

**STATEMENT OF  
UNITED STATES SENTENCING COMMISSION  
BEFORE THE HOUSE COMMITTEE ON APPROPRIATIONS,  
SUBCOMMITTEE FOR TRANSPORTATION, TREASURY, AND HOUSING  
AND URBAN DEVELOPMENT, THE JUDICIARY, DISTRICT OF COLUMBIA**

**April 5, 2006**

Chairman Knollenberg, Ranking Member Olver, members of the Committee, the United States Sentencing Commission thanks you for the opportunity to submit this statement in support of the Commission's appropriations request for fiscal year 2007.

In the Commission's statements in support of its fiscal year 2005 and 2006 appropriations requests, the Commission detailed for the Committee the impact the Supreme Court's decisions in *Blakely v. Washington*<sup>1</sup> and *United States v. Booker*<sup>2</sup> were having not only on the Commission, but the entire criminal justice community. The Commission continues to feel the impact of these decisions but remains firmly committed to meeting all of its statutory obligations.

The Commission continues to be the central agency for the collection, analysis, and reporting of federal sentencing statistics and trends, and it is dedicated to continuing this critical role. The Commission also continues to develop appropriate guideline penalties for a vast array of new and existing crimes, respond to Congressional directives and inquiries regarding sentencing policy generally, provide education on sentencing issues to the Judiciary and other participants in the criminal justice community, and conduct research activities that help to shape the future of sentencing policy.

The preceding fiscal years have been extraordinarily busy for the Commission, and it anticipates that fiscal year 2007 will be equally so. Full funding of its fiscal year 2007 request will ensure that the Commission can continue to meet all of its statutory obligations and, most importantly, continue to provide the criminal justice community with the most comprehensive and timely sentencing information available.

**RESOURCES REQUESTED**

The Commission is requesting **\$15,740,000 for fiscal year 2007**, representing a nine percent increase over allotted funding for fiscal year 2006. The Commission recognizes that the fiscal year 2007 budget cycle is extraordinarily tight, and it does not seek this increase lightly. The Commission's request is backed by significant resource demands, including increased demand for Commission work product.

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<sup>1</sup> 542 U.S. 296 (2004).

<sup>2</sup> 543 U.S. 220, 125 S. Ct. 738 (2005).

## JUSTIFICATION FOR COMMISSION'S APPROPRIATION REQUEST

The statutory duties of the Commission include, but are not limited to: (1) promulgating sentencing guidelines to be considered, determined, and calculated in all federal cases; (2) collecting sentencing data systematically to detect new criminal trends, determine if federal crime policies are achieving their goals, and 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 training to judges, prosecutors, probation officers, the defense bar, and other members of the criminal justice community in the application of the guidelines.

The *Booker* decision had a dramatic impact on the federal sentencing system, but it did not change these core missions. In fact, the Supreme Court reaffirmed these statutory obligations by explaining that the Commission's post-*Booker* mission remained "writing Guidelines, collecting information about district court sentencing decisions, undertaking research, and revising the Guidelines accordingly."

### **Sentencing Policy Development and Guideline Promulgation**

The Commission has maintained an active policy cycle in the wake of *Blakely* and *Booker*, despite the resource drain responding and adapting to these cases has caused. In fiscal year 2006, for example, the Commission has promulgated proposed amendments and issues for comment in fourteen discrete areas of criminal law, including: immigration, steroids, terrorism, transportation, and firearms offenses. With regard to immigration offenses – which now make up almost one-quarter of the entire federal caseload - the Commission has held one round table discussion (in Washington, D.C.) and two regional hearings (one in San Antonio, Texas and one in San Diego, California) at which it received expert testimony from judges, prosecutors, defense attorneys, probation officers, and others about issues related to immigration offenses. The Commission also met with key congressional staff to advise them of the Commission's findings and actions, and provided them with a detailed staff report on immigration reform and the federal sentencing guidelines.

