92.3	0.0	7.7	0.0	13	92.3	0.0	7.7	0.0	38	86.8	0.0	7.9	5.3	47	72.3	2.1	14.9	10.6
Judge 1130	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1152	2	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	3	66.7	0.0	0.0	33.3
Judge 1162	105	60.0	0.0	29.5	10.5	73	64.4	1.4	28.8	5.5	112	38.4	0.9	22.3	38.4	174	32.8	1.7	22.4	43.1
Judge 1170	4	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were two cases missing information on the sentencing judge from the Northern District of Illinois.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Illinois

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1194	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0
Judge 1289	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1308	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	1	0.0	100.0	0.0	0.0
Judge 1318	64	67.2	0.0	17.2	15.6	11	54.5	0.0	27.3	18.2	51	54.9	0.0	17.6	27.5	17	29.4	0.0	41.2	29.4
Judge 1379	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1386	6	66.7	0.0	0.0	33.3	3	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	7	100.0	0.0	0.0	0.0
Judge 1390	3	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1391	137	55.5	5.1	27.0	12.4	69	55.1	0.0	39.1	5.8	130	51.5	0.0	13.1	35.4	113	49.6	0.9	12.4	37.2
Judge 1439	94	68.1	2.1	18.1	11.7	68	50.0	4.4	41.2	4.4	132	51.5	1.5	30.3	16.7	161	48.4	11.2	13.7	26.7
Judge 1493	4	25.0	25.0	25.0	25.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1559	154	76.6	0.6	20.8	1.9	81	77.8	1.2	19.8	1.2	218	65.1	1.8	21.1	11.9	76	60.5	5.3	13.2	21.1

(Continued)

There were two cases missing information on the sentencing judge from the Northern District of Illinois.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Illinois

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 160	7	85.7	0.0	14.3	0.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1603	4	75.0	0.0	25.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1647	9	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0
Judge 1698	116	57.8	1.7	32.8	7.8	42	76.2	2.4	14.3	7.1	90	41.1	0.0	17.8	41.1	90	38.9	2.2	6.7	52.2
Judge 17	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1784	2	50.0	50.0	0.0	0.0	47	72.3	0.0	27.7	0.0	109	62.4	0.0	23.9	13.8	172	48.3	0.0	26.7	25.0
Judge 1911	--	--	--	--	--	--	--	--	--	--	4	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0
Judge 1956	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 2066	111	71.2	1.8	18.0	9.0	46	67.4	0.0	30.4	2.2	120	47.5	3.3	19.2	30.0	162	34.6	3.1	18.5	43.8
Judge 222	9	88.9	0.0	0.0	11.1	3	100.0	0.0	0.0	0.0	3	66.7	0.0	0.0	33.3	3	33.3	0.0	33.3	33.3
Judge 241	94	68.1	0.0	20.2	11.7	86	65.1	1.2	32.6	1.2	134	39.6	0.0	30.6	29.9	170	38.8	0.0	19.4	41.8

(Continued)

There were two cases missing information on the sentencing judge from the Northern District of Illinois.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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TABLE 2
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Northern District of Illinois

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 273	--	--	--	--	--	3	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 309	121	71.1	0.8	20.7	7.4	68	57.4	0.0	41.2	1.5	112	56.3	1.8	29.5	12.5	125	28.8	0.0	17.6	53.6
Judge 34	111	63.1	0.0	23.4	13.5	50	62.0	2.0	28.0	8.0	141	36.2	0.0	37.6	26.2	116	34.5	3.4	17.2	44.8
Judge 346	123	74.8	0.8	21.1	3.3	62	62.9	0.0	35.5	1.6	149	62.4	0.0	24.2	13.4	110	52.7	0.9	17.3	29.1
Judge 359	--	--	--	--	--	--	--	--	--	--	5	80.0	0.0	0.0	20.0	5	100.0	0.0	0.0	0.0
Judge 362	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	50.0	0.0	25.0	25.0
Judge 373	128	71.1	0.8	24.2	3.9	54	79.6	0.0	16.7	3.7	49	71.4	4.1	16.3	8.2	57	54.4	0.0	10.5	35.1
Judge 399	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 409	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	8	100.0	0.0	0.0	0.0
Judge 438	72	69.4	1.4	19.4	9.7	45	66.7	0.0	17.8	15.6	142	53.5	0.7	19.7	26.1	177	49.7	2.3	20.9	27.1
Judge 470	5	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	2	50.0	0.0	0.0	50.0	5	80.0	0.0	0.0	20.0

(Continued)

There were two cases missing information on the sentencing judge from the Northern District of Illinois.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
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**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Illinois

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 472	--	--	--	--	--	6	66.7	0.0	33.3	0.0	135	66.7	0.7	27.4	5.2	162	46.3	2.5	24.1	27.2
Judge 498	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	70	40.0	0.0	12.9	47.1
Judge 571	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	5	20.0	20.0	0.0	60.0
Judge 583	--	--	--	--	--	--	--	--	--	--	71	60.6	0.0	23.9	15.5	2	100.0	0.0	0.0	0.0
Judge 585	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	50.0	0.0
Judge 62	6	83.3	0.0	0.0	16.7	6	100.0	0.0	0.0	0.0	6	66.7	0.0	0.0	33.3	7	100.0	0.0	0.0	0.0
Judge 65	1	0.0	0.0	0.0	100.0	1	100.0	0.0	0.0	0.0	2	0.0	0.0	100.0	0.0	2	100.0	0.0	0.0	0.0
Judge 665	121	53.7	1.7	28.1	16.5	66	66.7	0.0	30.3	3.0	115	54.8	0.9	25.2	19.1	136	35.3	0.7	18.4	45.6
Judge 672	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 673	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 707	101	59.4	2.0	21.8	16.8	55	72.7	0.0	14.5	12.7	164	45.1	0.6	26.2	28.0	127	26.0	0.8	12.6	60.6

(Continued)

There were two cases missing information on the sentencing judge from the Northern District of Illinois.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Illinois

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 708	61	70.5	1.6	23.0	4.9	18	72.2	0.0	22.2	5.6	46	56.5	4.3	19.6	19.6	60	50.0	5.0	13.3	31.7
Judge 737	90	66.7	0.0	18.9	14.4	68	61.8	2.9	32.4	2.9	131	58.8	3.1	22.9	15.3	126	57.9	1.6	18.3	22.2
Judge 769	42	78.6	0.0	16.7	4.8	8	87.5	0.0	0.0	12.5	2	0.0	0.0	100.0	0.0	2	50.0	0.0	0.0	50.0
Judge 796	69	76.8	0.0	14.5	8.7	2	100.0	0.0	0.0	0.0	34	41.2	0.0	17.6	41.2	87	40.2	0.0	12.6	47.1
Judge 821	4	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	5	80.0	0.0	0.0	20.0	--	--	--	--	--
Judge 822	134	63.4	0.0	34.3	2.2	47	78.7	0.0	21.3	0.0	100	79.0	0.0	16.0	5.0	5	60.0	0.0	20.0	20.0
Judge 949	--	--	--	--	--	--	--	--	--	--	7	85.7	0.0	0.0	14.3	140	72.1	2.9	18.6	6.4
Judge 966	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 983	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	50.0	0.0	11	54.5	0.0	9.1	36.4
Judge 984	--	--	--	--	--	--	--	--	--	--	11	63.6	0.0	36.4	0.0	128	39.8	1.6	15.6	43.0
Judge 985	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--

(Continued)

There were two cases missing information on the sentencing judge from the Northern District of Illinois.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Illinois

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 986	119	43.7	2.5	38.7	15.1	76	67.1	1.3	23.7	7.9	136	47.8	0.0	21.3	30.9	32	34.4	3.1	25.0	37.5
Judge 987	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	127	35.4	0.0	22.8	41.7
Judge 994	4	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	6	83.3	0.0	0.0	16.7	6	66.7	0.0	0.0	33.3
Judge 995	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0

There were two cases missing information on the sentencing judge from the Northern District of Illinois.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Illinois

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	818	81.4	0.1	13.6	4.9	426	82.4	0.7	14.6	2.3	995	81.8	1.7	6.9	9.5	1,189	72.8	4.5	9.7	13.1
Judge 1123	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 113	6	66.7	0.0	33.3	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1296	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1349	159	74.8	0.0	20.8	4.4	72	83.3	0.0	12.5	4.2	206	75.2	1.0	8.7	15.0	222	67.6	2.3	14.0	16.2
Judge 1523	1	100.0	0.0	0.0	0.0	--	--	--	--	--	4	50.0	0.0	25.0	25.0	3	33.3	0.0	33.3	33.3
Judge 1547	82	69.5	0.0	22.0	8.5	59	81.4	1.7	15.3	1.7	126	80.2	1.6	7.9	10.3	282	61.7	8.9	7.8	21.6
Judge 1708	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1808	148	80.4	0.0	14.2	5.4	67	92.5	0.0	6.0	1.5	129	79.8	0.8	7.0	12.4	143	81.1	1.4	11.2	6.3
Judge 2016	--	--	--	--	--	--	--	--	--	--	3	33.3	0.0	66.7	0.0	--	--	--	--	--
Judge 2066	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 357	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were zero cases missing information on the sentencing judge from the Southern District of Illinois.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Illinois

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 603	53	90.6	0.0	3.8	5.7	43	88.4	0.0	9.3	2.3	87	90.8	0.0	3.4	5.7	--	--	--	--	--
Judge 615	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	3	66.7	0.0	0.0	33.3
Judge 672	239	87.0	0.0	7.9	5.0	138	73.9	0.7	22.5	2.9	274	86.5	2.9	2.6	8.0	226	74.8	6.2	5.8	13.3
Judge 791	125	84.0	0.8	12.8	2.4	46	89.1	2.2	8.7	0.0	163	81.6	2.5	11.7	4.3	310	81.6	2.3	10.3	5.8

There were zero cases missing information on the sentencing judge from the Southern District of Illinois.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Indiana

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	889	73.1	0.4	21.6	4.8	395	73.7	0.8	22.5	3.0	1,221	69.4	1.0	23.4	6.2	1,703	61.1	2.4	22.5	13.9
Judge 1078	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1084	194	80.4	2.1	13.9	3.6	56	76.8	1.8	21.4	0.0	57	75.4	1.8	17.5	5.3	106	61.3	7.5	19.8	11.3
Judge 1130	226	66.8	0.0	29.2	4.0	70	60.0	1.4	35.7	2.9	216	63.4	1.4	33.3	1.9	214	59.8	2.3	28.5	9.3
Judge 1289	138	85.5	0.0	3.6	10.9	84	83.3	1.2	10.7	4.8	251	72.5	2.0	17.1	8.4	497	57.1	2.4	20.5	19.9
Judge 1306	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1308	227	65.2	0.0	32.2	2.6	59	55.9	0.0	44.1	0.0	106	70.8	0.0	27.4	1.9	165	64.8	2.4	22.4	10.3
Judge 1391	--	--	--	--	--	--	--	--	--	--	4	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1400	--	--	--	--	--	3	66.7	0.0	0.0	33.3	4	100.0	0.0	0.0	0.0	11	100.0	0.0	0.0	0.0
Judge 1593	7	100.0	0.0	0.0	0.0	9	100.0	0.0	0.0	0.0	9	88.9	0.0	11.1	0.0	9	66.7	0.0	11.1	22.2
Judge 1703	82	69.5	0.0	25.6	4.9	75	81.3	0.0	13.3	5.3	202	70.3	0.5	20.3	8.9	--	--	--	--	--
Judge 1730	--	--	--	--	--	2	50.0	0.0	50.0	0.0	206	61.7	0.5	29.1	8.7	252	47.2	0.4	32.5	19.8

(Continued)

There were three cases missing information on the sentencing judge from the Northern District of Indiana.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Indiana

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1781	6	66.7	0.0	0.0	33.3	32	78.1	0.0	18.8	3.1	150	74.0	0.7	19.3	6.0	237	73.4	3.8	20.3	2.5
Judge 1920	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	124	59.7	1.6	17.7	21.0
Judge 2066	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 327	--	--	--	--	--	2	100.0	0.0	0.0	0.0	14	85.7	0.0	7.1	7.1	7	71.4	0.0	14.3	14.3
Judge 400	6	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--	20	90.0	0.0	10.0	0.0
Judge 464	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	61	82.0	0.0	11.5	6.6
Judge 708	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 8	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

There were three cases missing information on the sentencing judge from the Northern District of Indiana.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Indiana

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	609	64.7	1.1	26.9	7.2	368	70.9	2.4	24.2	2.4	902	60.5	2.9	22.3	14.3	1,059	53.1	5.5	21.2	20.3
Judge 1068	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	176	56.3	6.3	26.1	11.4
Judge 1105	1	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	6	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1147	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	43	62.8	4.7	23.3	9.3
Judge 1227	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1239	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 1246	99	71.7	1.0	20.2	7.1	119	73.9	0.0	26.1	0.0	223	73.5	2.2	17.0	7.2	191	67.5	4.7	18.3	9.4
Judge 1360	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 1388	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1511	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	30	60.0	6.7	16.7	16.7
Judge 1871	103	67.0	1.9	23.3	7.8	69	71.0	2.9	24.6	1.4	121	65.3	7.4	18.2	9.1	24	54.2	4.2	25.0	16.7
Judge 2064	125	68.8	0.0	30.4	0.8	39	84.6	0.0	15.4	0.0	194	49.0	2.1	27.8	21.1	231	47.6	4.3	20.8	27.3

(Continued)

There was one case missing information on the sentencing judge from the Southern District of Indiana.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Indiana

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 482	25	64.0	4.0	28.0	4.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 530	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 608	2	100.0	0.0	0.0	0.0	--	--	--	--	--	2	100.0	0.0	0.0	0.0	3	66.7	0.0	0.0	33.3
Judge 750	5	60.0	0.0	20.0	20.0	3	66.7	0.0	0.0	33.3	6	83.3	0.0	0.0	16.7	--	--	--	--	--
Judge 751	118	65.3	1.7	22.9	10.2	59	64.4	5.1	22.0	8.5	136	58.8	2.9	25.0	13.2	99	56.6	4.0	20.2	19.2
Judge 81	1	0.0	0.0	100.0	0.0	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 83	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 870	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0
Judge 91	127	52.0	0.8	36.2	11.0	74	62.2	5.4	29.7	2.7	210	52.9	1.9	25.2	20.0	257	40.5	7.4	21.0	31.1

There was one case missing information on the sentencing judge from the Southern District of Indiana.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Wisconsin

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	725	78.6	0.3	14.6	6.5	364	84.6	1.4	9.1	4.9	1,093	51.1	1.6	21.1	26.2	1,834	32.6	2.7	32.7	32.1
Judge 10	197	73.6	0.0	15.2	11.2	60	66.7	1.7	18.3	13.3	224	33.5	0.9	24.1	41.5	436	15.6	1.4	37.6	45.4
Judge 1510	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1539	170	79.4	0.6	15.9	4.1	75	85.3	0.0	9.3	5.3	209	45.5	1.4	19.1	34.0	456	34.2	2.4	38.6	24.8
Judge 1547	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	14	28.6	0.0	0.0	71.4
Judge 1559	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	0.0	50.0	0.0	50.0
Judge 1725	--	--	--	--	--	1	100.0	0.0	0.0	0.0	5	80.0	0.0	0.0	20.0	2	100.0	0.0	0.0	0.0
Judge 1786	171	80.1	0.0	15.2	4.7	59	89.8	0.0	8.5	1.7	237	67.5	1.3	16.9	14.3	250	49.2	1.6	17.2	32.0
Judge 268	7	85.7	0.0	0.0	14.3	--	--	--	--	--	6	83.3	0.0	0.0	16.7	7	42.9	0.0	14.3	42.9
Judge 344	161	80.1	0.6	13.7	5.6	88	86.4	1.1	11.4	1.1	186	55.4	2.7	21.5	20.4	413	33.7	1.0	40.2	25.2
Judge 411	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 427	2	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were zero cases missing information on the sentencing judge from the Eastern District of Wisconsin.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Wisconsin

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 428	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 555	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	0.0	50.0	--	--	--	--	--
Judge 699	5	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	6	100.0	0.0	0.0	0.0	7	85.7	0.0	0.0	14.3
Judge 702	7	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	6	16.7	0.0	16.7	66.7
Judge 723	4	100.0	0.0	0.0	0.0	78	91.0	3.8	0.0	5.1	214	49.1	2.3	26.6	22.0	241	39.4	9.5	19.9	31.1

There were zero cases missing information on the sentencing judge from the Eastern District of Wisconsin.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Wisconsin

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	368	87.0	2.7	7.9	2.4	216	91.7	2.8	5.6	0.0	599	87.6	1.3	2.8	8.2	718	55.0	1.7	9.6	33.7
Judge 10	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	22	18.2	0.0	18.2	63.6
Judge 11	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1308	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	18	77.8	0.0	16.7	5.6
Judge 1696	173	91.3	3.5	4.0	1.2	113	92.0	3.5	4.4	0.0	285	94.4	1.8	2.8	1.1	13	69.2	7.7	7.7	15.4
Judge 1786	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 344	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 372	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	103	35.0	1.9	11.7	51.5
Judge 411	175	81.7	1.7	12.6	4.0	94	90.4	2.1	7.4	0.0	296	80.7	1.0	3.0	15.2	538	57.4	1.7	9.1	31.8
Judge 416	1	100.0	0.0	0.0	0.0	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 417	17	94.1	5.9	0.0	0.0	9	100.0	0.0	0.0	0.0	15	93.3	0.0	0.0	6.7	23	95.7	0.0	0.0	4.3

There were two cases missing information on the sentencing judge from the Western District of Wisconsin.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Arkansas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	608	84.0	0.5	12.0	3.5	310	85.8	0.3	11.9	1.9	1,026	66.6	1.0	19.4	13.1	1,453	64.7	3.2	14.7	17.4
Judge 1123	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 1178	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1179	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	22	72.7	0.0	13.6	13.6
Judge 1282	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	161	71.4	5.0	9.9	13.7
Judge 1306	115	83.5	0.9	13.9	1.7	58	79.3	0.0	17.2	3.4	287	70.0	0.0	20.7	9.3	346	70.5	1.2	15.0	13.3
Judge 1308	17	82.4	0.0	11.8	5.9	--	--	--	--	--	6	66.7	0.0	0.0	33.3	1	0.0	0.0	100.0	0.0
Judge 1543	--	--	--	--	--	1	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	11	72.7	27.3	0.0	0.0
Judge 1549	66	83.3	1.5	9.1	6.1	30	90.0	0.0	10.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 2003	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 2030	6	83.3	0.0	16.7	0.0	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 2034	122	82.8	0.0	10.7	6.6	64	93.8	1.6	3.1	1.6	200	55.5	1.5	21.5	21.5	219	58.4	1.8	15.1	24.7

(Continued)

There were zero cases missing information on the sentencing judge from the Eastern District of Arkansas.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Arkansas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 2051	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 2053	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 2056	127	80.3	0.0	16.5	3.1	61	77.0	0.0	19.7	3.3	198	57.6	1.5	27.8	13.1	263	58.2	4.9	16.0	20.9
Judge 2062	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	3	100.0	0.0	0.0	0.0
Judge 313	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 455	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 462	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	9	100.0	0.0	0.0	0.0
Judge 532	35	94.3	2.9	2.9	0.0	17	94.1	0.0	5.9	0.0	89	66.3	2.2	15.7	15.7	139	61.9	7.2	11.5	19.4
Judge 606	--	--	--	--	--	1	100.0	0.0	0.0	0.0	3	66.7	0.0	0.0	33.3	--	--	--	--	--
Judge 826	--	--	--	--	--	--	--	--	--	--	166	75.9	0.6	12.7	10.8	271	63.5	1.8	18.5	16.2
Judge 845	--	--	--	--	--	--	--	--	--	--	3	66.7	0.0	33.3	0.0	--	--	--	--	--

(Continued)

There were zero cases missing information on the sentencing judge from the Eastern District of Arkansas.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Arkansas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 846	115	87.0	0.0	11.3	1.7	76	86.8	0.0	11.8	1.3	118	79.7	0.8	13.6	5.9	--	--	--	--	--
Judge 920	3	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0
Judge 964	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0

There were zero cases missing information on the sentencing judge from the Eastern District of Arkansas.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Arkansas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	402	75.9	0.2	20.4	3.5	208	78.8	1.0	19.7	0.5	529	71.6	0.4	19.8	8.1	999	75.0	0.9	12.8	11.3
Judge 1174	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	50.0	0.0	0.0	50.0
Judge 1690	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 1712	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1810	--	--	--	--	--	--	--	--	--	--	18	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1970	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 231	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	10	90.0	0.0	0.0	10.0
Judge 455	173	64.2	0.6	30.1	5.2	84	76.2	1.2	22.6	0.0	233	58.8	0.9	26.2	14.2	320	57.5	1.6	17.2	23.8
Judge 787	148	90.5	0.0	7.4	2.0	79	75.9	0.0	24.1	0.0	181	81.8	0.0	14.4	3.9	516	85.5	0.4	10.3	3.9
Judge 827	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	12	91.7	0.0	8.3	0.0
Judge 828	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 88	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--

(Continued)

There were two cases missing information on the sentencing judge from the Western District of Arkansas.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Arkansas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 916	2	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 93	78	73.1	0.0	24.4	2.6	41	87.8	2.4	7.3	2.4	93	77.4	0.0	19.4	3.2	134	73.9	1.5	14.2	10.4

There were two cases missing information on the sentencing judge from the Western District of Arkansas.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Iowa

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	902	64.6	2.0	26.6	6.8	547	74.2	1.5	23.6	0.7	1,159	70.0	4.6	16.4	9.1	1,740	62.6	5.5	19.5	12.5
Judge 1067	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 1108	6	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1123	3	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 124	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1253	6	100.0	0.0	0.0	0.0	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 126	443	62.1	2.3	29.8	5.9	189	66.1	2.1	30.7	1.1	397	57.9	5.8	22.2	14.1	605	46.1	6.9	23.0	24.0
Judge 1263	216	67.6	2.3	21.8	8.3	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1403	111	55.9	0.0	30.6	13.5	63	74.6	0.0	22.2	3.2	119	43.7	0.8	23.5	31.9	144	38.2	0.7	24.3	36.8
Judge 1485	--	--	--	--	--	--	--	--	--	--	4	50.0	0.0	0.0	50.0	1	0.0	100.0	0.0	0.0
Judge 1510	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1546	82	69.5	3.7	25.6	1.2	280	81.1	1.1	17.9	0.0	619	82.2	4.7	11.8	1.3	929	75.8	5.3	16.9	2.0

