

An Overview of the UNITED STATES SENTENCING COMMISSION



(Disclaimer: The characterizations in this overview are presented in simplified form and are not to be used for guideline interpretation, application, or authority; the characterizations do not necessarily represent the official position of the Commission.)

The United States Sentencing Commission is an independent agency in the judicial branch of government. Its principal purposes are: (1) to establish sentencing policies and practices for the federal courts, including guidelines to be consulted regarding the appropriate form and severity of punishment for offenders convicted of federal crimes; (2) to advise and assist Congress and the executive branch in the development of effective and efficient crime policy; and (3) to collect, analyze, research, and distribute a broad array of information on federal crime and sentencing issues, serving as an information resource for Congress, the executive branch, the courts, criminal justice practitioners, the academic community, and the public.

The U.S. Sentencing Commission was created by the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984. The sentencing guidelines established by the Commission are designed to

- incorporate the purposes of sentencing (*i.e.*, just punishment, deterrence, incapacitation, and rehabilitation);
- provide certainty and fairness in meeting the purposes of sentencing by avoiding unwarranted disparity among offenders with similar characteristics convicted of similar criminal conduct, while permitting sufficient judicial flexibility to take into account relevant aggravating and mitigating factors;
- reflect, to the extent practicable, advancement in the knowledge of human behavior as it relates to the criminal justice process.

The Commission is charged with the ongoing responsibilities of evaluating the effects of the sentencing guidelines on the criminal justice system, recommending to Congress appropriate modifications of substantive criminal law and sentencing procedures, and establishing a research and development program on sentencing issues.

A Brief History of Federal Sentencing Guidelines

Disparity in sentencing, certainty of punishment, and crime control have long been issues of interest for Congress, the criminal justice community, and the public. After more than a decade of research and debate, Congress decided that (1) the previously unfettered sentencing discretion accorded federal trial judges needed to be structured; (2) the administration of punishment needed to be more certain; and (3) specific offenders (*e.g.*, white collar and violent, repeat offenders)

needed to be targeted for more serious penalties. Consequently, Congress created a permanent commission charged with formulating national sentencing guidelines to define the parameters for federal trial judges to follow in their sentencing decisions.

The resulting sentencing guidelines went into effect November 1, 1987. Shortly after implementation of the guidelines, defendants began challenging the constitutionality of the Sentencing Reform Act (SRA) on the basis of improper legislative delegation and violation of the separation of powers doctrine. The U.S. Supreme Court rejected these challenges on January 18, 1989, in *Mistretta v. United States*, 488 U.S. 361 (1989), and upheld the constitutionality of the Commission as a judicial branch agency. Since nationwide implementation in January 1989, federal judges have sentenced more than 1,000,000 defendants under the guidelines.

In January of 2005, the U.S. Supreme Court decided *United States v. Booker*, 543 U.S. 220 (2005). The *Booker* decision addressed the question left unresolved by the Court's decision in *Blakely v. Washington*, 542 U.S. 296 (2004): whether the Sixth Amendment right to jury trial applies to the federal sentencing guidelines. In its substantive *Booker* opinion, the Court held that the Sixth Amendment applies to the federal sentencing guidelines. In its remedial *Booker* opinion, the Court severed and excised two statutory provisions, 18 U.S.C. § 3553(b)(1), which made the federal guidelines mandatory, and 18 U.S.C. § 3742(e), an appeals provision. Under the approach set forth by the Court, "district courts, while not bound to apply the Guidelines, must consult those Guidelines and take them into account when sentencing," subject to review by the courts of appeal for "unreasonableness." The Court also reaffirmed the constitutionality of the Commission and maintained all of the Sentencing Commission's statutory obligations under the Sentencing Reform Act. The subsequent Supreme Court decisions in *Rita v. United States*, 551 U.S. __ (2007), held that courts of appeal may apply a presumption of reasonableness when reviewing a sentence imposed within the guideline sentencing range. The Supreme Court continued to stress the importance of the federal sentencing guidelines in its most recent sentencing-related cases. *See Gall v. United States*, 128 S. Ct. 586 (2007) ("As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and initial benchmark" at sentencing); *Kimbrough v. United States*, 128 S. Ct. 558 (2007) (After *Booker*, "[a] district judge must include the Guidelines range in the array of factors warranting consideration").

How the Sentencing Guidelines Work

The sentencing guidelines provide federal judges with fair and consistent sentencing ranges to consult at sentencing. The guidelines take into account both the seriousness of the criminal conduct and the defendant's criminal record. Based on the severity of the offense, the guidelines assign most federal crimes to one of 43 "offense levels." Each offender is also assigned to one of six "criminal history categories" based upon the extent and recency of his or her past misconduct.

