



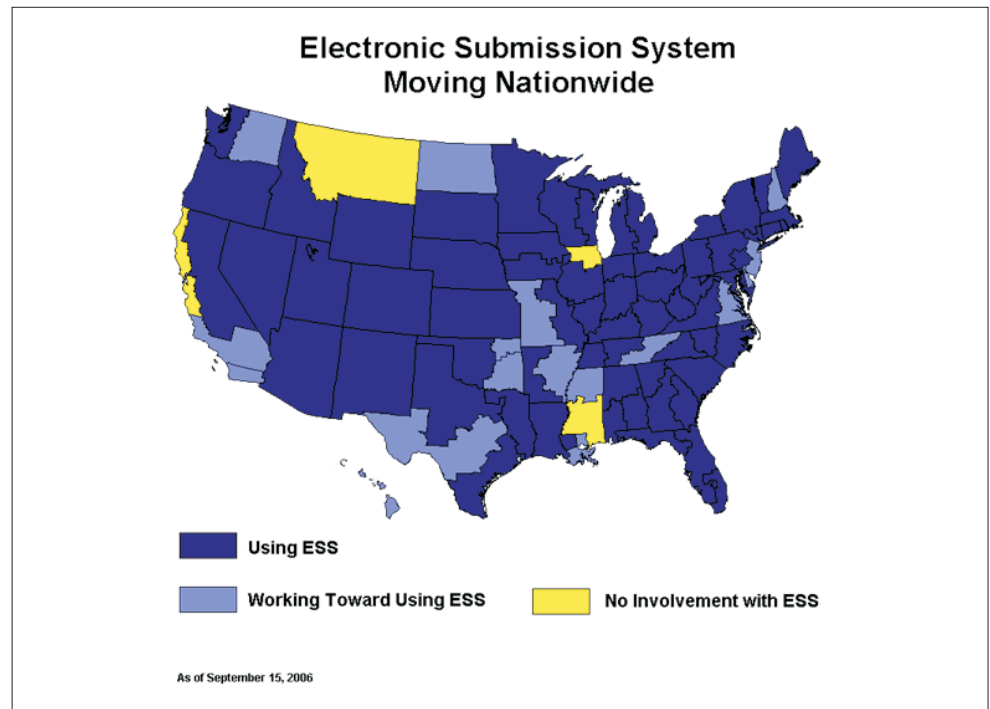
# Guidelines

News from the U.S. Sentencing Commission

Fall 2006

## Document Submission Made Easier with Electronic Submission System

The Commission continues to look for ways to ease the burden on courts in fulfilling their statutory requirements regarding document submission to the Commission. Last year, the Commission unveiled an electronic submission system (ESS) which enables courts to submit the five required documents (*i.e.*, judgment and commitment order, statement of reasons form, any plea agreement, the charging document, and the presentence report) electronically, thereby improving efficiency and avoiding delays in the mailing process.



Development of ESS began in the fall of 2004 with a pilot of four districts, and by September 2006, 70 districts were submitting their case files electronically and 17 others were working with the Commission toward joining ESS. ESS enables courts to send all case-related sentencing documents electronically to the Commission. The system is designed to accept submissions that are transmitted in Adobe Portable Document Format (PDF) via the Administrative Offices's Data Communication Network (DCN). DCN provides a direct link from the probation office to the Commission and thus avoids the security issues associated with the Internet. Other benefits to the courts using ESS include a savings of copying, postage, and shipping costs, and an automatic verification and record of documents sent.

**The Commission extends its congratulations and appreciation to the district court judges, probation officers, and other court personnel who helped make the nationwide document submission rate for FY05 over 99%, the highest ever.**

To receive more information about using the system, please call Joyce Rountt, the Commission's information systems manager, at (202) 502-4604. ■

# Commission Sets Priorities for 2006–2007 Amendment Cycle

On September 21, 2006, the Sentencing Commission adopted its policy priorities for the amendment cycle ending May 1, 2007. The Commission voted to begin work on a number of important sentencing guideline topics. Notably, the Commission voted to —

- consider and possibly develop guideline simplification options that might improve the operation of the guidelines;
- continue its policy work to develop and consider policy options that might improve the operation of Chapter Four (Criminal History);
- continue its work with the three branches of government and other interested parties on cocaine sentencing policy; and
- continue its work regarding immigration offenses, specifically offenses sentenced under section 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien).