The Commission took a similar approach with regard to its consideration of steroids offenses. The Commission held a roundtable in Washington, D.C. that brought in practitioners, scientists, and other academics to discuss these offenses and their associated harms. Commission staff also met with congressional staff and worked with staff from the Government Accountability Office on this very important topic. As part of its amendment process, the Commission also produced a detailed report on steroids use and abuse.

The Commission anticipates another active amendment cycle in fiscal year 2007. In addition to its own policy priorities (which it identifies each spring and finalizes each

fall), the Commission expects to address issues related to terrorism, transportation, sex, and drug offenses, as well as implementation of other outstanding crime legislation from the 109<sup>th</sup> Congress warranting a Commission response. The Commission believes that the multi-faceted approach it took with regard to its consideration of immigration and steroids offenses should continue to be the model for its future amendment cycles. As such, the Commission will have to devote more staff (and Commissioner) resources to the planning and execution of this type of outreach, including associated travel costs. This approach to the amendment process also will require greater resources to synthesize the information received into meaningful sentencing policy. Full funding of our fiscal year 2007 request will allow the Commission to meet this key statutory obligation in the most complete manner possible.

### **Collecting, Analyzing, and Reporting Sentencing Data**

As detailed previously, recent Supreme Court activity has had a major impact on the Commission's workload, primarily in the area of data collection, analysis, and reporting. Immediately after the *Blakely* and *Booker*, the Commission realized that the most critical role it could play as the criminal justice community assessed the impact of these decisions was the provision of the most timely and accurate sentencing data available.

The Commission extracts information from five documents – in every federal case – that the courts are required to send to the Commission under the 2003 PROTECT Act. On average, the Commission receives 70,000 cases annually, so the number of documents and pages that must be collected, analyzed, and then reported by the Commission is voluminous. Beginning in fiscal year 2005, the Commission refined its entire data collection and reporting process so that it could provide “real time” data about the effects of *Booker* on national sentencing to the criminal justice community. The Commission now reports national sentencing data on an almost monthly basis, a monumental task for any federal agency, let alone an agency as small as the Commission. This refinement of our data collection and reporting efforts has resulted in very significant demands on the Commission's resources, particularly personnel. The Commission's fiscal year 2007 funding request is designed to increase personnel in the key areas of data collection and analysis, and research. Increased funding during fiscal year 2007 also will allow the Commission to keep up with both the time and volume demands on its data collection and analysis resources it now faces.

#### *Information Technology Issues Associated with Data Collection, Analysis, and Reporting*

As important as meeting the Commission's personnel needs in the area of data collection and analysis, full funding will allow the Commission to continue moving forward with its plans to collect, analyze, and report data in an all-electronic format. Proceeding with these efforts will allow the Commission to work with its criminal justice partners to gather information efficiently and in a manner that promotes cooperation and efficiency, avoids unnecessary duplication of efforts, and ensures that the entire criminal justice system is operating at optimum levels.

To enhance the Commission's ability to process cases in a quick and cost efficient manner, it has developed and implemented an electronic document submission system that enables sentencing courts to submit electronically the five required sentencing documents directly to the Commission, as opposed to having to spend court resources on copying, bundling, and mailing hard copies. Currently, **64 districts** are using the electronic document submission system. The Commission anticipates that all 94 districts will be using the system by the end of fiscal year 2007.

The Commission also is moving to a fully automated document collection and data analysis system so that by the end of fiscal year 2007, all document receipt and data extraction and analysis will be done electronically. The Commission has spent the last several months building the foundation of this process and expects to have a completed system running by the end of fiscal year 2007. Becoming fully automated is critical to the success of the Commission's statutory missions and offers significant benefits to the entire criminal justice community. First, our electronic document submission system already has reduced personnel and resource burdens on the courts and probation offices, and updating this system so that all aspects are automated will allow for even more efficiencies. Second, by becoming fully automated, the Commission anticipates being able to provide even more detailed and accurate data on national sentencing trends to the criminal justice community at an even more expedited pace. Third, a fully automated system will allow the Commission to work closely with its criminal justice partners in creating an unparalleled system of document receipt and data reporting that avoids unwarranted duplication of efforts and promotes best practices throughout the system. Finally, by increasing internal efficiencies, the Commission will be able to dedicate more resources to research-oriented tasks that, in the preceding fiscal years, have been curtailed.