Innovations Under the Sentencing Reform Act

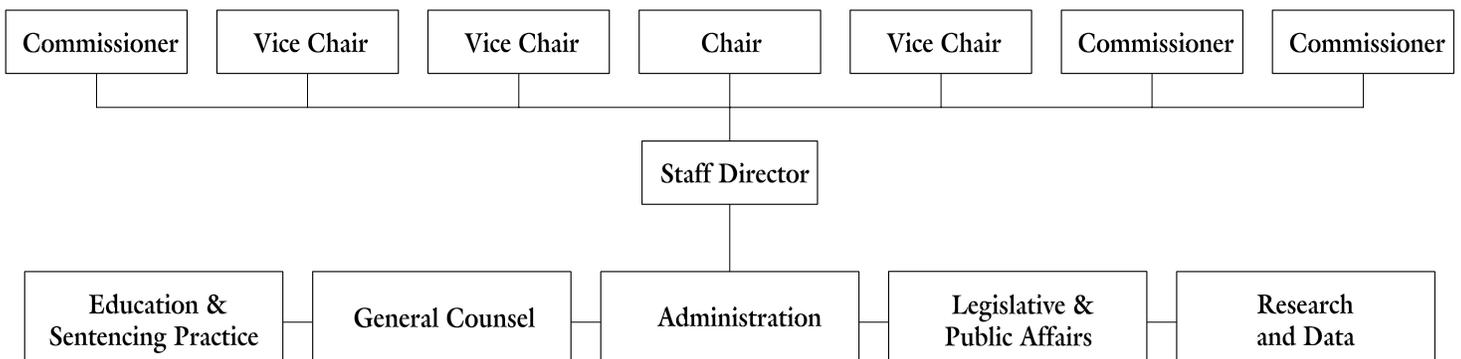
- Structured judicial discretion
- Appellate review of sentences
- Reasons for sentences stated on the record
- Determinate or "real time" sentencing
- Abolition of parole

The point at which the offense level and criminal history category intersect on the Commission’s sentencing table determines an offender’s guideline range. In order to provide flexibility, the top of each guideline range exceeds the bottom by six months or 25 percent (whichever is greater). Judges are advised to choose a sentence from within the guideline range unless the court identifies a factor that the Sentencing Commission failed to consider that should result in a different sentence. In these instances, the court may “depart” from the guideline range, while still providing a “guideline” sentence. Again, *Booker* held that federal courts, while not bound to apply the guidelines, must consult them.

Organization of the Sentencing Commission

Unlike many special purpose “study” commissions within the executive branch, Congress established the U.S. Sentencing Commission as an ongoing, independent agency within the judicial branch. The seven voting members on the Commission are appointed by the President and confirmed by the Senate, and serve six-year terms. No more than three of the commissioners may be federal judges and no more than four may belong to the same political party. The Attorney General is an *ex officio* member of the Commission, as is the chair of the U.S. Parole Commission.

The Commission staff of approximately 100 employees is divided into five offices with the director of each office reporting to the staff director who in turn reports to the chair. The five offices are — General Counsel, Education and Sentencing Practice, Research and Data, Legislative and Public Affairs, and Administration. The staff director supervises and coordinates all agency functions.



About the Commissioners

Chair

JUDGE RICARDO H. HINOJOSA, who has served on the U.S. District Court for the Southern District of Texas since 1983, also serves as an adjunct professor at the University of Texas School of Law. From 1976 until 1983, he was an attorney with the Ewers & Toothaker Law Firm in McAllen, Texas, and was a partner at the time he became a judge. He graduated Phi Beta Kappa and with honors from the University of Texas at Austin in 1972, and earned his law degree from Harvard Law School in 1975. Judge Hinojosa received the Distinguished Alumnus Award from the University of Texas Ex-Students' Association in 2001. He served as member (1979-83) and chairman (1981-83) of the Pan American University Board of Regents and in 1986 he received the Distinguished Service Award from the Pan American University Alumni Association.

Vice Chairs

JUDGE RUBEN CASTILLO has served as a U.S. district judge for the Northern District of Illinois since 1994. From 1991-1994, he was a partner in the Chicago office of Kirkland & Ellis. He was the regional counsel for the Mexican American Legal Defense and Educational Fund from 1988-1991. Judge Castillo served as an assistant U.S. attorney for the Northern District of Illinois from 1984-1988 and was previously with the firm of Jenner & Block. He is an adjunct professor of trial advocacy at Northwestern University School of Law, where he has taught since 1988. Judge Castillo received a B.A. degree from Loyola University of Chicago and a J.D. degree from Northwestern University School of Law, where he served on the editorial board of the Journal of Criminal Law and Criminology. Judge Castillo has been involved with the criminal justice system since 1978 when he was appointed as a deputy clerk for the local criminal courts, a position he maintained throughout college and law school.