(Continued)

There were 12 cases missing information on the sentencing judge from the Northern District of Iowa.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Iowa

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1562	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1606	9	88.9	0.0	11.1	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1650	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 1657	3	66.7	0.0	33.3	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1666	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	5	80.0	20.0	0.0	0.0
Judge 1756	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1819	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1903	3	33.3	0.0	66.7	0.0	7	42.9	0.0	57.1	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1978	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 2045	6	50.0	0.0	33.3	16.7	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 2076	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0

(Continued)

There were 12 cases missing information on the sentencing judge from the Northern District of Iowa.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Iowa

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 548	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	52	84.6	1.9	13.5	0.0
Judge 726	2	100.0	0.0	0.0	0.0	2	50.0	0.0	50.0	0.0	8	87.5	0.0	0.0	12.5	--	--	--	--	--
Judge 891	6	100.0	0.0	0.0	0.0	3	66.7	33.3	0.0	0.0	3	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 99	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

There were 12 cases missing information on the sentencing judge from the Northern District of Iowa.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Iowa

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	811	60.3	0.2	25.6	13.8	435	74.7	0.2	19.1	6.0	1,091	53.0	1.6	23.5	22.0	1,705	46.5	2.0	26.2	25.3
Judge 1123	283	58.7	0.4	23.3	17.7	128	62.5	0.8	20.3	16.4	308	46.8	1.9	25.3	26.0	283	31.8	1.8	33.9	32.5
Judge 126	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1509	32	65.6	0.0	15.6	18.8	5	60.0	0.0	20.0	20.0	15	20.0	0.0	26.7	53.3	--	--	--	--	--
Judge 1510	174	52.9	0.6	29.3	17.2	120	77.5	0.0	19.2	3.3	306	41.8	1.6	25.8	30.7	341	27.9	2.3	26.1	43.7
Judge 1546	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 1717	2	50.0	0.0	50.0	0.0	3	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	3	33.3	0.0	66.7	0.0
Judge 1931	106	53.8	0.0	34.0	12.3	57	87.7	0.0	12.3	0.0	64	54.7	3.1	18.8	23.4	14	64.3	0.0	21.4	14.3
Judge 1959	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	66.7	0.0	0.0	33.3
Judge 196	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 2045	132	69.7	0.0	24.2	6.1	22	90.9	0.0	9.1	0.0	10	60.0	10.0	10.0	20.0	--	--	--	--	--
Judge 726	82	73.2	0.0	20.7	6.1	100	76.0	0.0	24.0	0.0	288	66.3	1.0	20.8	11.8	463	47.7	2.2	30.5	19.7

(Continued)

There were zero cases missing information on the sentencing judge from the Southern District of Iowa.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Iowa

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 891	--	--	--	--	--	--	--	--	--	--	97	71.1	0.0	22.7	6.2	594	62.5	1.9	19.5	16.2
Judge 892	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0

There were zero cases missing information on the sentencing judge from the Southern District of Iowa.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Minnesota

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,030	61.5	0.6	20.0	18.0	499	66.5	1.2	24.6	7.6	1,558	51.6	0.4	24.8	23.1	2,052	34.7	1.0	28.2	36.2
Judge 1037	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1045	123	66.7	0.8	17.9	14.6	60	71.7	0.0	25.0	3.3	167	53.3	0.6	21.6	24.6	186	36.6	0.0	25.3	38.2
Judge 1051	2	50.0	0.0	0.0	50.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1076	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1148	118	64.4	0.0	18.6	16.9	24	66.7	0.0	33.3	0.0	101	62.4	0.0	16.8	20.8	120	50.0	0.0	15.8	34.2
Judge 1208	--	--	--	--	--	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	1	0.0	0.0	0.0	100.0
Judge 1305	148	64.9	0.7	18.2	16.2	51	58.8	3.9	23.5	13.7	175	45.7	0.0	26.3	28.0	199	26.1	0.0	30.7	43.2
Judge 1367	--	--	--	--	--	1	100.0	0.0	0.0	0.0	3	66.7	0.0	0.0	33.3	8	12.5	0.0	12.5	75.0
Judge 1385	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1606	130	62.3	0.0	16.9	20.8	72	69.4	0.0	27.8	2.8	188	53.2	0.5	25.5	20.7	210	36.7	1.4	35.7	26.2
Judge 1650	--	--	--	--	--	--	--	--	--	--	33	69.7	3.0	24.2	3.0	178	49.4	1.7	23.0	25.8

(Continued)

There were three cases missing information on the sentencing judge from the District of Minnesota.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Minnesota

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 179	--	--	--	--	--	1	100.0	0.0	0.0	0.0	2	50.0	0.0	0.0	50.0	--	--	--	--	--
Judge 1894	111	55.9	0.9	25.2	18.0	46	60.9	0.0	34.8	4.3	156	45.5	0.0	26.9	27.6	207	20.3	0.5	30.0	49.3
Judge 1976	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	75.0	0.0	25.0	0.0
Judge 2045	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 28	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 441	3	0.0	0.0	66.7	33.3	1	0.0	0.0	100.0	0.0	4	75.0	0.0	25.0	0.0	--	--	--	--	--
Judge 451	106	53.8	0.0	20.8	25.5	58	67.2	1.7	17.2	13.8	165	47.9	0.0	28.5	23.6	261	34.9	0.8	34.5	29.9
Judge 496	141	61.0	0.7	22.7	15.6	61	73.8	1.6	16.4	8.2	195	65.1	0.5	21.5	12.8	190	38.4	1.1	31.1	29.5
Judge 540	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 546	16	87.5	0.0	6.3	6.3	52	63.5	0.0	26.9	9.6	188	48.9	0.0	26.1	25.0	273	38.5	1.1	24.2	36.3
Judge 549	--	--	--	--	--	10	40.0	0.0	50.0	10.0	3	66.7	0.0	33.3	0.0	1	100.0	0.0	0.0	0.0

(Continued)

There were three cases missing information on the sentencing judge from the District of Minnesota.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Minnesota

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 612	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 613	129	58.1	1.6	21.7	18.6	58	67.2	3.4	19.0	10.3	175	39.4	1.7	28.6	30.3	212	23.6	2.8	26.4	47.2
Judge 712	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0

There were three cases missing information on the sentencing judge from the District of Minnesota.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Missouri

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,594	73.1	0.2	21.1	5.6	927	79.1	0.5	17.7	2.7	2,875	68.8	0.7	18.2	12.3	3,684	55.3	1.4	19.1	24.2
Judge 1060	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 11	1	100.0	0.0	0.0	0.0	1	0.0	0.0	100.0	0.0	3	66.7	0.0	33.3	0.0	--	--	--	--	--
Judge 1108	210	74.8	0.5	20.5	4.3	131	84.0	0.0	15.3	0.8	299	74.9	0.7	18.4	6.0	346	62.4	1.7	13.6	22.3
Judge 1148	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1260	3	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	5	40.0	0.0	20.0	40.0
Judge 1342	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	50.0	0.0	0.0	50.0
Judge 1384	--	--	--	--	--	2	100.0	0.0	0.0	0.0	2	50.0	0.0	50.0	0.0	2	50.0	0.0	0.0	50.0
Judge 1473	199	70.4	0.0	21.1	8.5	111	72.1	0.0	19.8	8.1	379	58.8	0.5	19.8	20.8	430	51.2	1.9	18.6	28.4
Judge 153	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 1625	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1708	202	73.3	0.0	17.3	9.4	104	77.9	0.0	17.3	4.8	357	56.3	0.6	17.6	25.5	359	41.8	0.6	21.2	36.5

(Continued)

There were two cases missing information on the sentencing judge from the Eastern District of Missouri.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Missouri

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1709	2	100.0	0.0	0.0	0.0	4	75.0	0.0	25.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1734	123	76.4	0.0	19.5	4.1	102	75.5	0.0	22.5	2.0	336	69.3	1.5	18.8	10.4	487	49.7	2.3	20.1	27.9
Judge 1812	212	76.9	0.0	19.8	3.3	66	90.9	0.0	4.5	4.5	172	78.5	0.0	14.5	7.0	185	73.0	0.5	12.4	14.1
Judge 1978	240	69.2	0.0	25.0	5.8	153	75.8	0.7	21.6	2.0	356	70.5	0.6	15.7	13.2	390	53.6	0.5	23.6	22.3
Judge 1979	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 2003	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 239	5	100.0	0.0	0.0	0.0	--	--	--	--	--	3	100.0	0.0	0.0	0.0	2	0.0	0.0	50.0	50.0
Judge 447	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 494	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 541	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 597	--	--	--	--	--	--	--	--	--	--	2	0.0	0.0	100.0	0.0	59	49.2	1.7	22.0	27.1

(Continued)

There were two cases missing information on the sentencing judge from the Eastern District of Missouri.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Missouri

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 72	5	80.0	0.0	20.0	0.0	65	89.2	0.0	9.2	1.5	321	75.1	0.0	17.4	7.5	515	60.2	1.0	20.4	18.4
Judge 750	5	60.0	0.0	0.0	40.0	5	80.0	0.0	20.0	0.0	8	62.5	0.0	37.5	0.0	--	--	--	--	--
Judge 752	199	73.4	0.0	22.1	4.5	89	76.4	2.2	20.2	1.1	351	75.2	0.3	19.7	4.8	465	54.8	0.2	24.3	20.6
Judge 883	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 886	183	70.5	1.1	24.6	3.8	94	78.7	2.1	19.1	0.0	284	68.0	2.1	19.0	10.9	430	61.4	3.0	12.8	22.8

There were two cases missing information on the sentencing judge from the Eastern District of Missouri.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Missouri

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,714	61.7	0.7	32.3	5.3	819	75.9	1.1	19.8	3.2	2,401	69.3	1.3	18.3	11.0	2,756	57.6	2.7	22.5	17.2
Judge 1021	--	--	--	--	--	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	9	88.9	0.0	0.0	11.1
Judge 1060	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	7	100.0	0.0	0.0	0.0	7	100.0	0.0	0.0	0.0
Judge 1067	304	55.9	1.0	34.9	8.2	116	73.3	0.9	21.6	4.3	265	63.0	4.2	19.2	13.6	355	47.9	3.1	24.8	24.2
Judge 1136	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1203	--	--	--	--	--	1	100.0	0.0	0.0	0.0	7	100.0	0.0	0.0	0.0	10	100.0	0.0	0.0	0.0
Judge 1625	171	48.0	0.6	46.8	4.7	85	54.1	1.2	41.2	3.5	233	70.8	1.3	16.3	11.6	294	48.0	2.4	26.9	22.8
Judge 1734	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 1745	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1756	224	65.2	1.8	26.3	6.7	103	80.6	0.0	18.4	1.0	346	65.3	1.2	17.6	15.9	388	49.2	1.8	32.0	17.0
Judge 1941	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	75.0	25.0	0.0	0.0
Judge 2003	213	73.2	0.5	23.5	2.8	87	80.5	3.4	12.6	3.4	291	64.9	2.4	21.0	11.7	340	65.0	2.6	17.9	14.4

(Continued)

There were zero cases missing information on the sentencing judge from the Western District of Missouri.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Missouri

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 2053	--	--	--	--	--	--	--	--	--	--	9	55.6	0.0	22.2	22.2	--	--	--	--	--
Judge 2055	254	55.5	0.4	35.4	8.7	83	80.7	1.2	10.8	7.2	253	60.1	0.8	21.3	17.8	209	55.0	2.4	18.7	23.9
Judge 337	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 494	29	86.2	0.0	3.4	10.3	127	83.5	0.8	13.4	2.4	305	77.4	0.7	14.8	7.2	297	70.4	0.7	16.2	12.8
Judge 541	15	100.0	0.0	0.0	0.0	6	100.0	0.0	0.0	0.0	10	70.0	0.0	0.0	30.0	16	62.5	0.0	18.8	18.8
Judge 575	287	60.6	0.7	38.0	0.7	113	73.5	1.8	23.0	1.8	295	79.7	1.0	15.3	4.1	348	67.8	2.6	18.7	10.9
Judge 635	212	67.9	0.0	27.4	4.7	91	74.7	0.0	22.0	3.3	372	69.9	0.0	22.3	7.8	303	49.5	2.0	29.0	19.5
Judge 647	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 752	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 778	3	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0
Judge 962	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	169	65.7	10.1	14.8	9.5

There were zero cases missing information on the sentencing judge from the Western District of Missouri.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Nebraska

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,368	69.4	0.2	13.2	17.3	922	74.9	0.3	14.1	10.6	2,123	68.4	1.6	17.5	12.5	2,301	62.2	1.9	14.1	21.8
Judge 1029	448	73.2	0.0	11.8	15.0	169	86.4	0.6	5.3	7.7	545	74.9	1.8	16.7	6.6	488	65.4	1.6	14.5	18.4
Judge 1228	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1486	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	11	81.8	0.0	9.1	9.1	3	100.0	0.0	0.0	0.0
Judge 1510	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	0.0	50.0
Judge 1587	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1700	172	69.2	0.6	13.4	16.9	177	70.6	0.0	18.6	10.7	6	33.3	0.0	16.7	50.0	2	100.0	0.0	0.0	0.0
Judge 173	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1819	158	69.6	0.0	9.5	20.9	98	73.5	0.0	4.1	22.4	194	66.0	0.5	14.4	19.1	287	61.7	1.4	11.1	25.8
Judge 1852	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	8	87.5	0.0	0.0	12.5	11	63.6	0.0	18.2	18.2
Judge 1908	78	74.4	0.0	17.9	7.7	25	96.0	0.0	0.0	4.0	55	81.8	0.0	9.1	9.1	63	68.3	0.0	14.3	17.5
Judge 2078	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0

(Continued)

There were four cases missing information on the sentencing judge from the District of Nebraska.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Nebraska

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 270	140	77.9	0.0	13.6	8.6	235	83.0	0.4	12.8	3.8	704	73.9	1.6	14.6	9.9	772	63.5	1.4	13.3	21.8
Judge 706	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	50.0	0.0	--	--	--	--	--
Judge 893	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 99	365	60.0	0.5	15.3	24.1	215	58.6	0.5	25.1	15.8	595	55.5	1.8	23.9	18.8	672	57.9	3.1	16.1	22.9

There were four cases missing information on the sentencing judge from the District of Nebraska.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of North Dakota

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	407	69.8	2.2	15.7	12.3	230	81.7	0.4	12.6	5.2	682	62.8	0.7	27.9	8.7	990	56.6	1.4	27.5	14.5
Judge 1013	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1032	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	50.0	50.0	0.0	0.0
Judge 1278	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1283	--	--	--	--	--	--	--	--	--	--	6	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 1686	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1976	204	68.1	2.5	15.7	13.7	40	80.0	0.0	10.0	10.0	73	63.0	0.0	30.1	6.8	30	66.7	3.3	23.3	6.7
Judge 374	157	67.5	2.5	16.6	13.4	15	86.7	0.0	0.0	13.3	30	56.7	0.0	16.7	26.7	29	51.7	3.4	20.7	24.1
Judge 49	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 546	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 548	2	100.0	0.0	0.0	0.0	107	81.3	0.0	15.0	3.7	359	59.6	0.6	32.6	7.2	697	52.7	0.9	32.7	13.7
Judge 549	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	2	50.0	0.0	50.0	0.0

(Continued)

There were three cases missing information on the sentencing judge from the District of North Dakota.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of North Dakota

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 550	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 690	5	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 843	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 844	32	78.1	0.0	18.8	3.1	63	81.0	1.6	14.3	3.2	211	67.3	1.4	21.8	9.5	286	64.3	1.7	17.5	16.4
Judge 959	3	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--

There were three cases missing information on the sentencing judge from the District of North Dakota.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of South Dakota

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	744	78.6	4.8	5.2	11.3	406	79.1	3.4	9.6	7.9	1,294	75.1	4.6	7.3	12.9	1,677	69.7	3.3	5.1	21.9
Judge 1029	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1030	7	85.7	0.0	0.0	14.3	5	60.0	40.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1032	234	77.8	11.5	2.6	8.1	126	80.2	4.8	4.0	11.1	429	71.3	7.2	3.7	17.7	316	62.7	6.6	3.8	26.9
Judge 104	107	80.4	0.9	15.0	3.7	41	73.2	4.9	17.1	4.9	126	67.5	7.1	18.3	7.1	91	76.9	7.7	7.7	7.7
Judge 1045	--	--	--	--	--	3	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1054	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	166	74.7	4.8	1.2	19.3
Judge 1322	6	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	9	88.9	0.0	11.1	0.0	10	90.0	10.0	0.0	0.0
Judge 1484	10	80.0	10.0	0.0	10.0	3	33.3	0.0	0.0	66.7	6	83.3	0.0	0.0	16.7	1	100.0	0.0	0.0	0.0
Judge 1485	202	80.7	2.5	1.0	15.8	127	88.2	0.8	3.9	7.1	421	83.4	1.4	1.9	13.3	421	68.2	1.9	4.3	25.7
Judge 154	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 163	19	78.9	0.0	0.0	21.1	27	66.7	0.0	25.9	7.4	92	72.8	7.6	8.7	10.9	37	64.9	2.7	13.5	18.9

(Continued)

There were two cases missing information on the sentencing judge from the District of South Dakota.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of South Dakota

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1657	145	76.6	1.4	9.7	12.4	63	68.3	4.8	23.8	3.2	195	68.7	3.6	20.0	7.7	467	74.3	1.5	6.9	17.3
Judge 1729	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	15	53.3	0.0	33.3	13.3
Judge 1819	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1932	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	116	60.3	1.7	2.6	35.3
Judge 1976	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 2034	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	14	71.4	0.0	7.1	21.4
Judge 2063	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 360	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 374	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0
Judge 475	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 510	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	14	92.9	0.0	0.0	7.1

(Continued)

There were two cases missing information on the sentencing judge from the District of South Dakota.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of South Dakota

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 632	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 858	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 918	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 922	7	14.3	0.0	14.3	71.4	2	50.0	0.0	0.0	50.0	4	100.0	0.0	0.0	0.0	3	66.7	0.0	0.0	33.3

There were two cases missing information on the sentencing judge from the District of South Dakota.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Alaska

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	409	70.2	1.0	14.9	13.9	247	69.2	0.8	24.3	5.7	462	60.6	2.6	17.3	19.5	601	45.9	2.0	26.5	25.6
Judge 1122	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 120	17	58.8	0.0	35.3	5.9	60	76.7	1.7	18.3	3.3	187	60.4	4.3	16.0	19.3	202	45.5	3.0	31.2	20.3
Judge 1288	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1418	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	11	100.0	0.0	0.0	0.0
Judge 1438	1	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	2	50.0	0.0	50.0	0.0	--	--	--	--	--
Judge 1441	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1579	9	100.0	0.0	0.0	0.0	8	100.0	0.0	0.0	0.0	11	90.9	0.0	9.1	0.0	10	80.0	0.0	10.0	10.0
Judge 1678	140	65.0	0.7	17.9	16.4	65	75.4	1.5	15.4	7.7	147	59.2	2.7	18.4	19.7	122	41.8	3.3	32.0	23.0
Judge 1733	121	71.9	1.7	10.7	15.7	51	78.4	0.0	11.8	9.8	50	48.0	0.0	14.0	38.0	8	37.5	0.0	37.5	25.0
Judge 1749	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0	8	50.0	0.0	37.5	12.5
Judge 191	8	75.0	0.0	12.5	12.5	13	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--

(Continued)

There were zero cases missing information on the sentencing judge from the District of Alaska.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Alaska

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 230	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 248	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 249	--	--	--	--	--	--	--	--	--	--	20	70.0	0.0	15.0	15.0	188	45.7	1.1	22.9	30.3
Judge 576	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 591	27	88.9	0.0	3.7	7.4	8	62.5	0.0	25.0	12.5	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 733	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 749	--	--	--	--	--	--	--	--	--	--	6	66.7	0.0	33.3	0.0	--	--	--	--	--
Judge 823	81	67.9	1.2	18.5	12.3	39	17.9	0.0	79.5	2.6	34	67.6	0.0	26.5	5.9	49	38.8	0.0	12.2	49.0
Judge 841	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

There were zero cases missing information on the sentencing judge from the District of Alaska.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Arizona

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	9,001	33.1	1.1	18.9	46.8	4,631	39.5	1.9	52.2	6.4	11,668	30.2	2.3	61.5	6.1	21,495	40.2	1.3	51.6	6.9
Judge 1093	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	39	33.3	2.6	56.4	7.7
Judge 1099	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	39	28.2	0.0	66.7	5.1
Judge 1104	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	37	35.1	0.0	56.8	8.1
Judge 1166	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	21	33.3	0.0	57.1	9.5
Judge 1171	159	20.1	0.6	0.6	78.6	57	26.3	0.0	68.4	5.3	--	--	--	--	--	--	--	--	--	--
Judge 1177	53	98.1	1.9	0.0	0.0	11	100.0	0.0	0.0	0.0	4	75.0	0.0	25.0	0.0	341	98.8	0.0	0.0	1.2
Judge 1192	130	39.2	3.8	34.6	22.3	163	39.9	1.8	52.8	5.5	509	51.3	3.3	37.1	8.3	744	41.5	3.5	50.0	5.0
Judge 1195	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1196	7	42.9	0.0	14.3	42.9	1	0.0	0.0	0.0	100.0	4	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1214	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	33	30.3	0.0	63.6	6.1
Judge 1238	4	25.0	0.0	0.0	75.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were 18 cases missing information on the sentencing judge from the District of Arizona.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Arizona

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1244	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 125	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	62	32.3	1.6	61.3	4.8
Judge 1254	9	11.1	0.0	22.2	66.7	2	50.0	0.0	0.0	50.0	4	25.0	0.0	75.0	0.0	--	--	--	--	--
Judge 1255	410	27.8	0.0	22.7	49.5	145	37.2	0.0	53.8	9.0	386	44.3	2.6	44.0	9.1	326	37.1	1.8	54.6	6.4
Judge 126	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	116	34.5	1.7	55.2	8.6
Judge 127	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 128	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 1287	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	10	20.0	0.0	70.0	10.0
Judge 1301	--	--	--	--	--	--	--	--	--	--	2	0.0	0.0	50.0	50.0	--	--	--	--	--
Judge 1306	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	47	21.3	0.0	74.5	4.3
Judge 1326	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	13	100.0	0.0	0.0	0.0