Full funding of the Commission's fiscal year 2007 request will ensure that the Commission can meet its information technology needs and continue to work with its criminal justice partners in a technologically efficient, non-duplicative manner.

#### *Increased Demands for Commission Work Product from Congress*

In addition to the new demands for national data placed on the Commission by the *Booker* decision, the Commission also is experiencing increased demands for work product from Congress. In addition to providing its monthly reports on national sentencing practices, the Commission is required to assist Congress in assessing the impact proposed crime legislation will have on the federal prison population. These assessments often are complex, time-sensitive, and require highly specialized Commission resources. In addition, in fiscal year 2005 and 2006, the Commission responded to a number of more general requests from Congress on issues such as gangs, drugs, immigration, and sex offenses. These requests are not expected to diminish during fiscal year 2007, and the Commission must ensure that it has adequate resources to address the needs of Congress.

## **Conducting Research**

Research is a critical part of the Commission's overall mission. As such, the Commission has undertaken in fiscal year 2006 to prepare a number of internal and external reports that provide a detailed examination of key policy areas such as immigration, drugs, and firearms offenses. These reports are crucial to the Commission's overall objective of promulgating reasoned and well-informed guideline and policy statement amendments. Also during fiscal year 2006, the Commission will be releasing a detailed report on the *Booker* decision and its impact on national sentencing.

The Commission anticipates undertaking a number of new research projects in fiscal year 2007. In addition to reports associated with its policy work, the Commission expects to continue its comprehensive review of recidivism. The Commission is in the midst of a multi-part series on recidivism in the federal system that is the most comprehensive study of its kind to be undertaken. The Commission also anticipates undertaking other coding projects and research initiatives of interest to the criminal justice community. Full funding of its fiscal year 2007 request will allow the Commission to devote the resources necessary to accomplish its research mission.

## **Training and Outreach**

The Commission continues its commitment to providing specialized guideline training and technical assistance to federal judges, prosecutors, defense attorneys, probation officers, staff attorneys, and law clerks. The Commission provides intensive training sessions throughout the year, and has increased its efforts since the *Booker* decision. In calendar year 2005, the Commission trained over 9,700 people. Commissioners and staff traveled to, and provided training in, 59 districts and all twelve circuits. Commissioners and staff also participated in numerous academic programs and symposia across the country as part of the ongoing debate about the future of federal sentencing. Commission representatives also attended a number of circuit court conferences, meetings of the Criminal Law Committee of the Judicial Conference of the United States, and the Judiciary's National Sentencing Institute. The Commission also held its own annual national training seminar with over 500 representatives of the criminal justice community in attendance.

The Commission expects its training and outreach efforts continue at this accelerated pace in fiscal year 2007. As a result, the Commission will continue to incur increased personnel and travel demands, including more demands on Commissioners to travel. Full funding of the Commission's request will ensure that these increased demands can be met.

## SUMMARY

The Commission is uniquely positioned to assist all three branches of government in ensuring the continued security of the public while providing fair and just sentences. An independent agency housed in the Judicial branch, the Commission is an expert bipartisan body of federal judges, individuals with varied experience in the federal criminal justice system, and ex-officio representatives of the Executive Branch whose work on sentencing policy must be reviewed by Congress. In short, the Commission is at the crossroads of where the three branches of government intersect to determine federal sentencing policy.

The Commission has worked hard and performed well with the resources available, and it appreciates the funding efforts of this Committee. Meeting the Commission's fiscal year 2007 funding request will ensure that the Commission continues to: develop aggressive and timely policy agendas; collect, analyze, and report accurate and comprehensive sentencing data; train our partners in the criminal justice community; and engage in meaningful research projects. The Commission urges Congress to support fully our fiscal year 2007 appropriation request of \$15,740,000 so that it can continue its role as a leader in federal sentencing policy.