CHIEF JUDGE WILLIAM K. SESSIONS III has served as a U.S. district judge for the District of Vermont since 1995. From 1978-1995, he was a partner with the Middlebury firm of Sessions, Keiner, Dumont & Barnes. He previously served in the Office of the Public Defender for Addison County. He has served as a professor at the Vermont Law School. Judge Sessions received a B.A. degree from Middlebury College and a J.D. degree from the George Washington School of Law.

Commissioners

MS. DABNEY FRIEDRICH served as associate counsel at the White House from 2003 until her appointment to the Sentencing Commission in December 2006. Prior to serving in that capacity, she was counsel to Chairman Orrin G. Hatch of the U.S. Senate Judiciary Committee from 2002-2003. From 1995 until 2002, she was an assistant U.S. attorney, first for the Southern District of California (1995-1997) and then for the Eastern District of Virginia (1998-2002). Prior to that (1994-1995), she was an associate in private practice at Latham & Watkins in San Diego. From 1992-1994, she was law clerk to now Chief Judge Thomas F. Hogan (U.S. District Court for the District of Columbia). Ms. Friedrich received her B.A. from Trinity University, her Diploma in Legal Studies from Oxford University, and her J.D. from Yale Law School.

MR. MICHAEL E. HOROWITZ is currently a partner with the law firm of Cadwalader, Wickersham & Taft in Washington, D.C. Previously, he served in the Justice Department's Criminal

Division as Deputy Assistant Attorney General in 1999 and as chief of staff from 2000-2002. From 1991 through 1999, Mr. Horowitz was an assistant United States attorney in the Southern District of New York, where he served as deputy chief of the Criminal Division and chief of the Public Corruption Unit. His work on a complex, five-year corruption investigation earned him the Attorney General's Distinguished Service Award. Mr. Horowitz received his B.A. summa cum laude from Brandeis University in 1984 and a J.D. magna cum laude from Harvard Law School in 1987.

MS. BERYL A. HOWELL serves as managing director, general counsel of the Washington, D.C. Office of Stroz Friedberg, LLC. She is the former general counsel of the Senate Committee on the Judiciary, where she worked on a variety of criminal justice, technology and other issues before the Committee. Prior to her work on the Senate staff, Ms. Howell served as an assistant U.S. attorney and deputy chief of the Narcotics Section of the U.S. Attorney's office in the Eastern District of New York. She was formerly an associate at Schulte, Roth & Zabel in New York City and a clerk for the Honorable Dickinson R. Debevoise in the District of New Jersey. During her tenure on the Senate Judiciary Committee, Ms. Howell worked for Senator Patrick J. Leahy (D-VT) (chairman and ranking member on the full Committee), and for the Technology and the Law Subcommittee and the Antitrust, Business Rights and Competition Subcommittee. Ms. Howell received her B.A. from Bryn Mawr College and her J.D. from Columbia University School of Law, where she was a Harlan Fiske Stone Scholar.

Ex-Officio Commissioners

MS. KELLI FERRY was recently designated an *ex-officio* member of the United States Sentencing Commission, representing the Office of the Attorney General, U.S. Department of Justice. Ms. Ferry serves as counselor to the assistant attorney general for the Criminal Division of the Department of Justice and is an assistant United States attorney in the Eastern District of Virginia. Prior to joining the United States Attorney's office, she clerked for the U.S. District Court, Eastern District of Virginia, and was a litigation associate at Wilmer Cutler & Pickering (now Wilmer Hale). Ms. Ferry received her B.A. from the University of Georgia summa cum laude and her J.D. from the University of Virginia School of Law.

MR. EDWARD F. REILLY, JR. was designated as chair of the U.S. Parole Commission by President George W. Bush on May 31, 2001. Prior to his appointment, he served one year in the Kansas House of Representatives and 28 years in the Kansas Senate. In the Legislature, he served as assistant majority leader, chairman of the Senate Committee on Federal and State Affairs, chairman of the Senate Insurance Subcommittee, and vice chairman of the Senate Elections Committee. Mr. Reilly has served four presidential administrations in various capacities.

Information

Visitors to the Commission's web site at www.ussc.gov can browse as well as download a wide selection of Commission documents and materials. The web site provides links to other federal judicial agencies, and, among many selections, features information about federal sentencing statistics by state and district, Commission meeting minutes and hearing transcripts, and state sentencing commissions.

For additional information about the U.S. Sentencing Commission, contact:

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