(Continued)

There were 18 cases missing information on the sentencing judge from the District of Arizona.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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TABLE 2
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District of Arizona

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1331	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	37	10.8	0.0	81.1	8.1
Judge 1333	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	34	32.4	0.0	67.6	0.0
Judge 1347	237	44.3	1.7	16.9	37.1	168	64.9	0.0	29.2	6.0	428	41.1	2.1	45.6	11.2	615	32.0	1.6	49.3	17.1
Judge 1380	2	50.0	0.0	0.0	50.0	--	--	--	--	--	--	--	--	--	--	33	36.4	0.0	60.6	3.0
Judge 139	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1431	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1520	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	34	41.2	0.0	50.0	8.8
Judge 1527	31	90.3	9.7	0.0	0.0	18	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	375	99.2	0.0	0.3	0.5
Judge 1528	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	61	21.3	3.3	68.9	6.6
Judge 1530	16	43.8	0.0	18.8	37.5	--	--	--	--	--	--	--	--	--	--	97	20.6	0.0	73.2	6.2
Judge 1546	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	116	30.2	0.9	62.1	6.9

(Continued)

There were 18 cases missing information on the sentencing judge from the District of Arizona.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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TABLE 2
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District of Arizona

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1548	1	100.0	0.0	0.0	0.0	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1559	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	31	29.0	0.0	64.5	6.5
Judge 1599	1,204	30.6	0.5	19.8	49.1	511	39.7	0.6	54.2	5.5	1,356	24.6	3.1	69.5	2.9	1,204	27.6	2.1	64.2	6.1
Judge 1608	44	45.5	0.0	22.7	31.8	5	20.0	20.0	60.0	0.0	7	71.4	14.3	14.3	0.0	1	0.0	0.0	100.0	0.0
Judge 1609	408	37.7	2.7	18.4	41.2	168	34.5	2.4	39.9	23.2	151	41.1	4.6	45.7	8.6	464	39.4	1.3	52.4	6.9
Judge 1621	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 165	349	30.4	1.7	22.9	45.0	173	35.3	0.6	55.5	8.7	389	39.1	1.5	45.8	13.6	841	36.1	1.9	49.8	12.1
Judge 1673	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	18	22.2	0.0	77.8	0.0
Judge 1701	7	57.1	0.0	14.3	28.6	3	0.0	0.0	66.7	33.3	--	--	--	--	--	--	--	--	--	--
Judge 1727	463	27.6	0.6	20.3	51.4	134	23.9	0.0	65.7	10.4	366	40.7	2.2	45.6	11.5	736	35.6	1.4	51.4	11.7
Judge 1731	44	34.1	0.0	27.3	38.6	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were 18 cases missing information on the sentencing judge from the District of Arizona.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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TABLE 2
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District of Arizona

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
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Judge 1737	13	69.2	7.7	23.1	0.0	3	66.7	0.0	0.0	33.3	--	--	--	--	--	--	--	--	--	--
Judge 1766	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	735	34.8	0.8	57.4	6.9
Judge 1790	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	49	30.6	0.0	67.3	2.0
Judge 1797	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	31	22.6	0.0	74.2	3.2
Judge 1816	103	43.7	4.9	19.4	32.0	41	53.7	0.0	31.7	14.6	51	54.9	2.0	33.3	9.8	--	--	--	--	--
Judge 1841	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1849	335	26.6	0.6	17.9	54.9	167	40.1	1.8	47.9	10.2	487	44.4	2.7	42.3	10.7	851	39.7	1.8	53.2	5.3
Judge 190	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1912	2	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--	2	0.0	0.0	100.0	0.0
Judge 1913	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	28	32.1	0.0	53.6	14.3
Judge 1927	37	100.0	0.0	0.0	0.0	30	46.7	53.3	0.0	0.0	1	100.0	0.0	0.0	0.0	363	100.0	0.0	0.0	0.0

(Continued)

There were 18 cases missing information on the sentencing judge from the District of Arizona.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Arizona

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1929	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1940	--	--	--	--	--	--	--	--	--	--	9	44.4	0.0	11.1	44.4	7	100.0	0.0	0.0	0.0
Judge 1944	--	--	--	--	--	--	--	--	--	--	436	44.7	4.8	40.8	9.6	723	38.2	2.1	50.6	9.1
Judge 1974	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	38	47.4	2.6	42.1	7.9
Judge 1976	1	0.0	0.0	0.0	100.0	14	28.6	0.0	57.1	14.3	63	19.0	1.6	77.8	1.6	--	--	--	--	--
Judge 1978	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	61	27.9	0.0	68.9	3.3
Judge 1984	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1997	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	43	16.3	0.0	76.7	7.0
Judge 2066	1	100.0	0.0	0.0	0.0	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--
Judge 2068	1,502	27.1	0.9	15.1	56.9	595	40.7	1.3	53.4	4.5	1,510	20.8	1.9	73.1	4.2	1,574	25.8	1.3	64.4	8.6
Judge 2077	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	124	26.6	2.4	62.1	8.9

(Continued)

There were 18 cases missing information on the sentencing judge from the District of Arizona.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Arizona

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 216	87	59.8	2.3	10.3	27.6	20	70.0	0.0	20.0	10.0	14	57.1	0.0	42.9	0.0	1	0.0	0.0	0.0	100.0
Judge 228	3	33.3	0.0	0.0	66.7	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 247	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 248	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 249	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	141	31.2	0.7	58.9	9.2
Judge 253	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	16	93.8	0.0	0.0	6.3
Judge 256	481	37.4	0.2	35.1	27.2	582	37.6	0.3	58.9	3.1	1,437	23.5	1.7	71.3	3.5	2,061	33.1	1.8	60.0	5.0
Judge 263	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	36	30.6	0.0	61.1	8.3
Judge 265	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 271	--	--	--	--	--	81	50.6	3.7	35.8	9.9	413	47.2	2.4	45.5	4.8	826	39.6	1.5	53.1	5.8
Judge 293	455	29.0	0.9	13.8	56.3	145	36.6	2.8	49.7	11.0	393	47.8	1.0	41.7	9.4	243	40.7	0.8	48.6	9.9

(Continued)

There were 18 cases missing information on the sentencing judge from the District of Arizona.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Arizona

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 295	53	41.5	50.9	0.0	7.5	72	55.6	44.4	0.0	0.0	2	50.0	50.0	0.0	0.0	--	--	--	--	--
Judge 332	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 351	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	16	37.5	0.0	56.3	6.3
Judge 367	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 368	1,501	23.7	0.2	19.3	56.8	595	23.9	0.7	71.1	4.4	1,548	20.7	1.8	71.0	6.5	2,133	28.9	0.9	60.2	9.9
Judge 369	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 38	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 384	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 39	9	66.7	0.0	0.0	33.3	4	50.0	0.0	50.0	0.0	12	75.0	8.3	8.3	8.3	9	88.9	0.0	0.0	11.1
Judge 403	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	86	31.4	2.3	58.1	8.1
Judge 45	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	38	39.5	0.0	60.5	0.0

(Continued)

There were 18 cases missing information on the sentencing judge from the District of Arizona.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Arizona

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 451	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	71	33.8	0.0	62.0	4.2
Judge 496	36	27.8	0.0	19.4	52.8	11	27.3	0.0	72.7	0.0	55	16.4	1.8	76.4	5.5	183	26.2	0.0	69.9	3.8
Judge 500	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	100	21.0	1.0	65.0	13.0
Judge 514	--	--	--	--	--	3	100.0	0.0	0.0	0.0	7	85.7	0.0	14.3	0.0	13	69.2	0.0	30.8	0.0
Judge 517	11	27.3	0.0	18.2	54.5	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 527	41	97.6	0.0	0.0	2.4	66	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0	358	100.0	0.0	0.0	0.0
Judge 530	51	49.0	0.0	0.0	51.0	3	33.3	0.0	66.7	0.0	64	26.6	0.0	67.2	6.3	37	27.0	0.0	59.5	13.5
Judge 542	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 552	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	417	99.8	0.0	0.0	0.2
Judge 557	7	14.3	0.0	0.0	85.7	--	--	--	--	--	--	--	--	--	--	114	32.5	0.9	57.9	8.8
Judge 580	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	326	100.0	0.0	0.0	0.0

(Continued)

There were 18 cases missing information on the sentencing judge from the District of Arizona.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Arizona

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 586	43	97.7	0.0	0.0	2.3	27	96.3	0.0	0.0	3.7	--	--	--	--	--	--	--	--	--	--
Judge 591	40	27.5	0.0	0.0	72.5	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 613	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	26	34.6	3.8	46.2	15.4
Judge 618	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	54	31.5	0.0	55.6	13.0
Judge 620	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	32	21.9	3.1	62.5	12.5
Judge 622	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 65	--	--	--	--	--	14	50.0	0.0	50.0	0.0	58	27.6	1.7	69.0	1.7	313	26.2	0.6	66.5	6.7
Judge 66	--	--	--	--	--	--	--	--	--	--	5	100.0	0.0	0.0	0.0	6	100.0	0.0	0.0	0.0
Judge 701	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	34	38.2	0.0	58.8	2.9
Judge 729	--	--	--	--	--	--	--	--	--	--	5	80.0	0.0	20.0	0.0	378	99.5	0.3	0.3	0.0
Judge 730	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0

(Continued)

There were 18 cases missing information on the sentencing judge from the District of Arizona.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Arizona

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 743	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	8	50.0	0.0	50.0	0.0
Judge 770	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 779	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	48	35.4	0.0	56.3	8.3
Judge 816	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	35	40.0	0.0	54.3	5.7
Judge 844	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	22	13.6	0.0	86.4	0.0
Judge 881	107	96.3	0.9	0.9	1.9	26	100.0	0.0	0.0	0.0	37	100.0	0.0	0.0	0.0	11	90.9	0.0	0.0	9.1
Judge 891	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	88	37.5	0.0	55.7	6.8
Judge 908	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	27	22.2	3.7	74.1	0.0
Judge 921	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	50	38.0	2.0	50.0	10.0
Judge 924	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 927	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	51	17.6	0.0	74.5	7.8

(Continued)

There were 18 cases missing information on the sentencing judge from the District of Arizona.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Arizona

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 928	--	--	--	--	--	--	--	--	--	--	6	33.3	16.7	16.7	33.3	39	38.5	0.0	56.4	5.1
Judge 938	--	--	--	--	--	--	--	--	--	--	8	12.5	12.5	75.0	0.0	9	11.1	0.0	88.9	0.0
Judge 939	493	43.4	0.4	31.4	24.7	566	36.2	0.4	56.9	6.5	1,431	19.1	2.0	75.7	3.3	1,846	25.0	1.2	67.4	6.4
Judge 944	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 999	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	30	26.7	0.0	63.3	10.0

There were 18 cases missing information on the sentencing judge from the District of Arizona.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Central District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	2,368	78.7	0.3	10.7	10.3	1,350	83.9	0.1	11.3	4.8	3,758	57.3	0.9	23.7	18.1	7,103	34.1	1.7	42.0	22.3
Judge 1000	134	79.1	0.7	9.7	10.4	42	78.6	0.0	19.0	2.4	112	58.0	2.7	19.6	19.6	254	30.7	3.5	43.3	22.4
Judge 1012	3	100.0	0.0	0.0	0.0	27	81.5	0.0	11.1	7.4	106	63.2	0.9	22.6	13.2	253	37.9	0.0	45.8	16.2
Judge 1036	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1037	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1041	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	50.0	0.0
Judge 1060	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	0.0	0.0	50.0	50.0
Judge 1061	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	66.7	0.0	33.3	0.0
Judge 1063	2	100.0	0.0	0.0	0.0	--	--	--	--	--	37	56.8	0.0	35.1	8.1	181	26.0	1.7	58.6	13.8
Judge 1100	29	96.6	0.0	0.0	3.4	22	100.0	0.0	0.0	0.0	87	57.5	2.3	19.5	20.7	39	35.9	2.6	33.3	28.2
Judge 1101	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1104	134	86.6	0.0	5.2	8.2	59	93.2	0.0	5.1	1.7	108	66.7	0.0	16.7	16.7	27	66.7	0.0	33.3	0.0

(Continued)

There were 132 cases missing information on the sentencing judge from the Central District of California.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Central District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1135	--	--	--	--	--	1	100.0	0.0	0.0	0.0	10	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0
Judge 1150	2	50.0	0.0	0.0	50.0	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 1158	142	79.6	0.0	17.6	2.8	51	78.4	0.0	13.7	7.8	69	71.0	0.0	17.4	11.6	--	--	--	--	--
Judge 1176	34	79.4	0.0	5.9	14.7	11	81.8	0.0	9.1	9.1	33	60.6	0.0	18.2	21.2	22	18.2	0.0	50.0	31.8
Judge 1202	124	74.2	0.8	9.7	15.3	68	77.9	0.0	17.6	4.4	127	53.5	0.0	12.6	33.9	307	31.3	2.9	28.7	37.1
Judge 1229	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	5	80.0	0.0	0.0	20.0
Judge 1243	--	--	--	--	--	2	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1252	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1320	22	68.2	0.0	13.6	18.2	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1328	114	70.2	0.0	13.2	16.7	43	93.0	0.0	4.7	2.3	153	55.6	0.7	30.1	13.7	237	38.0	0.4	50.2	11.4
Judge 1341	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	9	88.9	0.0	0.0	11.1

(Continued)

There were 132 cases missing information on the sentencing judge from the Central District of California.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Central District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1355	--	--	--	--	--	--	--	--	--	--	6	100.0	0.0	0.0	0.0	7	71.4	0.0	28.6	0.0
Judge 1356	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1374	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	109	47.7	0.9	37.6	13.8
Judge 1415	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0
Judge 1427	--	--	--	--	--	26	92.3	0.0	3.8	3.8	115	73.9	2.6	8.7	14.8	253	34.0	4.3	34.0	27.7
Judge 1436	5	80.0	0.0	20.0	0.0	--	--	--	--	--	--	--	--	--	--	10	20.0	0.0	30.0	50.0
Judge 1444	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	4	75.0	0.0	25.0	0.0
Judge 1449	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1481	52	88.5	0.0	0.0	11.5	59	86.4	0.0	5.1	8.5	154	55.2	0.0	27.9	16.9	378	27.5	2.6	51.3	18.5
Judge 15	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1513	64	98.4	0.0	0.0	1.6	41	78.0	0.0	12.2	9.8	135	60.7	3.7	18.5	17.0	227	24.2	2.2	52.0	21.6

(Continued)

There were 132 cases missing information on the sentencing judge from the Central District of California.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Central District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1528	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1531	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 1532	61	95.1	0.0	3.3	1.6	29	96.6	0.0	3.4	0.0	44	97.7	0.0	2.3	0.0	1	100.0	0.0	0.0	0.0
Judge 1544	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 1545	59	94.9	1.7	1.7	1.7	23	95.7	0.0	4.3	0.0	18	72.2	0.0	5.6	22.2	--	--	--	--	--
Judge 1548	64	96.9	0.0	3.1	0.0	31	100.0	0.0	0.0	0.0	75	66.7	0.0	22.7	10.7	215	37.7	0.9	26.0	35.3
Judge 159	--	--	--	--	--	1	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 1607	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	14	92.9	0.0	7.1	0.0
Judge 1624	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 1648	--	--	--	--	--	--	--	--	--	--	61	91.8	0.0	6.6	1.6	12	91.7	0.0	8.3	0.0
Judge 1680	--	--	--	--	--	--	--	--	--	--	5	100.0	0.0	0.0	0.0	14	92.9	0.0	7.1	0.0

(Continued)

There were 132 cases missing information on the sentencing judge from the Central District of California.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Central District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1684	--	--	--	--	--	21	100.0	0.0	0.0	0.0	172	59.3	0.0	24.4	16.3	292	32.9	0.3	52.4	14.4
Judge 1768	126	72.2	0.8	10.3	16.7	59	83.1	0.0	6.8	10.2	153	29.4	0.0	46.4	24.2	293	23.2	0.7	48.8	27.3
Judge 1815	126	65.9	0.0	15.9	18.3	53	88.7	0.0	9.4	1.9	140	54.3	0.0	23.6	22.1	58	39.7	1.7	51.7	6.9
Judge 1839	44	93.2	0.0	4.5	2.3	41	87.8	0.0	4.9	7.3	147	29.9	0.7	36.1	33.3	58	19.0	0.0	39.7	41.4
Judge 1845	2	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1846	187	59.9	1.6	28.3	10.2	57	84.2	0.0	15.8	0.0	37	64.9	0.0	18.9	16.2	--	--	--	--	--
Judge 1851	126	69.0	0.0	13.5	17.5	53	77.4	0.0	17.0	5.7	59	62.7	0.0	18.6	18.6	--	--	--	--	--
Judge 1869	50	98.0	0.0	2.0	0.0	56	75.0	0.0	16.1	8.9	44	34.1	0.0	20.5	45.5	32	28.1	0.0	40.6	31.3
Judge 1892	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	29	37.9	0.0	58.6	3.4
Judge 1895	1	0.0	0.0	0.0	100.0	--	--	--	--	--	13	92.3	0.0	7.7	0.0	9	77.8	0.0	11.1	11.1
Judge 1908	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Central District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1947	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 1954	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	6	66.7	0.0	0.0	33.3
Judge 1957	12	100.0	0.0	0.0	0.0	43	86.0	0.0	7.0	7.0	159	52.2	1.9	18.2	27.7	238	20.6	1.3	45.8	32.4
Judge 1966	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 1971	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1999	--	--	--	--	--	--	--	--	--	--	16	43.8	6.3	25.0	25.0	66	34.8	0.0	25.8	39.4
Judge 2001	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 2021	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 2027	--	--	--	--	--	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 2030	1	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 2031	51	96.1	0.0	3.9	0.0	35	94.3	0.0	5.7	0.0	52	94.2	0.0	3.8	1.9	259	26.3	6.6	22.4	44.8

(Continued)

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TABLE 2
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Central District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
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Judge 2040	--	--	--	--	--	--	--	--	--	--	9	77.8	0.0	22.2	0.0	15	86.7	0.0	6.7	6.7
Judge 2041	--	--	--	--	--	--	--	--	--	--	6	100.0	0.0	0.0	0.0	10	90.0	0.0	10.0	0.0
Judge 2054	--	--	--	--	--	--	--	--	--	--	10	40.0	0.0	50.0	10.0	250	41.2	3.2	38.0	17.6
Judge 2057	--	--	--	--	--	--	--	--	--	--	14	35.7	0.0	42.9	21.4	279	25.4	0.4	30.5	43.7
Judge 2069	--	--	--	--	--	2	100.0	0.0	0.0	0.0	11	100.0	0.0	0.0	0.0	8	87.5	0.0	0.0	12.5
Judge 262	16	100.0	0.0	0.0	0.0	8	100.0	0.0	0.0	0.0	8	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 263	1	100.0	0.0	0.0	0.0	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 287	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 289	--	--	--	--	--	23	73.9	0.0	21.7	4.3	149	30.9	1.3	44.3	23.5	262	19.8	1.9	59.5	18.7
Judge 293	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 297	161	75.2	0.6	13.0	11.2	62	87.1	0.0	11.3	1.6	224	69.2	0.0	22.8	8.0	329	45.3	1.2	37.7	15.8

(Continued)

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Judge 3	--	--	--	--	--	--	--	--	--	--	11	100.0	0.0	0.0	0.0	6	66.7	0.0	0.0	33.3
Judge 321	--	--	--	--	--	--	--	--	--	--	7	100.0	0.0	0.0	0.0	7	100.0	0.0	0.0	0.0
Judge 333	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0	11	72.7	0.0	0.0	27.3
Judge 363	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 365	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 366	125	80.0	0.0	10.4	9.6	59	89.8	0.0	8.5	1.7	165	49.7	1.8	28.5	20.0	80	36.3	2.5	42.5	18.8
Judge 394	90	55.6	0.0	14.4	30.0	56	57.1	0.0	37.5	5.4	166	41.6	0.6	19.9	38.0	160	30.6	1.3	34.4	33.8
Judge 399	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 41	15	100.0	0.0	0.0	0.0	53	86.8	0.0	7.5	5.7	116	64.7	1.7	19.8	13.8	234	33.8	2.6	42.3	21.4
Judge 526	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 531	--	--	--	--	--	1	100.0	0.0	0.0	0.0	7	71.4	0.0	14.3	14.3	11	90.9	0.0	0.0	9.1

(Continued)

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Central District of California

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Judge 560	--	--	--	--	--	--	--	--	--	--	10	50.0	0.0	50.0	0.0	216	33.8	0.9	43.1	22.2
Judge 567	--	--	--	--	--	--	--	--	--	--	15	46.7	0.0	53.3	0.0	26	88.5	0.0	11.5	0.0
Judge 568	52	98.1	0.0	1.9	0.0	54	70.4	1.9	16.7	11.1	110	45.5	0.9	34.5	19.1	278	34.2	0.7	53.2	11.9
Judge 587	--	--	--	--	--	7	100.0	0.0	0.0	0.0	137	59.1	2.2	31.4	7.3	368	46.7	1.6	41.3	10.3
Judge 620	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 641	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 658	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	64	25.0	1.6	53.1	20.3
Judge 692	--	--	--	--	--	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 731	--	--	--	--	--	--	--	--	--	--	15	66.7	0.0	33.3	0.0	246	26.4	0.4	56.1	17.1
Judge 735	--	--	--	--	--	--	--	--	--	--	11	18.2	0.0	72.7	9.1	252	41.7	0.0	39.7	18.7
Judge 772	28	85.7	0.0	10.7	3.6	16	87.5	0.0	12.5	0.0	53	58.5	1.9	20.8	18.9	26	3.8	3.8	50.0	42.3

(Continued)

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Central District of California

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Judge 80	80	77.5	0.0	8.8	13.8	46	71.7	0.0	15.2	13.0	3	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 805	--	--	--	--	--	--	--	--	--	--	6	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0
Judge 818	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	100.0	0.0	0.0
Judge 858	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	50.0	0.0	--	--	--	--	--
Judge 866	9	88.9	0.0	11.1	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 881	3	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 903	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0
Judge 908	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 924	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 972	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 973	11	100.0	0.0	0.0	0.0	--	--	--	--	--	4	75.0	0.0	0.0	25.0	1	0.0	0.0	0.0	100.0

(Continued)

There were 132 cases missing information on the sentencing judge from the Central District of California.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Central District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 989	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0	10	80.0	0.0	10.0	10.0
Judge 997	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	4	25.0	0.0	75.0	0.0

There were 132 cases missing information on the sentencing judge from the Central District of California.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	2,023	72.8	0.1	19.9	7.1	1,099	74.2	0.3	21.1	4.4	2,842	54.7	1.0	33.6	10.8	3,668	41.9	1.3	45.1	11.6
Judge 1055	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1101	195	57.9	0.5	35.4	6.2	74	50.0	1.4	45.9	2.7	145	51.0	2.1	40.0	6.9	--	--	--	--	--
Judge 1104	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 116	14	92.9	0.0	0.0	7.1	3	100.0	0.0	0.0	0.0	14	85.7	0.0	7.1	7.1	3	66.7	0.0	0.0	33.3
Judge 1265	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	191	35.1	0.5	48.2	16.2
Judge 1267	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 1334	60	96.7	0.0	1.7	1.7	9	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1336	--	--	--	--	--	23	100.0	0.0	0.0	0.0	30	90.0	0.0	3.3	6.7	57	52.6	0.0	42.1	5.3
Judge 137	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1372	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	16	100.0	0.0	0.0	0.0
Judge 1398	72	94.4	0.0	2.8	2.8	15	100.0	0.0	0.0	0.0	9	88.9	0.0	11.1	0.0	--	--	--	--	--

(Continued)

There were ten cases missing information on the sentencing judge from the Eastern District of California.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1410	9	88.9	0.0	0.0	11.1	6	100.0	0.0	0.0	0.0	105	53.3	0.0	35.2	11.4	610	39.7	1.6	46.7	12.0
Judge 1411	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	50.0	0.0
Judge 1662	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1663	18	50.0	0.0	22.2	27.8	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1687	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 1722	135	53.3	0.0	35.6	11.1	79	60.8	1.3	34.2	3.8	161	46.6	1.9	41.6	9.9	171	39.8	0.6	48.5	11.1
Judge 1733	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1769	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1770	14	92.9	0.0	0.0	7.1	3	100.0	0.0	0.0	0.0	16	100.0	0.0	0.0	0.0	10	80.0	0.0	0.0	20.0
Judge 1833	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1864	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	66.7	33.3	0.0	0.0

(Continued)

There were ten cases missing information on the sentencing judge from the Eastern District of California.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1943	12	91.7	0.0	8.3	0.0	7	71.4	0.0	14.3	14.3	8	62.5	0.0	25.0	12.5	--	--	--	--	--
Judge 1961	294	86.7	0.0	7.5	5.8	193	86.0	0.0	9.8	4.1	697	55.1	0.6	27.4	16.9	566	36.0	1.4	46.3	16.3
Judge 197	--	--	--	--	--	--	--	--	--	--	9	88.9	0.0	0.0	11.1	24	83.3	0.0	4.2	12.5
Judge 224	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 254	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	66.7	0.0	33.3	0.0
Judge 255	143	60.8	0.0	35.0	4.2	78	60.3	0.0	37.2	2.6	194	49.5	0.0	40.7	9.8	288	43.1	1.4	47.2	8.3
Judge 403	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	0.0	50.0	0.0	50.0
Judge 410	285	84.6	0.0	8.1	7.4	146	75.3	0.0	15.8	8.9	68	63.2	0.0	23.5	13.2	--	--	--	--	--
Judge 416	10	90.0	0.0	0.0	10.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 434	180	40.6	0.6	47.2	11.7	73	64.4	0.0	31.5	4.1	210	46.7	0.5	45.2	7.6	251	44.6	2.8	39.0	13.5
Judge 503	75	96.0	0.0	1.3	2.7	13	92.3	0.0	0.0	7.7	37	94.6	0.0	0.0	5.4	22	95.5	0.0	0.0	4.5

(Continued)

There were ten cases missing information on the sentencing judge from the Eastern District of California.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 541	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 542	17	64.7	0.0	35.3	0.0	73	63.0	1.4	28.8	6.8	211	47.9	0.0	46.0	6.2	280	37.9	1.4	53.2	7.5
Judge 609	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 644	41	43.9	2.4	43.9	9.8	49	57.1	0.0	40.8	2.0	145	53.1	4.1	40.0	2.8	276	48.2	1.4	44.2	6.2
Judge 645	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 693	--	--	--	--	--	1	100.0	0.0	0.0	0.0	7	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 70	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	7	71.4	0.0	0.0	28.6
Judge 825	56	96.4	0.0	1.8	1.8	21	100.0	0.0	0.0	0.0	29	89.7	3.4	6.9	0.0	29	93.1	0.0	3.4	3.4
Judge 882	228	85.1	0.0	8.3	6.6	179	84.9	0.0	12.3	2.8	532	59.4	0.9	31.6	8.1	586	39.9	1.0	49.0	10.1
Judge 898	--	--	--	--	--	--	--	--	--	--	25	28.0	0.0	44.0	28.0	14	57.1	0.0	28.6	14.3
Judge 953	145	53.8	0.0	35.2	11.0	43	62.8	0.0	27.9	9.3	175	40.0	2.3	40.0	17.7	244	38.5	0.8	44.3	16.4

(Continued)

There were ten cases missing information on the sentencing judge from the Eastern District of California.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 975	10	80.0	0.0	0.0	20.0	9	100.0	0.0	0.0	0.0	13	84.6	0.0	0.0	15.4	10	100.0	0.0	0.0	0.0

There were ten cases missing information on the sentencing judge from the Eastern District of California.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,844	65.0	1.0	12.3	21.7	752	70.9	0.9	17.4	10.8	2,001	55.6	1.8	25.9	16.7	3,061	49.6	2.1	31.7	16.6
Judge 1026	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	19	57.9	0.0	31.6	10.5
Judge 1058	9	88.9	0.0	0.0	11.1	1	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0	5	40.0	0.0	20.0	40.0
Judge 1062	9	100.0	0.0	0.0	0.0	14	64.3	0.0	14.3	21.4	35	77.1	0.0	0.0	22.9	23	65.2	0.0	8.7	26.1
Judge 1087	4	75.0	0.0	0.0	25.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1088	53	45.3	3.8	13.2	37.7	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1120	--	--	--	--	--	2	100.0	0.0	0.0	0.0	15	86.7	0.0	6.7	6.7	21	90.5	0.0	4.8	4.8
Judge 118	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	5	40.0	0.0	40.0	20.0
Judge 1389	2	100.0	0.0	0.0	0.0	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--
Judge 1423	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1454	66	63.6	0.0	7.6	28.8	31	74.2	0.0	22.6	3.2	105	41.9	1.0	42.9	14.3	167	40.7	4.2	34.1	21.0
Judge 1567	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--

(Continued)

There were three cases missing information on the sentencing judge from the Northern District of California.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1623	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	7	28.6	0.0	57.1	14.3
Judge 166	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	0.0	50.0
Judge 1664	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1679	4	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0	11	81.8	0.0	18.2	0.0	67	52.2	0.0	31.3	16.4
Judge 1722	--	--	--	--	--	--	--	--	--	--	5	20.0	20.0	0.0	60.0	2	100.0	0.0	0.0	0.0
Judge 1750	1	100.0	0.0	0.0	0.0	9	66.7	0.0	22.2	11.1	8	37.5	0.0	62.5	0.0	--	--	--	--	--
Judge 1779	15	93.3	0.0	0.0	6.7	5	80.0	0.0	0.0	20.0	28	85.7	0.0	3.6	10.7	22	90.9	0.0	4.5	4.5
Judge 1889	20	95.0	0.0	0.0	5.0	4	100.0	0.0	0.0	0.0	11	81.8	0.0	9.1	9.1	18	94.4	0.0	0.0	5.6
Judge 1910	--	--	--	--	--	--	--	--	--	--	9	88.9	0.0	0.0	11.1	5	80.0	0.0	0.0	20.0
Judge 193	32	81.3	0.0	6.3	12.5	30	100.0	0.0	0.0	0.0	60	83.3	0.0	6.7	10.0	36	72.2	0.0	13.9	13.9
Judge 1946	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0

(Continued)

There were three cases missing information on the sentencing judge from the Northern District of California.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1951	104	61.5	0.0	9.6	28.8	39	74.4	0.0	10.3	15.4	83	44.6	1.2	33.7	20.5	70	54.3	2.9	31.4	11.4
Judge 1961	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1962	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	0.0	50.0
Judge 1967	141	64.5	0.7	13.5	21.3	56	76.8	0.0	12.5	10.7	157	47.8	0.0	24.2	28.0	260	50.4	1.9	22.7	25.0
Judge 2006	--	--	--	--	--	22	77.3	9.1	13.6	0.0	101	78.2	1.0	14.9	5.9	160	59.4	3.8	33.8	3.1
Judge 2011	131	76.3	1.5	12.2	9.9	44	84.1	0.0	4.5	11.4	188	38.8	1.6	31.9	27.7	192	46.4	3.6	35.4	14.6
Judge 2015	142	62.7	1.4	9.9	26.1	63	68.3	1.6	17.5	12.7	128	55.5	3.1	28.9	12.5	243	52.7	2.9	27.6	16.9
Judge 202	124	61.3	0.0	11.3	27.4	39	43.6	2.6	35.9	17.9	138	48.6	2.2	28.3	21.0	224	39.7	1.3	37.9	21.0
Judge 2026	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 2073	4	75.0	0.0	25.0	0.0	2	100.0	0.0	0.0	0.0	16	87.5	0.0	6.3	6.3	6	83.3	0.0	0.0	16.7
Judge 251	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--

(Continued)

There were three cases missing information on the sentencing judge from the Northern District of California.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 28	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 29	103	67.0	1.0	11.7	20.4	49	53.1	2.0	20.4	24.5	99	49.5	3.0	34.3	13.1	191	46.1	2.1	33.0	18.8
Judge 326	6	83.3	0.0	0.0	16.7	8	87.5	0.0	12.5	0.0	31	83.9	0.0	12.9	3.2	21	61.9	0.0	19.0	19.0
Judge 329	117	56.4	1.7	12.8	29.1	31	51.6	0.0	41.9	6.5	52	63.5	0.0	17.3	19.2	156	50.6	2.6	35.3	11.5
Judge 382	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 398	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 440	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	12	25.0	0.0	41.7	33.3
Judge 56	15	60.0	13.3	6.7	20.0	5	80.0	0.0	0.0	20.0	5	80.0	0.0	20.0	0.0	--	--	--	--	--
Judge 57	108	65.7	0.9	9.3	24.1	58	75.9	0.0	12.1	12.1	94	62.8	0.0	26.6	10.6	217	51.6	2.8	31.8	13.8
Judge 599	152	63.8	0.0	19.7	16.4	46	76.1	0.0	21.7	2.2	169	56.8	2.4	26.0	14.8	251	53.8	1.2	32.7	12.4
Judge 721	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	6	100.0	0.0	0.0	0.0

(Continued)

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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 753	78	78.2	1.3	7.7	12.8	44	61.4	2.3	29.5	6.8	93	46.2	4.3	38.7	10.8	150	52.0	1.3	30.0	16.7
Judge 786	3	33.3	0.0	33.3	33.3	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 875	120	58.3	0.8	17.5	23.3	33	69.7	0.0	21.2	9.1	74	59.5	1.4	20.3	18.9	195	37.4	2.1	41.0	19.5
Judge 889	8	100.0	0.0	0.0	0.0	8	87.5	0.0	0.0	12.5	23	91.3	0.0	0.0	8.7	7	100.0	0.0	0.0	0.0
Judge 895	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 897	109	61.5	0.9	12.8	24.8	42	59.5	0.0	28.6	11.9	115	53.0	0.9	29.6	16.5	21	61.9	0.0	14.3	23.8
Judge 898	161	60.2	1.2	17.4	21.1	60	76.7	1.7	10.0	11.7	139	46.8	6.5	27.3	19.4	273	39.9	1.5	39.6	19.0

There were three cases missing information on the sentencing judge from the Northern District of California.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	7,874	42.8	0.2	11.3	45.8	3,056	68.2	0.3	25.0	6.5	7,988	44.8	0.7	44.9	9.6	16,984	36.7	0.6	53.1	9.6
Judge 1	4	75.0	0.0	0.0	25.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 101	4	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	90	37.8	1.1	60.0	1.1
Judge 1104	18	61.1	0.0	5.6	33.3	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1106	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	72	98.6	1.4	0.0	0.0
Judge 1125	846	35.2	0.1	10.4	54.3	364	61.3	0.3	29.4	9.1	613	33.0	0.0	57.9	9.1	1,156	32.2	0.3	51.2	16.3
Judge 1130	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1153	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	9	100.0	0.0	0.0	0.0
Judge 12	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	7	100.0	0.0	0.0	0.0
Judge 1225	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	6	66.7	0.0	16.7	16.7
Judge 124	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	16	100.0	0.0	0.0	0.0
Judge 1243	4	25.0	0.0	0.0	75.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--

(Continued)

There were 54 cases missing information on the sentencing judge from the Southern District of California.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1244	22	45.5	0.0	9.1	45.5	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 125	2	100.0	0.0	0.0	0.0	--	--	--	--	--	512	47.3	1.0	47.3	4.5	1,289	45.5	0.9	46.9	6.8
Judge 1263	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1283	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	0.0	50.0	--	--	--	--	--
Judge 1287	810	31.5	0.1	14.3	54.1	333	64.9	0.3	24.6	10.2	545	30.6	0.9	53.8	14.7	1,091	32.1	0.3	52.7	14.9
Judge 1291	2	50.0	0.0	0.0	50.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1330	164	30.5	0.0	17.7	51.8	43	72.1	0.0	23.3	4.7	80	36.3	1.3	56.3	6.3	--	--	--	--	--
Judge 1331	649	27.1	1.1	20.5	51.3	285	56.8	0.7	38.6	3.9	526	39.0	0.6	52.9	7.6	1,207	31.6	0.4	60.1	7.9
Judge 1361	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 1379	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1380	25	56.0	0.0	4.0	40.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1436	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1441	22	40.9	0.0	9.1	50.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1443	1	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--	4	100.0	0.0	0.0	0.0
Judge 1505	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	17	88.2	0.0	5.9	5.9
Judge 1520	18	44.4	0.0	5.6	50.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1548	32	37.5	0.0	9.4	53.1	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1553	2	50.0	0.0	0.0	50.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1567	347	53.3	0.0	10.1	36.6	197	78.7	1.0	17.3	3.0	187	46.0	0.5	40.6	12.8	--	--	--	--	--
Judge 1612	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1624	--	--	--	--	--	92	72.8	0.0	25.0	2.2	597	39.4	0.3	52.4	7.9	1,379	34.7	0.4	59.3	5.7
Judge 1630	--	--	--	--	--	--	--	--	--	--	13	92.3	0.0	7.7	0.0	1,242	38.6	0.4	56.7	4.3

(Continued)

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Southern District of California

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Judge 1653	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1710	48	20.8	0.0	6.3	72.9	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1733	60	30.0	1.7	8.3	60.0	5	60.0	0.0	20.0	20.0	--	--	--	--	--	--	--	--	--	--
Judge 1739	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	6	100.0	0.0	0.0	0.0
Judge 1778	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1786	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1811	2	50.0	0.0	0.0	50.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1813	1	0.0	0.0	0.0	100.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	10	60.0	10.0	30.0	0.0
Judge 1815	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 1839	6	16.7	0.0	16.7	66.7	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1851	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

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Southern District of California

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Judge 1857	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1859	617	96.4	0.2	0.3	3.1	273	95.6	0.0	1.5	2.9	851	72.7	1.2	22.2	3.9	892	65.4	0.6	33.7	0.3
Judge 1869	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1898	526	84.8	0.4	3.4	11.4	23	100.0	0.0	0.0	0.0	227	82.4	0.4	12.8	4.4	--	--	--	--	--
Judge 1967	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 1994	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1997	14	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1999	1	0.0	0.0	0.0	100.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 2001	--	--	--	--	--	--	--	--	--	--	16	12.5	0.0	81.3	6.3	--	--	--	--	--
Judge 2002	684	38.0	0.1	9.9	51.9	248	71.8	0.0	24.2	4.0	621	44.6	0.3	51.5	3.5	1,222	38.2	0.2	59.7	3.8
Judge 201	125	48.0	0.0	8.0	44.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--	2	50.0	0.0	50.0	0.0

(Continued)

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Southern District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 202	6	16.7	0.0	0.0	83.3	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 215	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	13	76.9	0.0	0.0	23.1
Judge 230	6	50.0	0.0	0.0	50.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 250	1	0.0	0.0	0.0	100.0	5	100.0	0.0	0.0	0.0	13	23.1	0.0	61.5	15.4	--	--	--	--	--
Judge 251	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 252	2	100.0	0.0	0.0	0.0	130	81.5	0.0	16.9	1.5	609	37.9	1.5	45.8	14.8	1,364	31.0	2.3	53.7	13.0
Judge 255	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	50.0	0.0	--	--	--	--	--
Judge 297	32	46.9	0.0	15.6	37.5	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 384	5	80.0	0.0	0.0	20.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 403	15	26.7	0.0	13.3	60.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 45	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	865	24.4	0.0	63.1	12.5

(Continued)

There were 54 cases missing information on the sentencing judge from the Southern District of California.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 526	2	0.0	0.0	50.0	50.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 541	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 544	28	60.7	0.0	3.6	35.7	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 557	20	30.0	0.0	5.0	65.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 591	52	44.2	0.0	7.7	48.1	3	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 632	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 638	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	100.0	0.0	0.0	0.0
Judge 644	14	57.1	0.0	0.0	42.9	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 660	25	44.0	0.0	4.0	52.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 696	872	31.1	0.0	13.5	55.4	377	59.9	0.8	30.2	9.0	448	41.5	0.2	43.3	15.0	820	29.1	0.2	60.6	10.0
Judge 697	3	0.0	0.0	33.3	66.7	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--

(Continued)

There were 54 cases missing information on the sentencing judge from the Southern District of California.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 709	2	50.0	0.0	0.0	50.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 775	--	--	--	--	--	--	--	--	--	--	4	25.0	0.0	75.0	0.0	--	--	--	--	--
Judge 776	--	--	--	--	--	75	58.7	0.0	40.0	1.3	597	38.0	0.7	56.4	4.9	1,407	33.7	0.5	55.1	10.7
Judge 777	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 778	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 779	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 80	1	0.0	0.0	0.0	100.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 825	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 842	2	100.0	0.0	0.0	0.0	50	74.0	0.0	22.0	4.0	613	46.2	1.0	23.7	29.2	1,418	41.7	0.4	38.3	19.5
Judge 858	420	23.8	0.0	14.3	61.9	159	66.0	0.0	30.8	3.1	558	40.7	0.0	56.3	3.0	1,371	32.1	0.3	59.7	7.9
Judge 861	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were 54 cases missing information on the sentencing judge from the Southern District of California.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of California

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 864	4	50.0	0.0	25.0	25.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 866	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 875	3	33.3	0.0	0.0	66.7	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 892	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 914	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 918	4	50.0	0.0	25.0	25.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 924	838	32.5	0.0	13.7	53.8	335	60.6	0.3	26.9	12.2	341	43.7	0.6	43.4	12.3	3	66.7	0.0	33.3	0.0
Judge 928	2	50.0	0.0	0.0	50.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 953	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 967	437	37.3	0.5	12.8	49.4	45	53.3	0.0	33.3	13.3	--	--	--	--	--	--	--	--	--	--
Judge 973	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

There were 54 cases missing information on the sentencing judge from the Southern District of California.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Guam

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	251	71.3	0.8	26.7	1.2	112	56.3	0.0	37.5	6.3	249	55.8	0.8	29.7	13.7	207	66.7	3.4	15.0	15.0
Judge 1104	--	--	--	--	--	--	--	--	--	--	7	71.4	0.0	28.6	0.0	--	--	--	--	--
Judge 1159	--	--	--	--	--	1	0.0	0.0	100.0	0.0	24	100.0	0.0	0.0	0.0	62	95.2	1.6	0.0	3.2
Judge 1176	--	--	--	--	--	--	--	--	--	--	9	33.3	0.0	55.6	11.1	--	--	--	--	--
Judge 1189	--	--	--	--	--	--	--	--	--	--	14	35.7	0.0	50.0	14.3	--	--	--	--	--
Judge 125	--	--	--	--	--	--	--	--	--	--	4	50.0	0.0	25.0	25.0	--	--	--	--	--
Judge 1301	--	--	--	--	--	--	--	--	--	--	3	66.7	0.0	33.3	0.0	--	--	--	--	--
Judge 1344	15	80.0	0.0	20.0	0.0	3	66.7	0.0	33.3	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1380	--	--	--	--	--	--	--	--	--	--	4	0.0	0.0	75.0	25.0	--	--	--	--	--
Judge 1427	--	--	--	--	--	--	--	--	--	--	11	63.6	0.0	27.3	9.1	--	--	--	--	--
Judge 1513	--	--	--	--	--	4	25.0	0.0	75.0	0.0	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 1576	--	--	--	--	--	--	--	--	--	--	7	57.1	0.0	42.9	0.0	--	--	--	--	--

(Continued)

There was one case missing information on the sentencing judge from the District of Guam.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Guam

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1839	--	--	--	--	--	--	--	--	--	--	10	50.0	0.0	50.0	0.0	--	--	--	--	--
Judge 1843	2	50.0	0.0	0.0	50.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1899	--	--	--	--	--	--	--	--	--	--	61	63.9	1.6	13.1	21.3	143	53.8	4.2	21.7	20.3
Judge 1903	1	100.0	0.0	0.0	0.0	10	70.0	0.0	30.0	0.0	7	57.1	0.0	42.9	0.0	--	--	--	--	--
Judge 1904	232	70.7	0.9	27.6	0.9	94	56.4	0.0	36.2	7.4	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 252	--	--	--	--	--	--	--	--	--	--	10	50.0	10.0	30.0	10.0	--	--	--	--	--
Judge 29	--	--	--	--	--	--	--	--	--	--	10	30.0	0.0	40.0	30.0	--	--	--	--	--
Judge 297	--	--	--	--	--	--	--	--	--	--	12	25.0	0.0	66.7	8.3	--	--	--	--	--
Judge 403	--	--	--	--	--	--	--	--	--	--	5	0.0	0.0	40.0	60.0	--	--	--	--	--
Judge 542	--	--	--	--	--	--	--	--	--	--	7	42.9	0.0	57.1	0.0	--	--	--	--	--
Judge 591	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There was one case missing information on the sentencing judge from the District of Guam.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Guam

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 660	--	--	--	--	--	--	--	--	--	--	12	75.0	0.0	16.7	8.3	--	--	--	--	--
Judge 742	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 842	--	--	--	--	--	--	--	--	--	--	4	50.0	0.0	50.0	0.0	--	--	--	--	--
Judge 864	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 898	--	--	--	--	--	--	--	--	--	--	6	66.7	0.0	16.7	16.7	--	--	--	--	--
Judge 927	--	--	--	--	--	--	--	--	--	--	17	35.3	0.0	35.3	29.4	--	--	--	--	--

There was one case missing information on the sentencing judge from the District of Guam.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Hawaii

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	888	60.1	0.6	30.3	9.0	454	66.3	0.7	28.6	4.4	1,232	48.4	1.5	33.0	17.1	870	42.6	1.1	30.9	25.3
Judge 1004	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1022	20	95.0	0.0	0.0	5.0	4	100.0	0.0	0.0	0.0	22	100.0	0.0	0.0	0.0	20	75.0	5.0	10.0	10.0
Judge 1044	31	96.8	0.0	0.0	3.2	12	100.0	0.0	0.0	0.0	35	85.7	0.0	5.7	8.6	13	84.6	0.0	0.0	15.4
Judge 1302	256	61.7	0.0	31.3	7.0	119	68.9	0.0	29.4	1.7	286	43.4	0.7	31.1	24.8	211	38.4	0.5	36.5	24.6
Judge 1524	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	100.0	0.0	0.0	0.0
Judge 1532	1	0.0	0.0	0.0	100.0	10	60.0	0.0	40.0	0.0	7	28.6	0.0	14.3	57.1	--	--	--	--	--
Judge 1545	12	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1548	4	50.0	0.0	50.0	0.0	3	33.3	0.0	66.7	0.0	--	--	--	--	--	--	--	--	--	--
Judge 16	--	--	--	--	--	6	83.3	0.0	0.0	16.7	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 1674	--	--	--	--	--	--	--	--	--	--	227	45.8	1.3	39.2	13.7	225	38.7	0.9	33.3	27.1
Judge 1683	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were three cases missing information on the sentencing judge from the District of Hawaii.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Hawaii

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1710	--	--	--	--	--	6	66.7	0.0	33.3	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1839	--	--	--	--	--	--	--	--	--	--	4	50.0	0.0	25.0	25.0	--	--	--	--	--
Judge 1843	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	0.0	50.0	--	--	--	--	--
Judge 2072	--	--	--	--	--	--	--	--	--	--	2	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 320	18	100.0	0.0	0.0	0.0	9	100.0	0.0	0.0	0.0	22	95.5	0.0	4.5	0.0	15	93.3	0.0	0.0	6.7
Judge 557	230	60.0	0.9	32.2	7.0	90	63.3	0.0	34.4	2.2	310	44.2	2.9	38.7	14.2	225	40.0	1.8	33.8	24.4
Judge 660	--	--	--	--	--	6	50.0	0.0	50.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 675	247	48.6	0.8	35.6	15.0	174	62.1	1.1	28.7	8.0	298	46.6	1.7	33.9	17.8	155	43.2	1.3	25.2	30.3
Judge 897	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 928	5	80.0	0.0	20.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 960	63	52.4	1.6	36.5	9.5	13	69.2	7.7	15.4	7.7	15	86.7	0.0	13.3	0.0	2	100.0	0.0	0.0	0.0

There were three cases missing information on the sentencing judge from the District of Hawaii.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Idaho

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	441	54.0	1.4	34.0	10.7	289	47.8	1.4	45.3	5.5	698	44.3	1.7	39.8	14.2	1,187	44.0	1.3	37.4	17.4
Judge 1104	3	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1121	152	57.2	2.0	29.6	11.2	120	58.3	1.7	32.5	7.5	303	48.2	0.7	35.3	15.8	484	43.6	0.4	34.5	21.5
Judge 1149	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1171	--	--	--	--	--	2	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1230	--	--	--	--	--	--	--	--	--	--	10	40.0	0.0	50.0	10.0	--	--	--	--	--
Judge 1244	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	7	57.1	0.0	42.9	0.0
Judge 1255	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	25.0	0.0	50.0	25.0
Judge 128	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	14	28.6	0.0	50.0	21.4
Judge 1337	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1368	7	28.6	0.0	71.4	0.0	--	--	--	--	--	17	23.5	0.0	64.7	11.8	--	--	--	--	--
Judge 1380	12	75.0	0.0	8.3	16.7	--	--	--	--	--	3	0.0	0.0	66.7	33.3	19	47.4	5.3	42.1	5.3

(Continued)

There was one case missing information on the sentencing judge from the District of Idaho.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Idaho

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1426	--	--	--	--	--	--	--	--	--	--	3	33.3	0.0	0.0	66.7	--	--	--	--	--
Judge 1427	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	25.0	25.0	25.0	25.0
Judge 1441	--	--	--	--	--	2	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1464	--	--	--	--	--	--	--	--	--	--	6	16.7	0.0	83.3	0.0	--	--	--	--	--
Judge 1528	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	14	42.9	0.0	42.9	14.3
Judge 1545	--	--	--	--	--	3	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1553	5	20.0	0.0	80.0	0.0	15	20.0	0.0	80.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1722	--	--	--	--	--	4	0.0	25.0	75.0	0.0	9	55.6	11.1	33.3	0.0	32	50.0	0.0	46.9	3.1
Judge 1755	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	16	68.8	0.0	25.0	6.3
Judge 1806	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	13	23.1	0.0	46.2	30.8
Judge 184	7	100.0	0.0	0.0	0.0	4	50.0	0.0	0.0	50.0	8	62.5	0.0	12.5	25.0	6.0	66.7	0.0	33.3	0.0

(Continued)

There was one case missing information on the sentencing judge from the District of Idaho.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Idaho

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1840	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	50.0	0.0	6	83.3	0.0	16.7	0.0
Judge 1843	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	31	38.7	3.2	41.9	16.1
Judge 1869	--	--	--	--	--	--	--	--	--	--	5	20.0	0.0	20.0	60.0	3	66.7	0.0	33.3	0.0
Judge 1912	5	60.0	0.0	20.0	20.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1913	7	57.1	0.0	14.3	28.6	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1999	1	0.0	0.0	100.0	0.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--	3	33.3	33.3	33.3	0.0
Judge 2024	4	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0	4	75.0	0.0	0.0	25.0
Judge 2037	206	51.9	1.5	36.4	10.2	107	45.8	0.9	48.6	4.7	294	42.9	3.1	42.2	11.9	404	41.1	1.7	41.3	15.8
Judge 230	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	0.0	0.0	50.0	50.0
Judge 252	--	--	--	--	--	--	--	--	--	--	7	14.3	0.0	71.4	14.3	13	7.7	0.0	53.8	38.5
Judge 257	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	0.0	50.0

(Continued)

There was one case missing information on the sentencing judge from the District of Idaho.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Idaho

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 258	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	8	75.0	12.5	0.0	12.5
Judge 274	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	5	60.0	0.0	40.0	0.0
Judge 297	24	41.7	0.0	45.8	12.5	9	33.3	0.0	66.7	0.0	2	50.0	0.0	0.0	50.0	13	53.8	0.0	23.1	23.1
Judge 403	1	100.0	0.0	0.0	0.0	2	0.0	0.0	100.0	0.0	--	--	--	--	--	29	48.3	3.4	41.4	6.9
Judge 431	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	13	92.3	0.0	7.7	0.0
Judge 500	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	32	43.8	0.0	40.6	15.6
Judge 515	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 557	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	0.0	50.0	--	--	--	--	--
Judge 591	--	--	--	--	--	2	50.0	0.0	50.0	0.0	6	33.3	0.0	66.7	0.0	--	--	--	--	--
Judge 660	6	50.0	0.0	33.3	16.7	10	20.0	0.0	80.0	0.0	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 772	--	--	--	--	--	--	--	--	--	--	12	16.7	0.0	66.7	16.7	--	--	--	--	--

(Continued)

There was one case missing information on the sentencing judge from the District of Idaho.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Idaho

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 776	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 938	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 996	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	5	80.0	0.0	20.0	0.0

There was one case missing information on the sentencing judge from the District of Idaho.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Montana

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	844	72.2	1.7	18.2	7.9	412	83.5	2.2	10.9	3.4	1,169	76.8	3.8	11.5	8.0	1,389	70.1	3.0	13.4	13.5
Judge 1127	34	58.8	0.0	35.3	5.9	18	61.1	0.0	16.7	22.2	54	68.5	9.3	13.0	9.3	66	62.1	7.6	7.6	22.7
Judge 1140	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0	16	81.3	0.0	6.3	12.5
Judge 1301	273	52.7	1.1	33.0	13.2	91	79.1	1.1	11.0	8.8	305	63.0	1.0	18.7	17.4	354	53.7	1.7	18.4	26.3
Judge 1380	2	50.0	0.0	50.0	0.0	--	--	--	--	--	7	85.7	0.0	14.3	0.0	--	--	--	--	--
Judge 1424	--	--	--	--	--	--	--	--	--	--	4	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0
Judge 1428	1	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	3	66.7	0.0	0.0	33.3	--	--	--	--	--
Judge 1528	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	15	40.0	0.0	20.0	40.0
Judge 1532	14	57.1	0.0	21.4	21.4	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1567	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1700	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1701	149	83.9	0.7	9.4	6.0	34	85.3	5.9	8.8	0.0	126	85.7	2.4	3.2	8.7	162	68.5	1.9	14.8	14.8

(Continued)

There were five cases missing information on the sentencing judge from the District of Montana.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Montana

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1733	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	50.0	0.0	--	--	--	--	--
Judge 1821	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	5	100.0	0.0	0.0	0.0
Judge 1839	2	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1840	16	81.3	0.0	6.3	12.5	--	--	--	--	--	1	100.0	0.0	0.0	0.0	1	0.0	0.0	0.0	100.0
Judge 1849	3	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 187	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1913	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1999	7	71.4	0.0	14.3	14.3	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 314	185	87.0	2.2	6.5	4.3	113	85.0	4.4	8.8	1.8	282	77.7	3.2	13.8	5.3	371	63.9	6.2	18.1	11.9
Judge 403	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 42	3	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	6	100.0	0.0	0.0	0.0	--	--	--	--	--

(Continued)

There were five cases missing information on the sentencing judge from the District of Montana.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Montana

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 439	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 500	--	--	--	--	--	--	--	--	--	--	7	85.7	14.3	0.0	0.0	--	--	--	--	--
Judge 547	18	94.4	0.0	5.6	0.0	1	100.0	0.0	0.0	0.0	3	66.7	0.0	0.0	33.3	--	--	--	--	--
Judge 740	127	81.1	4.7	13.4	0.8	150	86.7	0.7	12.7	0.0	360	85.6	6.4	6.9	1.1	392	92.6	1.3	5.4	0.8
Judge 818	5	40.0	0.0	20.0	40.0	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 819	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 830	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 856	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 927	--	--	--	--	--	--	--	--	--	--	4	25.0	0.0	0.0	75.0	--	--	--	--	--

There were five cases missing information on the sentencing judge from the District of Montana.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Nevada

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,490	74.9	0.5	10.9	13.6	755	82.9	0.7	12.2	4.2	1,575	69.7	1.7	15.7	12.8	1,954	64.1	1.6	15.7	18.5
Judge 1074	4	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0	6	100.0	0.0	0.0	0.0	2	50.0	0.0	0.0	50.0
Judge 1085	4	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	1	0.0	0.0	0.0	100.0
Judge 1149	77	83.1	0.0	5.2	11.7	96	84.4	1.0	10.4	4.2	170	64.1	0.6	21.2	14.1	266	66.5	0.4	19.2	13.9
Judge 1244	180	79.4	1.1	12.8	6.7	97	95.9	0.0	2.1	2.1	110	72.7	1.8	8.2	17.3	91	78.0	4.4	5.5	12.1
Judge 1257	4	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0	8	100.0	0.0	0.0	0.0	7	100.0	0.0	0.0	0.0
Judge 1359	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	103	59.2	1.9	17.5	21.4
Judge 1520	226	68.6	0.0	15.0	16.4	104	70.2	1.0	24.0	4.8	213	64.8	2.3	19.2	13.6	258	63.6	1.2	16.3	19.0
Judge 1528	4	75.0	0.0	0.0	25.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	3	0.0	0.0	66.7	33.3
Judge 1542	4	50.0	0.0	25.0	25.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1553	78	80.8	0.0	5.1	14.1	27	88.9	0.0	0.0	11.1	94	69.1	3.2	8.5	19.1	145	62.1	2.1	15.2	20.7
Judge 1636	--	--	--	--	--	--	--	--	--	--	108	70.4	1.9	9.3	18.5	70	70.0	1.4	4.3	24.3

(Continued)

There were two cases missing information on the sentencing judge from the District of Nevada.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Nevada

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 2045	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 391	3	100.0	0.0	0.0	0.0	6	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	8	100.0	0.0	0.0	0.0
Judge 454	228	72.4	0.0	10.5	17.1	89	86.5	0.0	11.2	2.2	201	77.6	1.0	17.9	3.5	262	64.9	0.4	21.0	13.7
Judge 455	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 557	2	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	7	0.0	0.0	42.9	57.1
Judge 600	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 660	150	82.0	0.7	12.0	5.3	49	83.7	0.0	14.3	2.0	72	75.0	0.0	16.7	8.3	136	64.7	1.5	21.3	12.5
Judge 742	206	74.3	1.5	7.8	16.5	57	77.2	1.8	7.0	14.0	6	33.3	0.0	0.0	66.7	--	--	--	--	--
Judge 798	94	77.7	1.1	2.1	19.1	108	80.6	1.9	14.8	2.8	180	63.9	2.8	17.2	16.1	157	58.6	1.9	5.7	33.8
Judge 864	223	69.1	0.4	15.7	14.8	86	76.7	0.0	19.8	3.5	214	72.9	0.9	15.4	10.7	234	62.8	2.1	20.5	14.5
Judge 911	3	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	2	50.0	0.0	0.0	50.0

(Continued)

There were two cases missing information on the sentencing judge from the District of Nevada.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Nevada

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 927	--	--	--	--	--	15	93.3	0.0	0.0	6.7	183	68.3	2.7	16.9	12.0	199	62.3	3.5	10.1	24.1
Judge 928	--	--	--	--	--	7	85.7	0.0	14.3	0.0	1	0.0	0.0	100.0	0.0	--	--	--	--	--

There were two cases missing information on the sentencing judge from the District of Nevada.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of the Northern Mariana Islands

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	35	60.0	0.0	40.0	0.0	29	82.8	0.0	17.2	0.0	63	69.8	1.6	25.4	3.2	69	79.7	0.0	10.1	10.1
Judge 1176	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 126	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	6	50.0	0.0	33.3	16.7
Judge 1344	35	60.0	0.0	40.0	0.0	29	82.8	0.0	17.2	0.0	61	70.5	1.6	26.2	1.6	46	84.8	0.0	10.9	4.3
Judge 1380	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1520	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	75.0	0.0	0.0	25.0
Judge 1899	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 2038	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 2039	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 29	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 297	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	50.0	0.0	0.0	50.0
Judge 403	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	0.0	50.0

(Continued)

There were zero cases missing information on the sentencing judge from the District of the Northern Mariana Islands.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of the Northern Mariana Islands

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 776	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0

There were zero cases missing information on the sentencing judge from the District of the Northern Mariana Islands.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Oregon

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,449	63.5	0.6	17.5	18.4	665	67.7	0.9	18.3	13.1	1,603	52.0	1.5	24.8	21.7	2,296	42.0	1.5	37.5	19.0
Judge 1175	80	48.8	1.3	20.0	30.0	18	83.3	0.0	11.1	5.6	87	56.3	0.0	32.2	11.5	156	55.1	0.0	31.4	13.5
Judge 120	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 1330	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1332	--	--	--	--	--	7	85.7	0.0	0.0	14.3	255	47.8	1.6	28.2	22.4	272	35.3	1.5	46.7	16.5
Judge 1441	74	50.0	0.0	23.0	27.0	30	53.3	0.0	20.0	26.7	74	56.8	1.4	20.3	21.6	217	49.8	1.4	19.4	29.5
Judge 1442	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0
Judge 1551	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1552	146	65.8	0.7	15.1	18.5	66	56.1	0.0	28.8	15.2	124	48.4	0.0	23.4	28.2	145	41.4	2.1	43.4	13.1
Judge 1554	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 16	238	78.2	0.4	14.7	6.7	104	76.9	0.0	16.3	6.7	216	47.2	1.9	29.2	21.8	199	42.7	0.5	38.7	18.1
Judge 1804	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0

(Continued)

There were zero cases missing information on the sentencing judge from the District of Oregon.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Oregon

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 218	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 219	186	52.2	0.5	21.5	25.8	90	58.9	1.1	24.4	15.6	213	51.2	2.3	25.4	21.1	297	33.7	2.4	43.4	20.5
Judge 338	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 348	5	80.0	0.0	0.0	20.0	--	--	--	--	--	3	100.0	0.0	0.0	0.0	14	64.3	0.0	0.0	35.7
Judge 392	2	100.0	0.0	0.0	0.0	--	--	--	--	--	2	50.0	0.0	0.0	50.0	--	--	--	--	--
Judge 49	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 526	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 627	47	53.2	2.1	29.8	14.9	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 63	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 743	237	66.7	0.0	14.3	19.0	121	68.6	0.0	21.5	9.9	166	58.4	1.2	22.3	18.1	271	51.3	1.5	34.3	12.9
Judge 790	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	5	40.0	0.0	60.0	0.0

(Continued)

There were zero cases missing information on the sentencing judge from the District of Oregon.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Oregon

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 818	226	79.6	0.4	12.8	7.1	104	78.8	1.9	12.5	6.7	194	58.2	1.5	23.2	17.0	241	49.8	2.1	34.9	13.3
Judge 820	4	75.0	0.0	25.0	0.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 854	3	66.7	33.3	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 927	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	0.0	50.0	--	--	--	--	--
Judge 928	10	60.0	0.0	20.0	20.0	12	58.3	25.0	8.3	8.3	46	56.5	4.3	26.1	13.0	164	41.5	1.8	40.2	16.5
Judge 998	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 999	189	43.9	1.1	22.8	32.3	109	62.4	0.0	13.8	23.9	216	48.1	1.4	19.9	30.6	304	27.6	1.6	41.4	29.3

There were zero cases missing information on the sentencing judge from the District of Oregon.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Washington

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	808	50.2	0.6	10.8	38.4	437	75.1	0.5	10.8	13.7	1,087	51.4	2.8	27.5	18.3	1,466	38.1	3.8	36.6	21.5
Judge 1075	--	--	--	--	--	--	--	--	--	--	4	50.0	0.0	50.0	0.0	--	--	--	--	--
Judge 1230	2	50.0	0.0	50.0	0.0	--	--	--	--	--	23	52.2	4.3	26.1	17.4	--	--	--	--	--
Judge 1379	20	45.0	0.0	10.0	45.0	7	85.7	0.0	0.0	14.3	9	55.6	11.1	11.1	22.2	--	--	--	--	--
Judge 1380	179	53.1	0.6	5.6	40.8	80	73.8	0.0	10.0	16.3	191	61.3	4.7	22.5	11.5	262	42.7	4.2	39.7	13.4
Judge 1477	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	58	31.0	1.7	41.4	25.9
Judge 1528	22	36.4	0.0	9.1	54.5	14	78.6	0.0	0.0	21.4	62	64.5	1.6	19.4	14.5	87	43.7	3.4	40.2	12.6
Judge 1710	169	42.0	0.6	14.2	43.2	104	69.2	1.0	15.4	14.4	185	37.8	1.6	27.0	33.5	291	30.2	2.1	34.0	33.7
Judge 1824	--	--	--	--	--	7	100.0	0.0	0.0	0.0	189	47.6	0.5	37.0	14.8	301	33.2	5.6	39.5	21.6
Judge 1836	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1912	44	54.5	0.0	18.2	27.3	23	78.3	0.0	8.7	13.0	20	70.0	0.0	25.0	5.0	2	50.0	0.0	50.0	0.0
Judge 1913	156	55.8	0.6	10.9	32.7	96	74.0	0.0	12.5	13.5	197	47.2	1.5	31.0	20.3	234	42.7	2.6	37.2	17.5

(Continued)

There was one case missing information on the sentencing judge from the Eastern District of Washington.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Washington

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1916	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1983	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1984	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1999	210	50.5	1.0	11.0	37.6	100	78.0	1.0	9.0	12.0	201	55.2	5.5	23.9	15.4	218	41.3	5.0	31.2	22.5
Judge 403	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 493	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 59	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 740	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 872	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0
Judge 876	3	66.7	0.0	0.0	33.3	6	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	9	88.9	0.0	0.0	11.1

There was one case missing information on the sentencing judge from the Eastern District of Washington.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Washington

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,381	59.2	0.9	19.7	20.2	737	60.4	1.2	21.8	16.6	2,182	39.0	1.8	35.3	23.8	3,155	44.0	1.1	36.2	18.7
Judge 1065	190	46.3	1.1	28.4	24.2	105	53.3	1.0	21.9	23.8	282	35.8	2.1	36.2	25.9	294	26.5	1.0	46.9	25.5
Judge 1089	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 1090	5	100.0	0.0	0.0	0.0	57	78.9	1.8	8.8	10.5	272	42.3	2.9	32.4	22.4	291	32.3	3.1	40.5	24.1
Judge 1187	--	--	--	--	--	--	--	--	--	--	3	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 1189	24	91.7	0.0	8.3	0.0	9	88.9	0.0	11.1	0.0	272	41.2	1.1	40.8	16.9	278	27.7	2.2	46.4	23.7
Judge 1236	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 130	22	86.4	0.0	4.5	9.1	7	100.0	0.0	0.0	0.0	14	71.4	0.0	7.1	21.4	--	--	--	--	--
Judge 1464	148	65.5	0.0	12.8	21.6	96	52.1	0.0	32.3	15.6	293	38.2	2.7	39.9	19.1	309	32.0	0.3	45.0	22.7
Judge 1532	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1576	--	--	--	--	--	--	--	--	--	--	233	33.9	1.3	46.8	18.0	267	36.0	1.9	45.7	16.5
Judge 1612	208	54.3	1.4	21.2	23.1	54	44.4	1.9	29.6	24.1	--	--	--	--	--	--	--	--	--	--

(Continued)

There were 15 cases missing information on the sentencing judge from the Western District of Washington.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Washington

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1691	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	268	31.3	0.4	43.3	25.0
Judge 1696	4	75.0	0.0	25.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1820	--	--	--	--	--	12	100.0	0.0	0.0	0.0	27	88.9	0.0	0.0	11.1	152	93.4	0.0	5.3	1.3
Judge 1839	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	5	0.0	0.0	60.0	40.0
Judge 1841	111	61.3	2.7	29.7	6.3	32	71.9	0.0	21.9	6.3	--	--	--	--	--	--	--	--	--	--
Judge 1855	--	--	--	--	--	9	88.9	0.0	0.0	11.1	26	96.2	0.0	0.0	3.8	83	94.0	0.0	3.6	2.4
Judge 1890	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1891	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	106	97.2	0.0	0.9	1.9
Judge 1901	2	100.0	0.0	0.0	0.0	8	87.5	0.0	0.0	12.5	--	--	--	--	--	--	--	--	--	--
Judge 1913	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1983	22	81.8	0.0	9.1	9.1	--	--	--	--	--	3	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0

(Continued)

There were 15 cases missing information on the sentencing judge from the Western District of Washington.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Washington

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 199	--	--	--	--	--	--	--	--	--	--	5	100.0	0.0	0.0	0.0	25	100.0	0.0	0.0	0.0
Judge 1999	--	--	--	--	--	1	0.0	0.0	100.0	0.0	9	77.8	11.1	11.1	0.0	1	100.0	0.0	0.0	0.0
Judge 2072	222	55.0	1.4	20.3	23.4	97	54.6	4.1	15.5	25.8	159	32.7	1.9	32.7	32.7	85	29.4	1.2	48.2	21.2
Judge 229	2	100.0	0.0	0.0	0.0	2	50.0	0.0	50.0	0.0	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 230	65	60.0	1.5	20.0	18.5	38	60.5	0.0	28.9	10.5	1	100.0	0.0	0.0	0.0	156	22.4	1.3	50.0	26.3
Judge 248	120	62.5	0.0	24.2	13.3	80	65.0	1.3	22.5	11.3	246	27.6	1.2	29.7	41.5	57	24.6	1.8	43.9	29.8
Judge 403	182	50.0	0.5	15.9	33.5	113	52.2	0.9	28.3	18.6	285	32.6	1.8	39.3	26.3	254	32.7	2.0	42.1	23.2
Judge 411	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 414	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	122	95.9	0.0	2.5	1.6
Judge 493	--	--	--	--	--	--	--	--	--	--	15	73.3	0.0	0.0	26.7	93	94.6	0.0	5.4	0.0
Judge 59	51	98.0	0.0	0.0	2.0	14	100.0	0.0	0.0	0.0	34	94.1	0.0	5.9	0.0	85	95.3	0.0	2.4	2.4

(Continued)

There were 15 cases missing information on the sentencing judge from the Western District of Washington.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Washington

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 925	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	221	30.3	0.5	46.2	23.1

There were 15 cases missing information on the sentencing judge from the Western District of Washington.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Colorado

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,352	59.0	0.5	28.3	12.1	611	65.8	0.2	28.2	5.9	1,716	57.1	1.2	27.6	14.1	2,027	56.5	1.4	22.3	19.7
Judge 1040	26	57.7	3.8	23.1	15.4	77	76.6	0.0	18.2	5.2	234	64.5	0.0	23.9	11.5	351	57.5	1.4	20.5	20.5
Judge 1190	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	50.0	0.0	0.0	50.0
Judge 1199	179	53.6	1.7	33.0	11.7	79	60.8	0.0	35.4	3.8	10	60.0	0.0	20.0	20.0	--	--	--	--	--
Judge 1213	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1279	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	66.7	0.0	0.0	33.3
Judge 1292	214	62.1	0.5	24.8	12.6	87	56.3	0.0	34.5	9.2	230	48.3	3.5	25.7	22.6	88	28.4	3.4	39.8	28.4
Judge 1300	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	100.0	0.0	0.0	0.0
Judge 1319	2	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1392	1	0.0	0.0	100.0	0.0	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1394	240	62.1	0.0	22.5	15.4	83	74.7	0.0	16.9	8.4	271	54.6	0.0	32.5	12.9	68	60.3	1.5	17.6	20.6
Judge 1449	--	--	--	--	--	1	100.0	0.0	0.0	0.0	2	50.0	0.0	0.0	50.0	2	0.0	50.0	50.0	0.0

(Continued)

There were three cases missing information on the sentencing judge from the District of Colorado.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Colorado

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 150	23	69.6	0.0	17.4	13.0	65	56.9	0.0	33.8	9.2	251	55.8	2.8	25.9	15.5	393	53.9	1.3	30.5	14.2
Judge 1568	8	87.5	0.0	0.0	12.5	2	100.0	0.0	0.0	0.0	5	60.0	0.0	0.0	40.0	7	71.4	0.0	0.0	28.6
Judge 1577	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 164	4	100.0	0.0	0.0	0.0	1	0.0	0.0	0.0	100.0	11	63.6	0.0	18.2	18.2	3	100.0	0.0	0.0	0.0
Judge 1651	10	90.0	0.0	0.0	10.0	5	100.0	0.0	0.0	0.0	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 1699	9	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	3	66.7	0.0	33.3	0.0	2	100.0	0.0	0.0	0.0
Judge 1775	165	52.7	0.6	37.6	9.1	10	60.0	0.0	40.0	0.0	15	86.7	0.0	6.7	6.7	--	--	--	--	--
Judge 1837	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	50.0	0.0
Judge 1941	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	100.0	0.0	0.0
Judge 1969	7	100.0	0.0	0.0	0.0	3	33.3	0.0	66.7	0.0	4	75.0	0.0	0.0	25.0	1	100.0	0.0	0.0	0.0
Judge 1985	5	20.0	0.0	40.0	40.0	5	40.0	0.0	60.0	0.0	--	--	--	--	--	--	--	--	--	--

(Continued)

There were three cases missing information on the sentencing judge from the District of Colorado.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Colorado

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1993	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	50.0	0.0
Judge 205	4	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 206	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	209	65.6	1.0	20.6	12.9
Judge 345	8	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 432	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 436	208	59.1	0.5	31.3	9.1	88	60.2	1.1	35.2	3.4	283	55.4	1.3	26.2	17.2	320	61.6	0.6	15.9	21.9
Judge 521	--	--	--	--	--	--	--	--	--	--	7	57.1	0.0	28.6	14.3	43	76.7	0.0	14.0	9.3
Judge 53	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	254	48.4	0.4	26.8	24.4
Judge 582	--	--	--	--	--	3	66.7	0.0	33.3	0.0	144	59.0	0.7	28.5	11.8	--	--	--	--	--
Judge 76	227	55.1	0.0	30.8	14.1	94	71.3	0.0	24.5	4.3	267	58.8	0.4	33.7	7.1	131	64.9	0.8	16.0	18.3
Judge 783	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0

(Continued)

There were three cases missing information on the sentencing judge from the District of Colorado.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Colorado

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 900	10	50.0	0.0	30.0	20.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 947	--	--	--	--	--	--	--	--	--	--	21	66.7	0.0	23.8	9.5	136	49.3	4.4	16.2	30.1

There were three cases missing information on the sentencing judge from the District of Colorado.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Kansas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,220	74.7	0.4	15.6	9.3	741	81.4	0.4	15.4	2.8	1,931	63.1	4.8	22.3	9.8	2,632	55.3	5.0	28.9	10.8
Judge 1005	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1136	98	72.4	0.0	20.4	7.1	44	84.1	0.0	15.9	0.0	218	64.2	0.9	28.0	6.9	336	50.9	2.1	38.4	8.6
Judge 1175	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1180	152	74.3	0.0	9.2	16.4	96	83.3	0.0	10.4	6.3	279	62.4	10.8	17.2	9.7	286	52.1	8.0	25.9	14.0
Judge 123	125	74.4	1.6	9.6	14.4	99	85.9	1.0	11.1	2.0	270	68.9	10.4	14.8	5.9	273	60.1	12.8	16.5	10.6
Judge 1262	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	90	50.0	6.7	37.8	5.6
Judge 1346	125	79.2	0.8	15.2	4.8	58	79.3	0.0	20.7	0.0	173	63.6	0.6	31.2	4.6	307	61.2	2.9	31.9	3.9
Judge 1406	--	--	--	--	--	1	100.0	0.0	0.0	0.0	4	75.0	0.0	0.0	25.0	9	88.9	11.1	0.0	0.0
Judge 1557	31	96.8	0.0	0.0	3.2	22	95.5	0.0	0.0	4.5	--	--	--	--	--	--	--	--	--	--
Judge 1585	57	68.4	1.8	17.5	12.3	79	84.8	1.3	8.9	5.1	150	60.0	1.3	24.0	14.7	254	44.1	3.1	30.7	22.0
Judge 1597	96	61.5	0.0	25.0	13.5	50	84.0	0.0	14.0	2.0	153	49.0	1.3	22.9	26.8	143	42.7	1.4	31.5	24.5

(Continued)

There were four cases missing information on the sentencing judge from the District of Kansas.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Kansas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1626	30	83.3	0.0	6.7	10.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1677	--	--	--	--	--	7	100.0	0.0	0.0	0.0	2	50.0	0.0	0.0	50.0	8	100.0	0.0	0.0	0.0
Judge 170	1	100.0	0.0	0.0	0.0	--	--	--	--	--	10	70.0	0.0	0.0	30.0	20	95.0	0.0	0.0	5.0
Judge 1919	117	70.1	0.0	20.5	9.4	57	71.9	0.0	24.6	3.5	22	59.1	0.0	27.3	13.6	--	--	--	--	--
Judge 1941	102	83.3	0.0	14.7	2.0	56	64.3	1.8	33.9	0.0	200	65.0	0.5	28.0	6.5	389	56.3	3.1	32.4	8.2
Judge 1955	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1975	2	100.0	0.0	0.0	0.0	--	--	--	--	--	2	50.0	0.0	0.0	50.0	2	50.0	0.0	50.0	0.0
Judge 2003	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 220	--	--	--	--	--	4	75.0	0.0	25.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 226	133	82.0	0.8	8.3	9.0	102	90.2	0.0	5.9	3.9	253	67.6	10.7	15.4	6.3	277	56.3	8.3	28.9	6.5
Judge 420	141	67.4	0.0	27.0	5.7	63	68.3	0.0	30.2	1.6	186	58.6	0.0	29.6	11.8	193	57.0	2.6	25.9	14.5

(Continued)

There were four cases missing information on the sentencing judge from the District of Kansas.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Kansas

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 635	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 636	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	14	92.9	0.0	7.1	0.0
Judge 863	6	83.3	0.0	0.0	16.7	2	50.0	0.0	50.0	0.0	6	83.3	0.0	0.0	16.7	30	100.0	0.0	0.0	0.0

There were four cases missing information on the sentencing judge from the District of Kansas.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of New Mexico

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	4,267	60.1	0.3	12.6	27.1	2,343	69.2	0.5	27.3	3.0	7,799	58.0	0.4	32.4	9.2	12,509	62.7	0.4	28.9	7.9
Judge 10	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1141	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1155	--	--	--	--	--	--	--	--	--	--	1	0.0	100.0	0.0	0.0	--	--	--	--	--
Judge 1158	4	75.0	0.0	25.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1180	27	63.0	0.0	0.0	37.0	--	--	--	--	--	55	78.2	0.0	20.0	1.8	217	70.0	0.0	22.1	7.8
Judge 1187	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 123	57	68.4	0.0	19.3	12.3	--	--	--	--	--	10	40.0	0.0	60.0	0.0	--	--	--	--	--
Judge 1303	6	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	1	0.0	0.0	100.0	0.0	1	100.0	0.0	0.0	0.0
Judge 144	636	62.6	0.3	12.7	24.4	258	67.1	0.8	27.9	4.3	426	49.5	0.7	41.5	8.2	731	48.4	1.1	39.1	11.4
Judge 1445	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 1447	2	100.0	0.0	0.0	0.0	--	--	--	--	--	25	28.0	0.0	48.0	24.0	--	--	--	--	--

(Continued)

There were 18 cases missing information on the sentencing judge from the District of New Mexico.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of New Mexico

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1449	633	58.9	0.6	11.5	28.9	185	71.9	0.5	22.7	4.9	875	45.0	0.3	45.9	8.7	1,266	39.8	0.4	50.6	9.2
Judge 1452	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	1	100.0	0.0	0.0	0.0
Judge 1453	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	50.0	0.0	--	--	--	--	--
Judge 1524	3	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 1547	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	111	66.7	0.0	27.0	6.3
Judge 1559	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	14	50.0	0.0	42.9	7.1
Judge 1656	--	--	--	--	--	3	100.0	0.0	0.0	0.0	2	50.0	0.0	50.0	0.0	5	80.0	0.0	20.0	0.0
Judge 1669	--	--	--	--	--	3	100.0	0.0	0.0	0.0	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 1733	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1753	3	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1788	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	39	30.8	0.0	46.2	23.1

(Continued)

There were 18 cases missing information on the sentencing judge from the District of New Mexico.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of New Mexico

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1819	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1830	1	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1854	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 186	--	--	--	--	--	562	73.7	0.4	25.1	0.9	2,847	79.0	0.2	13.6	7.2	4,812	86.4	0.0	8.4	5.2
Judge 1878	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0
Judge 192	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1924	612	49.5	0.2	9.6	40.7	243	53.9	0.8	35.8	9.5	340	34.1	0.0	41.5	24.4	444	33.6	2.0	38.7	25.7
Judge 1926	48	66.7	0.0	0.0	33.3	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1978	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 200	15	40.0	0.0	0.0	60.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 205	17	47.1	0.0	0.0	52.9	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were 18 cases missing information on the sentencing judge from the District of New Mexico.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of New Mexico

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 210	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 227	--	--	--	--	--	148	68.9	0.0	31.1	0.0	404	43.8	0.2	44.8	11.1	671	47.2	0.7	41.9	10.1
Judge 228	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 276	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 341	--	--	--	--	--	11	63.6	0.0	36.4	0.0	--	--	--	--	--	--	--	--	--	--
Judge 383	10	50.0	0.0	40.0	10.0	1	100.0	0.0	0.0	0.0	17	35.3	0.0	47.1	17.6	--	--	--	--	--
Judge 384	699	59.4	0.1	14.7	25.8	239	74.5	0.4	23.0	2.1	1,150	53.3	0.7	38.5	7.5	1,726	52.3	0.4	42.3	5.0
Judge 420	12	50.0	0.0	16.7	33.3	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 459	3	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 488	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 500	115	63.5	0.0	20.9	15.7	43	79.1	0.0	14.0	7.0	16	37.5	0.0	56.3	6.3	44	90.9	0.0	9.1	0.0

(Continued)

There were 18 cases missing information on the sentencing judge from the District of New Mexico.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of New Mexico

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 530	1	100.0	0.0	0.0	0.0	--	--	--	--	--	6	16.7	0.0	33.3	50.0	5	60.0	0.0	0.0	40.0
Judge 533	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 55	194	66.0	0.0	21.1	12.9	128	73.4	0.8	23.4	2.3	429	39.6	0.5	44.1	15.9	634	39.1	0.8	44.8	15.3
Judge 591	15	60.0	0.0	0.0	40.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 620	--	--	--	--	--	--	--	--	--	--	5	20.0	0.0	40.0	40.0	--	--	--	--	--
Judge 639	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 646	2	100.0	0.0	0.0	0.0	--	--	--	--	--	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 654	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 760	498	64.1	0.4	9.0	26.5	180	63.3	0.6	32.8	3.3	281	31.0	0.4	60.1	8.5	228	63.6	2.2	23.7	10.5
Judge 761	20	55.0	0.0	15.0	30.0	8	75.0	0.0	25.0	0.0	16	25.0	0.0	68.8	6.3	1	0.0	0.0	0.0	100.0
Judge 762	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0

(Continued)

There were 18 cases missing information on the sentencing judge from the District of New Mexico.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of New Mexico

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 779	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	8	87.5	0.0	12.5	0.0
Judge 792	--	--	--	--	--	--	--	--	--	--	413	44.6	0.0	46.0	9.4	624	43.4	0.5	48.9	7.2
Judge 793	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 828	5	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 84	382	61.3	0.0	12.6	26.2	16	81.3	0.0	18.8	0.0	1	0.0	0.0	0.0	100.0	51	37.3	0.0	58.8	3.9
Judge 857	--	--	--	--	--	33	63.6	0.0	36.4	0.0	--	--	--	--	--	--	--	--	--	--
Judge 910	209	62.2	0.0	20.6	17.2	269	67.7	0.7	29.4	2.2	445	52.8	0.9	37.1	9.2	824	53.8	1.0	38.2	7.0
Judge 979	--	--	--	--	--	--	--	--	--	--	2	0.0	0.0	100.0	0.0	2	100.0	0.0	0.0	0.0
Judge 980	31	71.0	3.2	0.0	25.8	4	75.0	0.0	25.0	0.0	16	18.8	0.0	75.0	6.3	35	60.0	0.0	25.7	14.3

There were 18 cases missing information on the sentencing judge from the District of New Mexico.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Oklahoma

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	234	72.2	0.4	8.1	19.2	124	86.3	2.4	10.5	0.8	257	80.9	0.4	13.6	5.1	382	72.8	1.0	15.2	11.0
Judge 1459	43	69.8	0.0	9.3	20.9	51	88.2	0.0	11.8	0.0	91	75.8	1.1	16.5	6.6	102	77.5	1.0	15.7	5.9
Judge 1676	171	70.8	0.6	8.2	20.5	7	85.7	0.0	14.3	0.0	7	71.4	0.0	14.3	14.3	25	56.0	0.0	20.0	24.0
Judge 1721	--	--	--	--	--	1	100.0	0.0	0.0	0.0	4	75.0	0.0	25.0	0.0	10	90.0	0.0	10.0	0.0
Judge 1995	2	100.0	0.0	0.0	0.0	1	0.0	0.0	0.0	100.0	1	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0
Judge 200	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 2004	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 2007	--	--	--	--	--	64	85.9	4.7	9.4	0.0	148	85.8	0.0	11.5	2.7	241	72.2	1.2	14.5	12.0
Judge 254	17	88.2	0.0	5.9	5.9	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 463	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 623	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 781	--	--	--	--	--	--	--	--	--	--	4	25.0	0.0	25.0	50.0	--	--	--	--	--

(Continued)

There were zero cases missing information on the sentencing judge from the Eastern District of Oklahoma.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Eastern District of Oklahoma

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 868	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--

There were zero cases missing information on the sentencing judge from the Eastern District of Oklahoma.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Oklahoma

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	383	80.9	1.6	12.8	4.7	171	90.1	1.8	8.2	0.0	617	82.3	1.5	11.3	4.9	739	68.7	0.4	17.3	13.5
Judge 1218	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	3	100.0	0.0	0.0	0.0
Judge 1459	15	100.0	0.0	0.0	0.0	19	94.7	5.3	0.0	0.0	80	83.8	1.3	13.8	1.3	115	80.0	0.0	13.9	6.1
Judge 200	4	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 2032	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 254	8	75.0	0.0	0.0	25.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 340	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	6	100.0	0.0	0.0	0.0	5	60.0	0.0	20.0	20.0
Judge 387	137	76.6	0.7	16.1	6.6	36	83.3	2.8	13.9	0.0	139	86.3	2.2	8.6	2.9	19	89.5	0.0	10.5	0.0
Judge 518	23	82.6	4.3	13.0	0.0	38	89.5	0.0	10.5	0.0	170	77.6	0.6	17.1	4.7	237	59.1	0.0	21.9	19.0
Judge 539	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 623	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	2	50.0	50.0	0.0	0.0
Judge 624	--	--	--	--	--	--	--	--	--	--	14	92.9	0.0	7.1	0.0	220	74.5	0.9	12.7	11.8

(Continued)

There were zero cases missing information on the sentencing judge from the Northern District of Oklahoma.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Oklahoma

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 781	--	--	--	--	--	--	--	--	--	--	6	66.7	0.0	0.0	33.3	--	--	--	--	--
Judge 828	88	85.2	2.3	10.2	2.3	38	89.5	0.0	10.5	0.0	8	87.5	0.0	12.5	0.0	--	--	--	--	--
Judge 941	4	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	6	83.3	0.0	0.0	16.7	--	--	--	--	--
Judge 982	--	--	--	--	--	--	--	--	--	--	3	33.3	0.0	66.7	0.0	--	--	--	--	--
Judge 990	99	77.8	2.0	15.2	5.1	37	94.6	2.7	2.7	0.0	179	82.7	2.2	7.8	7.3	136	63.2	0.0	21.3	15.4
Judge 991	--	--	--	--	--	--	--	--	--	--	4	75.0	0.0	0.0	25.0	--	--	--	--	--

There were zero cases missing information on the sentencing judge from the Northern District of Oklahoma.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Oklahoma

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	462	76.8	3.0	14.7	5.4	249	82.7	1.6	12.9	2.8	761	71.5	3.2	7.8	17.6	1,677	72.7	2.0	7.6	17.7
Judge 1098	--	--	--	--	--	1	0.0	0.0	0.0	100.0	4	75.0	0.0	0.0	25.0	--	--	--	--	--
Judge 1099	64	84.4	0.0	9.4	6.3	11	81.8	0.0	9.1	9.1	117	58.1	0.0	14.5	27.4	97	60.8	2.1	13.4	23.7
Judge 1125	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1281	91	75.8	2.2	16.5	5.5	43	93.0	2.3	4.7	0.0	111	72.1	0.9	10.8	16.2	176	76.7	1.1	8.0	14.2
Judge 1525	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	13	100.0	0.0	0.0	0.0
Judge 1578	3	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	2	0.0	0.0	0.0	100.0	5	100.0	0.0	0.0	0.0
Judge 1618	76	78.9	3.9	13.2	3.9	39	82.1	2.6	15.4	0.0	103	56.3	8.7	5.8	29.1	142	60.6	2.1	7.7	29.6
Judge 1676	1	0.0	0.0	0.0	100.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1861	84	63.1	8.3	23.8	4.8	24	79.2	0.0	16.7	4.2	84	82.1	4.8	6.0	7.1	--	--	--	--	--
Judge 1996	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 2007	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--

(Continued)

There were zero cases missing information on the sentencing judge from the Western District of Oklahoma.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Oklahoma

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 26	16	75.0	0.0	12.5	12.5	19	78.9	0.0	15.8	5.3	--	--	--	--	--	--	--	--	--	--
Judge 311	70	80.0	1.4	14.3	4.3	28	60.7	0.0	39.3	0.0	83	80.7	1.2	6.0	12.0	179	72.1	0.6	4.5	22.9
Judge 402	8	75.0	0.0	0.0	25.0	3	100.0	0.0	0.0	0.0	6	83.3	0.0	0.0	16.7	4	100.0	0.0	0.0	0.0
Judge 463	--	--	--	--	--	--	--	--	--	--	8	87.5	0.0	0.0	12.5	163	64.4	3.1	11.0	21.5
Judge 52	5	80.0	0.0	0.0	20.0	2	100.0	0.0	0.0	0.0	4	75.0	0.0	0.0	25.0	6	83.3	0.0	0.0	16.7
Judge 551	1	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	24	87.5	0.0	0.0	12.5	459	95.9	0.0	0.7	3.5
Judge 619	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 623	18	66.7	5.6	27.8	0.0	23	78.3	4.3	8.7	8.7	77	75.3	5.2	6.5	13.0	225	57.3	4.4	17.8	20.4
Judge 77	2	100.0	0.0	0.0	0.0	--	--	--	--	--	3	100.0	0.0	0.0	0.0	26	96.2	0.0	0.0	3.8
Judge 781	3	100.0	0.0	0.0	0.0	33	84.8	3.0	9.1	3.0	101	68.3	5.0	8.9	17.8	178	45.5	6.2	11.2	37.1
Judge 852	15	100.0	0.0	0.0	0.0	15	100.0	0.0	0.0	0.0	29	96.6	0.0	0.0	3.4	4	75.0	0.0	0.0	25.0

(Continued)

There were zero cases missing information on the sentencing judge from the Western District of Oklahoma.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Western District of Oklahoma

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 980	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--

There were zero cases missing information on the sentencing judge from the Western District of Oklahoma.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Utah

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,145	80.8	0.1	5.9	13.3	1,023	82.2	0.9	9.2	7.7	2,718	63.7	1.1	20.7	14.5	3,472	45.1	1.2	34.9	18.9
Judge 128	126	74.6	0.8	8.7	15.9	101	78.2	1.0	6.9	13.9	391	58.1	0.8	21.7	19.4	643	40.3	1.2	38.3	20.2
Judge 129	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 1358	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1401	74	100.0	0.0	0.0	0.0	20	100.0	0.0	0.0	0.0	28	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 1551	2	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1629	62	82.3	0.0	6.5	11.3	30	93.3	0.0	3.3	3.3	103	68.9	2.9	17.5	10.7	179	50.3	1.1	33.5	15.1
Judge 175	13	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 18	16	100.0	0.0	0.0	0.0	17	100.0	0.0	0.0	0.0	11	100.0	0.0	0.0	0.0	48	97.9	0.0	2.1	0.0
Judge 1803	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1805	65	84.6	0.0	7.7	7.7	125	80.0	1.6	15.2	3.2	10	70.0	0.0	10.0	20.0	--	--	--	--	--
Judge 1806	130	76.9	0.0	6.2	16.9	42	81.0	0.0	11.9	7.1	441	63.9	0.7	26.3	9.1	693	44.4	1.2	36.9	17.5

(Continued)

There were 12 cases missing information on the sentencing judge from the District of Utah.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Utah

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 189	--	--	--	--	--	53	100.0	0.0	0.0	0.0	128	99.2	0.0	0.0	0.8	200	100.0	0.0	0.0	0.0
Judge 1942	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	498	33.7	1.6	39.8	24.9
Judge 1968	--	--	--	--	--	--	--	--	--	--	17	100.0	0.0	0.0	0.0	31	100.0	0.0	0.0	0.0
Judge 1987	--	--	--	--	--	24	100.0	0.0	0.0	0.0	36	97.2	0.0	0.0	2.8	12	83.3	0.0	0.0	16.7
Judge 2035	120	80.0	0.0	3.3	16.7	104	78.8	1.0	10.6	9.6	118	69.5	0.8	8.5	21.2	--	--	--	--	--
Judge 272	1	100.0	0.0	0.0	0.0	3	66.7	0.0	0.0	33.3	4	25.0	0.0	25.0	50.0	--	--	--	--	--
Judge 274	201	81.6	0.0	7.5	10.9	165	78.8	1.8	10.9	8.5	431	54.1	2.3	21.1	22.5	545	41.1	2.0	37.4	19.4
Judge 305	82	75.6	0.0	11.0	13.4	146	79.5	0.7	11.0	8.9	443	66.4	0.9	23.0	9.7	1	0.0	0.0	100.0	0.0
Judge 384	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 623	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 718	48	81.3	0.0	6.3	12.5	39	71.8	0.0	7.7	20.5	100	54.0	2.0	24.0	20.0	42	40.5	0.0	42.9	16.7

(Continued)

There were 12 cases missing information on the sentencing judge from the District of Utah.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Utah

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 722	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 895	13	69.2	0.0	0.0	30.8	21	95.2	0.0	0.0	4.8	11	45.5	0.0	27.3	27.3	--	--	--	--	--
Judge 947	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 979	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 996	188	77.7	0.0	3.7	18.6	132	81.1	0.8	10.6	7.6	444	57.7	0.9	25.0	16.4	576	36.1	0.5	39.2	24.1

There were 12 cases missing information on the sentencing judge from the District of Utah.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Wyoming

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	385	75.6	3.1	12.2	9.1	279	82.8	0.0	10.4	6.8	995	70.4	1.0	15.2	13.5	1,464	60.7	1.7	18.1	19.5
Judge 112	10	90.0	0.0	10.0	0.0	3	100.0	0.0	0.0	0.0	9	77.8	0.0	11.1	11.1	20	100.0	0.0	0.0	0.0
Judge 1131	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	9	100.0	0.0	0.0	0.0
Judge 1193	--	--	--	--	--	2	100.0	0.0	0.0	0.0	11	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 1716	--	--	--	--	--	--	--	--	--	--	4	75.0	0.0	25.0	0.0	4	100.0	0.0	0.0	0.0
Judge 205	125	69.6	1.6	16.8	12.0	94	83.0	0.0	7.4	9.6	224	56.7	0.9	17.0	25.4	201	56.2	2.0	15.9	25.9
Judge 214	11	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 359	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 360	--	--	--	--	--	--	--	--	--	--	124	97.6	0.0	0.0	2.4	116	99.1	0.0	0.0	0.9
Judge 500	106	77.4	6.6	9.4	6.6	80	86.3	0.0	8.8	5.0	329	69.9	2.4	21.0	6.7	505	59.6	1.2	20.6	18.6
Judge 618	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	62	48.4	1.6	19.4	30.6
Judge 678	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0

(Continued)

There was one case missing information on the sentencing judge from the District of Wyoming.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
District of Wyoming

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 900	132	76.5	2.3	11.4	9.8	100	79.0	0.0	15.0	6.0	292	68.2	0.0	14.4	17.5	544	53.9	2.6	21.5	22.1

There was one case missing information on the sentencing judge from the District of Wyoming.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Middle District of Alabama

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	386	51.3	0.5	40.9	7.3	226	65.0	0.9	27.9	6.2	704	58.2	1.8	34.4	5.5	906	59.7	3.0	25.4	11.9
Judge 1113	--	--	--	--	--	2	50.0	0.0	0.0	50.0	--	--	--	--	--	--	--	--	--	--
Judge 1256	10	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1317	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0	20	100.0	0.0	0.0	0.0
Judge 1365	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1522	9	33.3	0.0	55.6	11.1	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 17	6	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 176	1	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1787	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1819	12	58.3	0.0	41.7	0.0	--	--	--	--	--	13	30.8	0.0	61.5	7.7	--	--	--	--	--
Judge 1860	103	47.6	0.0	44.7	7.8	77	53.2	0.0	37.7	9.1	183	51.9	1.1	39.9	7.1	196	57.7	0.5	23.0	18.9
Judge 1947	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were zero cases missing information on the sentencing judge from the Middle District of Alabama.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Middle District of Alabama

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1950	11	100.0	0.0	0.0	0.0	11	100.0	0.0	0.0	0.0	9	100.0	0.0	0.0	0.0	18	94.4	0.0	5.6	0.0
Judge 1972	--	--	--	--	--	--	--	--	--	--	64	73.4	6.3	14.1	6.3	251	46.6	5.2	34.7	13.5
Judge 20	105	47.6	1.0	45.7	5.7	53	62.3	1.9	35.8	0.0	189	61.4	1.1	35.4	2.1	137	66.4	0.7	27.0	5.8
Judge 278	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	11	72.7	18.2	9.1	0.0
Judge 294	4	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 343	--	--	--	--	--	--	--	--	--	--	4	25.0	0.0	50.0	25.0	--	--	--	--	--
Judge 385	7	100.0	0.0	0.0	0.0	12	91.7	0.0	0.0	8.3	11	100.0	0.0	0.0	0.0	34	91.2	8.8	0.0	0.0
Judge 386	--	--	--	--	--	--	--	--	--	--	55	50.9	5.5	36.4	7.3	4	50.0	0.0	50.0	0.0
Judge 468	85	38.8	1.2	44.7	15.3	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 504	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	50.0	0.0	--	--	--	--	--
Judge 511	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	0.0	50.0

(Continued)

There were zero cases missing information on the sentencing judge from the Middle District of Alabama.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Middle District of Alabama

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 592	23	34.8	0.0	65.2	0.0	3	33.3	0.0	33.3	33.3	--	--	--	--	--	--	--	--	--	--
Judge 620	--	--	--	--	--	1	0.0	100.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 629	--	--	--	--	--	56	71.4	0.0	23.2	5.4	155	51.6	1.3	39.4	7.7	233	60.5	3.0	24.5	12.0
Judge 813	8	87.5	0.0	12.5	0.0	4	75.0	0.0	0.0	25.0	8	87.5	0.0	12.5	0.0	--	--	--	--	--

There were zero cases missing information on the sentencing judge from the Middle District of Alabama.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Alabama

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,151	69.1	0.9	26.6	3.5	592	70.8	1.4	26.7	1.2	1,466	61.5	2.0	26.2	10.3	1,686	63.2	2.1	21.1	13.7
Judge 119	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1365	138	74.6	0.7	22.5	2.2	4	75.0	25.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1429	1	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	2	50.0	0.0	0.0	50.0
Judge 147	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 151	150	69.3	1.3	27.3	2.0	76	60.5	2.6	34.2	2.6	174	49.4	2.9	33.9	13.8	190	60.5	3.2	23.7	12.6
Judge 1521	--	--	--	--	--	--	--	--	--	--	191	60.2	0.5	29.8	9.4	189	60.8	0.5	22.8	15.9
Judge 1522	101	70.3	0.0	24.8	5.0	80	67.5	0.0	31.3	1.3	59	44.1	3.4	28.8	23.7	7	42.9	0.0	14.3	42.9
Judge 1526	5	80.0	0.0	20.0	0.0	--	--	--	--	--	1	0.0	0.0	100.0	0.0	1	100.0	0.0	0.0	0.0
Judge 172	52	61.5	3.8	26.9	7.7	82	73.2	1.2	24.4	1.2	144	61.1	2.8	20.8	15.3	195	57.9	2.6	17.4	22.1
Judge 1746	182	59.9	1.1	35.7	3.3	73	78.1	4.1	17.8	0.0	143	62.9	2.8	23.8	10.5	152	69.7	2.0	21.1	7.2
Judge 1752	--	--	--	--	--	1	100.0	0.0	0.0	0.0	2	0.0	0.0	100.0	0.0	--	--	--	--	--

(Continued)

There were five cases missing information on the sentencing judge from the Northern District of Alabama.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Alabama

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1753	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1859	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 259	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 260	113	69.9	1.8	24.8	3.5	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 341	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 343	154	69.5	0.0	24.0	6.5	114	66.7	0.0	32.5	0.9	156	65.4	0.0	27.6	7.1	63	54.0	0.0	27.0	19.0
Judge 364	--	--	--	--	--	--	--	--	--	--	2	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 386	--	--	--	--	--	43	65.1	2.3	32.6	0.0	160	61.9	6.9	25.0	6.3	231	64.9	6.5	19.9	8.7
Judge 444	3	100.0	0.0	0.0	0.0	--	--	--	--	--	14	100.0	0.0	0.0	0.0	66	97.0	1.5	0.0	1.5
Judge 56	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	6	100.0	0.0	0.0	0.0
Judge 605	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--

(Continued)

There were five cases missing information on the sentencing judge from the Northern District of Alabama.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Alabama

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 719	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 754	84	82.1	0.0	17.9	0.0	28	92.9	0.0	3.6	3.6	85	82.4	2.4	9.4	5.9	91	80.2	3.3	8.8	7.7
Judge 759	4	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 836	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	50.0	0.0	25.0	25.0
Judge 837	--	--	--	--	--	--	--	--	--	--	149	64.4	0.0	24.8	10.7	212	51.9	0.0	24.5	23.6
Judge 901	160	66.9	0.6	30.0	2.5	84	73.8	0.0	25.0	1.2	181	61.9	0.0	30.4	7.7	227	60.8	0.4	29.1	9.7
Judge 946	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	49	67.3	0.0	20.4	12.2

There were five cases missing information on the sentencing judge from the Northern District of Alabama.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Alabama

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	793	67.5	0.8	26.2	5.5	327	69.1	0.6	28.4	1.8	1,084	65.6	1.3	23.8	9.3	1,610	62.9	1.4	21.1	14.6
Judge 1081	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	0.0	100.0	0.0	0.0	--	--	--	--	--
Judge 1293	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 1366	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1787	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1798	--	--	--	--	--	5	80.0	0.0	0.0	20.0	15	46.7	0.0	33.3	20.0	--	--	--	--	--
Judge 1799	4	100.0	0.0	0.0	0.0	74	67.6	1.4	29.7	1.4	365	64.4	1.1	27.4	7.1	486	63.0	1.4	22.2	13.4
Judge 1938	185	65.9	1.1	28.6	4.3	3	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 259	470	64.3	0.9	28.5	6.4	135	65.2	0.0	32.6	2.2	207	64.3	0.5	21.7	13.5	128	55.5	0.0	25.8	18.8
Judge 269	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	100.0	0.0	0.0
Judge 304	--	--	--	--	--	--	--	--	--	--	5	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 364	--	--	--	--	--	--	--	--	--	--	1	0.0	100.0	0.0	0.0	--	--	--	--	--

(Continued)

There were three cases missing information on the sentencing judge from the Southern District of Alabama.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Alabama

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 407	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 506	--	--	--	--	--	--	--	--	--	--	147	71.4	0.0	22.4	6.1	530	63.2	0.8	20.4	15.7
Judge 713	92	87.0	0.0	12.0	1.1	108	74.1	0.9	24.1	0.9	342	65.8	2.0	21.9	10.2	460	64.3	2.2	19.8	13.7
Judge 755	40	62.5	0.0	25.0	12.5	2	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--

There were three cases missing information on the sentencing judge from the Southern District of Alabama.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Middle District of Florida

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	3,521	62.7	0.7	29.6	7.0	1,898	70.3	0.3	24.8	4.6	4,917	62.9	1.0	24.9	11.2	6,126	55.6	1.7	20.7	22.0
Judge 1001	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1015	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1035	140	50.7	1.4	35.0	12.9	156	59.6	0.6	37.8	1.9	401	68.3	0.2	26.7	4.7	445	61.6	1.1	28.3	9.0
Judge 1072	232	61.2	0.4	27.6	10.8	151	63.6	0.0	26.5	9.9	353	66.0	1.7	21.2	11.0	387	46.3	6.2	25.3	22.2
Judge 1148	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 115	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1168	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1222	--	--	--	--	--	2	100.0	0.0	0.0	0.0	2	50.0	0.0	0.0	50.0	7	85.7	0.0	0.0	14.3
Judge 1264	283	98.2	0.0	1.4	0.4	81	95.1	0.0	4.9	0.0	301	99.0	0.0	1.0	0.0	357	99.4	0.0	0.0	0.6
Judge 1269	239	52.3	1.3	36.0	10.5	152	70.4	0.0	28.9	0.7	376	65.2	0.0	30.1	4.8	389	59.4	4.6	26.7	9.3
Judge 1306	--	--	--	--	--	--	--	--	--	--	67	71.6	1.5	17.9	9.0	67	47.8	1.5	35.8	14.9

(Continued)

There were two cases missing information on the sentencing judge from the Middle District of Florida.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Middle District of Florida

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1307	273	64.8	0.4	28.2	6.6	190	64.2	0.0	29.5	6.3	245	64.5	1.6	30.2	3.7	335	63.0	1.2	24.8	11.0
Judge 1310	--	--	--	--	--	8	62.5	0.0	37.5	0.0	7	85.7	0.0	0.0	14.3	31	71.0	0.0	19.4	9.7
Judge 1327	4	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	10	80.0	0.0	20.0	0.0	3	66.7	33.3	0.0	0.0
Judge 1330	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 1381	180	68.9	2.2	23.9	5.0	1	0.0	100.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1437	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1490	4	75.0	0.0	0.0	25.0	--	--	--	--	--	--	--	--	--	--	6	50.0	0.0	16.7	33.3
Judge 1502	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1516	116	44.0	0.0	47.4	8.6	68	60.3	0.0	32.4	7.4	173	36.4	2.3	30.1	31.2	278	43.2	0.0	16.9	39.9
Judge 1536	7	71.4	0.0	14.3	14.3	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1572	--	--	--	--	--	1	100.0	0.0	0.0	0.0	3	66.7	0.0	0.0	33.3	6	83.3	0.0	0.0	16.7

(Continued)

There were two cases missing information on the sentencing judge from the Middle District of Florida.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Middle District of Florida

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1646	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1652	201	68.2	0.5	25.4	6.0	117	70.9	0.0	23.9	5.1	225	53.3	1.8	31.1	13.8	89	58.4	2.2	14.6	24.7
Judge 1671	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	132	43.2	0.8	15.2	40.9
Judge 1704	98	68.4	0.0	26.5	5.1	29	82.8	0.0	10.3	6.9	57	52.6	0.0	33.3	14.0	139	66.9	0.0	12.9	20.1
Judge 1706	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 173	--	--	--	--	--	--	--	--	--	--	1	0.0	100.0	0.0	0.0	--	--	--	--	--
Judge 1769	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	6	83.3	0.0	16.7	0.0	9	100.0	0.0	0.0	0.0
Judge 1777	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0	2	50.0	0.0	0.0	50.0
Judge 1798	287	46.0	0.3	41.8	11.8	152	67.8	0.0	25.0	7.2	314	70.7	2.5	11.8	15.0	453	54.7	1.8	10.8	32.7
Judge 1833	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1839	7	85.7	0.0	0.0	14.3	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--

(Continued)

There were two cases missing information on the sentencing judge from the Middle District of Florida.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Middle District of Florida

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1857	9	88.9	0.0	0.0	11.1	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1877	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	33.3	0.0	66.7	0.0
Judge 1984	13	84.6	0.0	15.4	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1997	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 2009	232	53.4	2.2	35.8	8.6	136	69.9	0.7	23.5	5.9	395	58.7	0.8	27.8	12.7	331	45.6	3.6	25.7	25.1
Judge 2029	4	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 2033	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 2039	18	72.2	0.0	22.2	5.6	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 2061	--	--	--	--	--	3	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 21	11	72.7	0.0	27.3	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 240	237	62.0	0.8	31.2	5.9	163	76.7	0.0	20.9	2.5	364	64.3	0.0	26.1	9.6	388	49.0	1.5	32.0	17.5

(Continued)

There were two cases missing information on the sentencing judge from the Middle District of Florida.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Middle District of Florida

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 26	2	100.0	0.0	0.0	0.0	4	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 306	19	78.9	10.5	5.3	5.3	19	68.4	0.0	31.6	0.0	109	67.9	0.9	21.1	10.1	53	58.5	0.0	26.4	15.1
Judge 322	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	50.0	0.0	--	--	--	--	--
Judge 343	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 345	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 363	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 383	174	61.5	0.0	31.6	6.9	73	68.5	2.7	23.3	5.5	188	52.7	1.6	28.7	17.0	241	49.4	0.4	16.2	34.0
Judge 399	27	81.5	0.0	7.4	11.1	73	71.2	0.0	20.5	8.2	239	46.4	1.7	28.9	23.0	362	42.0	3.0	22.7	32.3
Judge 406	--	--	--	--	--	--	--	--	--	--	233	74.7	0.0	21.5	3.9	329	60.2	0.9	26.4	12.5
Judge 461	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 47	149	48.3	0.0	46.3	5.4	90	67.8	0.0	31.1	1.1	172	67.4	2.3	23.3	7.0	286	51.0	0.0	21.7	27.3

(Continued)

There were two cases missing information on the sentencing judge from the Middle District of Florida.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Middle District of Florida

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 480	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 499	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	10	0.0	10.0	30.0	60.0
Judge 508	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 530	4	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 566	196	65.3	0.0	33.7	1.0	68	73.5	0.0	25.0	1.5	175	57.7	0.0	36.0	6.3	113	73.5	0.9	14.2	11.5
Judge 614	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	1	0.0	0.0	0.0	100.0	3	33.3	0.0	0.0	66.7
Judge 630	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 680	2	100.0	0.0	0.0	0.0	4	75.0	0.0	25.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 717	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 754	2	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 8	209	50.7	0.5	38.8	10.0	81	80.2	0.0	12.3	7.4	270	43.0	0.7	33.3	23.0	228	43.9	0.9	17.5	37.7

(Continued)

There were two cases missing information on the sentencing judge from the Middle District of Florida.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Middle District of Florida

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 81	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	3	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0
Judge 816	124	79.0	0.0	18.5	2.4	66	80.3	0.0	16.7	3.0	191	49.7	0.5	30.9	18.8	135	55.6	0.7	28.9	14.8
Judge 833	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	110	58.2	0.0	3.6	38.2
Judge 845	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	66.7	0.0	0.0	33.3
Judge 849	--	--	--	--	--	--	--	--	--	--	14	78.6	0.0	14.3	7.1	368	47.0	1.4	21.5	30.2
Judge 883	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 896	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	10	70.0	0.0	0.0	30.0
Judge 907	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 919	2	100.0	0.0	0.0	0.0	--	--	--	--	--	6	83.3	0.0	0.0	16.7	4	50.0	0.0	0.0	50.0
Judge 976	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	75.0	0.0	0.0	25.0

There were two cases missing information on the sentencing judge from the Middle District of Florida.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Florida

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	873	67.6	1.4	26.7	4.4	494	62.8	1.2	34.4	1.6	1,125	69.8	2.4	21.1	6.8	1,422	67.9	2.0	17.8	12.2
Judge 1123	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1275	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	50.0	0.0	0.0	50.0
Judge 1276	140	61.4	0.0	33.6	5.0	61	63.9	0.0	36.1	0.0	154	48.1	2.6	35.7	13.6	221	65.2	0.0	24.0	10.9
Judge 1396	6	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1457	119	58.8	3.4	37.0	0.8	108	42.6	0.9	55.6	0.9	77	46.8	5.2	41.6	6.5	58	53.4	6.9	27.6	12.1
Judge 1592	13	100.0	0.0	0.0	0.0	30	60.0	3.3	36.7	0.0	207	71.0	3.4	20.8	4.8	233	55.8	6.4	17.6	20.2
Judge 161	5	80.0	0.0	0.0	20.0	2	100.0	0.0	0.0	0.0	11	100.0	0.0	0.0	0.0	48	93.8	0.0	0.0	6.3
Judge 1715	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1764	--	--	--	--	--	--	--	--	--	--	149	81.9	0.0	17.4	0.7	177	81.4	0.0	13.6	5.1
Judge 1787	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1870	--	--	--	--	--	--	--	--	--	--	18	100.0	0.0	0.0	0.0	63	90.5	4.8	0.0	4.8

(Continued)

There was one case missing information on the sentencing judge from the Northern District of Florida.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Florida

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1935	173	68.8	2.3	23.1	5.8	85	72.9	1.2	23.5	2.4	134	71.6	1.5	18.7	8.2	90	68.9	0.0	14.4	16.7
Judge 363	20	60.0	5.0	25.0	10.0	3	66.7	0.0	33.3	0.0	36	66.7	5.6	16.7	11.1	29	62.1	0.0	24.1	13.8
Judge 364	199	65.3	1.0	28.6	5.0	85	68.2	3.5	24.7	3.5	161	81.4	4.3	9.9	4.3	185	74.6	2.2	17.3	5.9
Judge 441	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0
Judge 443	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	45	97.8	0.0	0.0	2.2
Judge 452	11	100.0	0.0	0.0	0.0	30	100.0	0.0	0.0	0.0	24	100.0	0.0	0.0	0.0	9	100.0	0.0	0.0	0.0
Judge 707	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 754	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 809	180	73.3	0.6	22.2	3.9	87	57.5	0.0	40.2	2.3	152	65.8	0.7	22.4	11.2	259	54.1	1.2	25.9	18.9

There was one case missing information on the sentencing judge from the Northern District of Florida.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Florida

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	5,674	81.3	0.4	12.5	5.8	2,261	82.8	0.7	13.8	2.8	6,117	73.7	1.1	12.2	12.9	8,271	67.5	1.6	10.2	20.7
Judge 1001	211	75.8	0.9	17.1	6.2	84	89.3	0.0	9.5	1.2	125	73.6	0.8	11.2	14.4	310	71.9	1.3	10.6	16.1
Judge 1095	271	83.4	1.1	11.1	4.4	110	88.2	3.6	7.3	0.9	310	80.6	0.0	11.3	8.1	490	64.7	1.6	10.8	22.9
Judge 1138	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 1168	--	--	--	--	--	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1172	35	85.7	0.0	11.4	2.9	163	79.8	0.6	17.8	1.8	312	62.8	0.3	20.8	16.0	524	51.7	0.8	14.5	33.0
Judge 1175	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1186	29	96.6	0.0	0.0	3.4	142	78.9	0.0	19.0	2.1	302	84.1	0.7	9.3	6.0	426	83.6	0.7	5.4	10.3
Judge 1212	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 1266	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1277	340	80.6	0.3	15.0	4.1	105	84.8	1.0	13.3	1.0	316	70.3	0.9	16.1	12.7	510	64.7	1.0	11.0	23.3
Judge 1310	--	--	--	--	--	--	--	--	--	--	11	90.9	0.0	9.1	0.0	--	--	--	--	--

(Continued)

There were 30 cases missing information on the sentencing judge from the Southern District of Florida.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Florida

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1312	375	85.3	0.8	12.5	1.3	130	86.9	1.5	11.5	0.0	343	83.7	5.0	8.5	2.9	409	80.4	7.6	6.1	5.9
Judge 1314	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1315	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0	1	0.0	100.0	0.0	0.0
Judge 1320	--	--	--	--	--	--	--	--	--	--	6	66.7	0.0	0.0	33.3	2	100.0	0.0	0.0	0.0
Judge 1321	322	83.2	0.3	9.6	6.8	81	87.7	0.0	7.4	4.9	256	69.5	4.3	5.9	20.3	326	59.5	2.1	11.0	27.3
Judge 1324	--	--	--	--	--	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1369	12	91.7	0.0	0.0	8.3	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1381	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1437	78	88.5	0.0	9.0	2.6	28	89.3	0.0	7.1	3.6	5	80.0	0.0	0.0	20.0	--	--	--	--	--
Judge 1449	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 1596	206	84.5	0.5	10.7	4.4	21	85.7	0.0	9.5	4.8	--	--	--	--	--	--	--	--	--	--

(Continued)

There were 30 cases missing information on the sentencing judge from the Southern District of Florida.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Florida

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1622	168	74.4	0.6	19.0	6.0	16	75.0	0.0	25.0	0.0	152	67.1	0.7	21.7	10.5	267	70.0	1.1	15.0	13.9
Judge 1682	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1683	338	75.1	0.3	15.1	9.5	126	81.7	0.0	11.1	7.1	327	76.5	0.0	12.8	10.7	408	69.1	0.2	14.0	16.7
Judge 17	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1767	3	100.0	0.0	0.0	0.0	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1859	2	50.0	0.0	50.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1897	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1903	325	83.4	0.0	12.9	3.7	140	86.4	0.7	8.6	4.3	332	75.6	0.3	9.9	14.2	467	73.7	0.9	9.4	16.1
Judge 1937	2	50.0	0.0	0.0	50.0	--	--	--	--	--	--	--	--	--	--	4	100.0	0.0	0.0	0.0
Judge 2074	255	80.4	0.0	13.7	5.9	63	87.3	0.0	12.7	0.0	164	68.3	3.7	9.8	18.3	448	70.3	1.1	11.8	16.7
Judge 225	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--

(Continued)

There were 30 cases missing information on the sentencing judge from the Southern District of Florida.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Florida

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 30	--	--	--	--	--	98	89.8	0.0	10.2	0.0	334	74.0	0.6	7.5	18.0	411	67.9	1.2	6.3	24.6
Judge 353	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 358	--	--	--	--	--	109	76.1	0.0	21.1	2.8	372	71.8	0.5	21.2	6.5	413	71.4	1.0	14.0	13.6
Judge 389	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 390	--	--	--	--	--	--	--	--	--	--	351	74.9	0.6	8.8	15.7	473	74.0	0.6	6.6	18.8
Judge 391	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 441	1	100.0	0.0	0.0	0.0	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 483	341	76.2	0.6	16.1	7.0	126	76.2	0.0	18.3	5.6	297	76.4	1.7	15.2	6.7	420	75.7	0.5	10.0	13.8
Judge 578	264	77.7	0.0	9.1	13.3	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 686	309	83.8	0.6	12.3	3.2	113	88.5	0.0	11.5	0.0	286	73.1	0.7	9.1	17.1	351	55.8	1.4	12.0	30.8
Judge 687	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were 30 cases missing information on the sentencing judge from the Southern District of Florida.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Florida

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 690	--	--	--	--	--	3	100.0	0.0	0.0	0.0	16	62.5	6.3	0.0	31.3	15	93.3	0.0	0.0	6.7
Judge 697	15	93.3	0.0	0.0	6.7	10	80.0	0.0	20.0	0.0	10	80.0	0.0	0.0	20.0	19	89.5	0.0	10.5	0.0
Judge 709	351	88.6	0.0	7.4	4.0	112	87.5	0.0	8.0	4.5	361	74.2	0.8	11.6	13.3	429	73.9	0.2	7.5	18.4
Judge 755	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 801	325	83.7	0.0	9.8	6.5	76	86.8	1.3	9.2	2.6	154	66.2	0.0	10.4	23.4	18	61.1	0.0	11.1	27.8
Judge 817	9	88.9	0.0	11.1	0.0	1	100.0	0.0	0.0	0.0	16	56.3	0.0	12.5	31.3	14	50.0	0.0	0.0	50.0
Judge 836	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	66.7	0.0	0.0	33.3
Judge 855	400	81.0	0.5	13.3	5.3	109	78.0	0.9	17.4	3.7	329	83.3	1.2	8.5	7.0	347	63.7	7.5	8.1	20.7
Judge 858	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 868	324	70.7	1.2	17.3	10.8	173	69.9	1.2	24.9	4.0	363	60.3	1.4	17.4	20.9	279	56.3	3.9	11.8	28.0
Judge 904	2	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--

(Continued)

There were 30 cases missing information on the sentencing judge from the Southern District of Florida.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Florida

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 908	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--
Judge 932	352	86.1	0.0	9.1	4.8	111	82.0	1.8	11.7	4.5	258	72.9	0.4	10.5	16.3	483	50.1	0.2	11.0	38.7
Judge 966	1	0.0	0.0	100.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 970	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

There were 30 cases missing information on the sentencing judge from the Southern District of Florida.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Middle District of Georgia

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	882	71.5	1.1	23.0	4.3	441	71.2	1.8	26.1	0.9	1,135	72.0	2.4	18.9	6.8	1,263	78.1	2.5	13.6	5.8
Judge 1052	40	67.5	5.0	27.5	0.0	80	70.0	1.3	27.5	1.3	124	71.0	1.6	18.5	8.9	166	79.5	1.8	12.0	6.6
Judge 1056	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	100.0	0.0	0.0	0.0
Judge 1071	227	63.9	0.4	31.3	4.4	76	71.1	3.9	23.7	1.3	208	65.9	6.3	19.7	8.2	255	67.8	7.8	15.3	9.0
Judge 1431	4	100.0	0.0	0.0	0.0	--	--	--	--	--	3	66.7	0.0	33.3	0.0	--	--	--	--	--
Judge 1432	171	64.3	2.9	26.9	5.8	41	63.4	2.4	34.1	0.0	186	67.7	2.2	25.3	4.8	--	--	--	--	--
Judge 1613	16	68.8	0.0	6.3	25.0	34	55.9	0.0	44.1	0.0	188	60.6	2.1	30.3	6.9	334	71.0	0.9	24.6	3.6
Judge 1637	106	76.4	0.0	19.8	3.8	50	58.0	2.0	40.0	0.0	160	75.0	0.6	21.3	3.1	225	75.6	2.2	12.9	9.3
Judge 1885	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	25	80.0	0.0	8.0	12.0
Judge 1982	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	21	100.0	0.0	0.0	0.0
Judge 269	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	50.0	50.0	0.0	0.0
Judge 536	1	0.0	0.0	0.0	100.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Continued)

There were four cases missing information on the sentencing judge from the Middle District of Georgia.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Middle District of Georgia

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 561	58	100.0	0.0	0.0	0.0	50	98.0	0.0	0.0	2.0	91	92.3	0.0	0.0	7.7	96	97.9	0.0	0.0	2.1
Judge 592	167	61.7	1.2	31.7	5.4	62	53.2	3.2	41.9	1.6	83	71.1	1.2	13.3	14.5	--	--	--	--	--
Judge 797	82	100.0	0.0	0.0	0.0	44	100.0	0.0	0.0	0.0	87	95.4	2.3	0.0	2.3	66	100.0	0.0	0.0	0.0
Judge 815	10	100.0	0.0	0.0	0.0	4	100.0	0.0	0.0	0.0	5	80.0	0.0	0.0	20.0	3	100.0	0.0	0.0	0.0
Judge 874	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	66	98.5	0.0	0.0	1.5

There were four cases missing information on the sentencing judge from the Middle District of Georgia.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Georgia

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	1,925	69.6	0.7	17.4	12.3	845	78.0	0.9	15.1	5.9	1,950	65.3	2.0	16.9	15.7	2,689	55.4	1.6	18.1	24.8
Judge 1002	3	100.0	0.0	0.0	0.0	--	--	--	--	--	3	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 103	--	--	--	--	--	--	--	--	--	--	34	64.7	0.0	5.9	29.4	190	46.3	1.6	14.2	37.9
Judge 1071	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 108	1	100.0	0.0	0.0	0.0	--	--	--	--	--	4	75.0	0.0	25.0	0.0	3	100.0	0.0	0.0	0.0
Judge 1083	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1181	104	70.2	0.0	23.1	6.7	69	92.8	0.0	5.8	1.4	150	66.7	1.3	22.7	9.3	146	51.4	0.7	25.3	22.6
Judge 1348	1	100.0	0.0	0.0	0.0	--	--	--	--	--	8	87.5	0.0	0.0	12.5	--	--	--	--	--
Judge 1350	196	67.9	0.0	24.5	7.7	78	78.2	1.3	20.5	0.0	170	75.9	0.0	13.5	10.6	150	62.0	0.0	19.3	18.7
Judge 1407	125	64.8	2.4	20.0	12.8	62	85.5	0.0	4.8	9.7	111	66.7	1.8	12.6	18.9	161	64.6	1.9	2.5	31.1
Judge 1440	128	66.4	1.6	21.1	10.9	49	81.6	0.0	14.3	4.1	140	68.6	3.6	20.0	7.9	264	59.8	1.1	18.9	20.1
Judge 1613	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0

(Continued)

There were nine cases missing information on the sentencing judge from the Northern District of Georgia.
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TABLE 2
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Northern District of Georgia

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	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1665	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	5	100.0	0.0	0.0	0.0	2	100.0	0.0	0.0	0.0
Judge 1720	87	64.4	0.0	16.1	19.5	54	70.4	0.0	22.2	7.4	81	60.5	1.2	18.5	19.8	74	45.9	0.0	10.8	43.2
Judge 1814	162	69.8	1.2	19.1	9.9	77	75.3	2.6	20.8	1.3	144	64.6	1.4	13.9	20.1	201	48.8	2.5	16.9	31.8
Judge 1822	6	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1843	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 1863	150	69.3	0.7	19.3	10.7	61	80.3	0.0	16.4	3.3	180	69.4	0.6	22.8	7.2	260	66.5	0.4	20.4	12.7
Judge 1866	79	69.6	0.0	19.0	11.4	19	89.5	0.0	10.5	0.0	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 1880	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4	75.0	0.0	25.0	0.0
Judge 1933	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	100.0	0.0	0.0	0.0
Judge 1934	7	71.4	0.0	14.3	14.3	--	--	--	--	--	34	67.6	0.0	26.5	5.9	111	63.1	2.7	23.4	10.8
Judge 1948	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	--	--	--	--	--

(Continued)

There were nine cases missing information on the sentencing judge from the Northern District of Georgia.
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TABLE 2
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Northern District of Georgia

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 1963	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0	--	--	--	--	--
Judge 204	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	4	50.0	0.0	25.0	25.0	--	--	--	--	--
Judge 261	2	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 269	169	76.9	0.6	8.9	13.6	75	72.0	1.3	20.0	6.7	142	68.3	2.8	16.2	12.7	139	50.4	3.6	27.3	18.7
Judge 287	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 288	119	65.5	1.7	18.5	14.3	54	66.7	0.0	20.4	13.0	160	65.0	5.0	20.0	10.0	224	48.7	1.3	25.0	25.0
Judge 361	--	--	--	--	--	3	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0	6	100.0	0.0	0.0	0.0
Judge 393	178	75.8	1.1	12.4	10.7	86	76.7	1.2	16.3	5.8	149	63.1	0.7	18.8	17.4	118	57.6	0.8	26.3	15.3
Judge 423	1	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Judge 437	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	100.0	0.0
Judge 507	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	156	57.1	1.9	14.1	26.9

(Continued)

There were nine cases missing information on the sentencing judge from the Northern District of Georgia.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
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TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Georgia

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 511	--	--	--	--	--	--	--	--	--	--	91	73.6	2.2	13.2	11.0	43	72.1	4.7	7.0	16.3
Judge 553	--	--	--	--	--	--	--	--	--	--	4	25.0	0.0	50.0	25.0	1	0.0	0.0	100.0	0.0
Judge 554	137	62.8	0.0	19.0	18.2	65	75.4	1.5	13.8	9.2	166	57.8	2.4	14.5	25.3	225	40.0	2.7	20.9	36.4
Judge 572	3	100.0	0.0	0.0	0.0	--	--	--	--	--	1	0.0	0.0	0.0	100.0	--	--	--	--	--
Judge 605	143	72.0	0.7	16.8	10.5	36	80.6	5.6	11.1	2.8	74	55.4	9.5	6.8	28.4	115	60.9	2.6	7.0	29.6
Judge 629	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	66.7	0.0	33.3	0.0
Judge 690	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	9	55.6	0.0	22.2	22.2
Judge 711	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 744	1	100.0	0.0	0.0	0.0	2	50.0	0.0	0.0	50.0	1	100.0	0.0	0.0	0.0	1	100.0	0.0	0.0	0.0
Judge 819	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 864	10	60.0	0.0	10.0	30.0	2	100.0	0.0	0.0	0.0	4	25.0	0.0	50.0	25.0	--	--	--	--	--

(Continued)

There were nine cases missing information on the sentencing judge from the Northern District of Georgia.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
**** The Post-Gall Period includes cases sentenced between December 11, 2007 and September 30, 2011.

SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Northern District of Georgia

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 865	105	67.6	0.0	10.5	21.9	50	72.0	0.0	10.0	18.0	86	44.2	0.0	15.1	40.7	61	54.1	1.6	11.5	32.8
Judge 909	3	100.0	0.0	0.0	0.0	--	--	--	--	--	--	--	--	--	--	1	0.0	0.0	0.0	100.0
Judge 929	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	12	66.7	8.3	8.3	16.7

There were nine cases missing information on the sentencing judge from the Northern District of Georgia.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
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*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Georgia

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
TOTAL	788	75.5	0.9	17.9	5.7	299	73.9	1.3	18.4	6.4	1,165	77.8	6.4	9.4	6.5	2,405	78.6	3.7	10.0	7.6
Judge 1310	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0
Judge 1316	188	72.3	1.1	20.7	5.9	66	66.7	1.5	22.7	9.1	218	79.8	1.8	9.2	9.2	389	74.0	3.1	13.4	9.5
Judge 1357	58	70.7	1.7	25.9	1.7	22	90.9	0.0	0.0	9.1	22	90.9	0.0	9.1	0.0	8	100.0	0.0	0.0	0.0
Judge 17	92	77.2	0.0	17.4	5.4	31	77.4	0.0	22.6	0.0	91	70.3	3.3	15.4	11.0	57	86.0	0.0	10.5	3.5
Judge 173	197	60.4	0.0	26.4	13.2	93	61.3	1.1	26.9	10.8	282	69.9	5.0	16.0	9.2	193	66.8	6.2	11.9	15.0
Judge 1751	--	--	--	--	--	--	--	--	--	--	16	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 1752	91	100.0	0.0	0.0	0.0	13	100.0	0.0	0.0	0.0	195	96.4	1.5	0.5	1.5	413	96.4	0.7	0.0	2.9
Judge 2047	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	241	63.1	1.7	22.0	13.3
Judge 269	--	--	--	--	--	--	--	--	--	--	1	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 524	--	--	--	--	--	--	--	--	--	--	3	100.0	0.0	0.0	0.0	--	--	--	--	--
Judge 525	139	82.7	2.9	13.7	0.7	63	82.5	3.2	12.7	1.6	259	64.9	18.9	10.4	5.8	370	62.4	13.0	12.2	12.4

(Continued)

There was one case missing information on the sentencing judge from the Southern District of Georgia.
* The Post-Koon Period includes cases sentenced between October 1, 2000 and April 30, 2003.
** The Post-PROTECT ACT Period includes cases sentenced between May 1, 2003 and June 24, 2004.
*** The Post-Booker Period includes cases sentenced between January 12, 2005 and December 10, 2007.
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SOURCE: U.S. Sentencing Commission, 2001 - 2010 Datafiles, USSCFY01 - USSCFY10, and Preliminary Data from USSCFY11 (October 1, 2010, through September 30, 2011).

TABLE 2
SENTENCES RELATIVE TO THE GUIDELINE RANGE BY DISTRICT AND JUDGE
Southern District of Georgia

	Post-Koon*					Post-PROTECT ACT**					Post-Booker***					Post-Gall****				
	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent	Number of Cases	Within Range Percent	Above Range Percent	Gov't Spon'd Percent	Non-Gov't Spon'd Below Range Percent
Judge 710	6	83.3	0.0	0.0	16.7	1	100.0	0.0	0.0	0.0	19	94.7	0.0	0.0	5.3	46	97.8	0.0	0.0	2.2
Judge 747	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	297	68.7	3.7	20.5	7.1
Judge 90	17	100.0	0.0	0.0	0.0	10	100.0	0.0	0.0	0.0	58	96.6	1.7	0.0	1.7	390	99.0	0.0	0.3	0.8

There was one case missing information on the sentencing judge from the Southern District of Georgia.
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