The Commission also stated in its notice that it will continue to work with the legislative, executive, and judicial branches and other interested parties with regard to *United States v. Booker*.

Addressing several pieces of legislation is also on the Commission’s agenda this cycle, including —

## Guidelines

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One Columbus Circle, N.E.  
Washington, DC 20002-8002  
[www.ussc.gov](http://www.ussc.gov)  
(202) 502-4500  
Fax: (202) 502-4699

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Editor — Michael Courlander  
Production — Jeanne Doherty

- The USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. No. 109–177, which criminalizes, increases penalties for, or expands definitions of, a series of terrorism offenses (many dealing with mass transportation) and controlled substances;
- The Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109–164, which contains new provisions designed to combat human smuggling and trafficking;
- The Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109–162, which criminalizes misuse of public employee insignia and uniforms and provides penalties for crimes related to stalking and disclosure of information obtained by an international marriage broker.
- The Stop Counterfeiting in Manufactured Goods Act, Pub. L. No. 109–181, which directed the Commission to review and, if appropriate, amend the sentencing guidelines applicable to persons convicted of trafficking in counterfeit labels or trafficking in counterfeit goods or services. In response, the Commission promulgated an emergency amendment, effective September 12, 2006, and will continue its review of the criminal infringement of copyright and trademark guideline.

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## Commission Unveils New Quarterly Reports

There has been much interest in the Commission's sentencing data from Congress, judges, the executive branch, and researchers since the *Booker* decision. The Sentencing Commission has published its *2005 Annual Report* and its *2005 Sourcebook of Federal Sentencing Statistics* and has posted the volumes on its website at <http://www.ussc.gov/annrpts.htm>. The statistics in these reports are presented according to whether the sentencing occurred pre- or post-*Booker* (January 12, 2005).

In addition, in order to better identify emerging trends over time, the Commission for the first time has begun to publish quarterly reports of its sentencing data. To standardize the analyses, the format and methodology of the quarterly reports are comparable to the *Sourcebook* and the March 2006 *Final Report on the Impact of United States v. Booker on Federal Sentencing*, available on the Commission's website at [http://www.ussc.gov/booker\\_report/Booker\\_Report.pdf](http://www.ussc.gov/booker_report/Booker_Report.pdf).

Each quarterly report also includes new charts and figures that provide cumulative data and data across time to facilitate discussion and research of sentencing in a post-*Booker* world. The first of these quarterly reports, for the third quarter of FY2006, is now available on the Commission's website at <http://www.ussc.gov/bf.htm>. ■

## Commission Welcomes New Judicial Fellow Lauren Cohen Bell

The Sentencing Commission is pleased to welcome Dr. Lauren Cohen Bell who, as a Supreme Court Fellow, will spend the coming year at the Commission. Dr. Bell has written extensively on issues involving the judiciary and Congress.

Dr. Bell is an associate professor of political science at Randolph-Macon College where she has taught since August 1999. Previously she was a visiting assistant professor of political science at Bucknell University, and she was an American Political Science Association Congressional Fellow to the United States Senate Judiciary Committee, Subcommittee on Immigration 1997-1998.

She has published numerous scholarly articles and her books include *Warring Factions: Interest Groups, Money, and the New Politics of Senate Confirmation* and *The U.S. Congress: A Simulation for Students*. Her forthcoming book, *Political Communication: A Multidisciplinary Exploration* (with Joan Connors and Ted Sheckels), is scheduled to be published in 2007.



Dr. Bell is also the recipient of numerous teaching and advisor awards, including the DuPriest Award for Outstanding Faculty Advisor (twice awarded) and the Thomas Branch Award for Excellence in Teaching (twice awarded). She received her B.A. in political science from The College of Wooster, Ohio, in 1994, and an M.A. and Ph.D. in political science from the University of Oklahoma's Carl Albert Congressional Research and Studies Center in 1997 and 1999, respectively. ■

## Chair Hinojosa Testifies on Hill

On March 16, 2006, Commission chair, Judge Ricardo H. Hinojosa, testified before the House Subcommittee on Crime, Terrorism, and Homeland Security, House Committee on the Judiciary, regarding the impact of the Supreme Court's decision in *United States v. Booker* on federal sentencing. Much of the discussion centered on the Commission's recently released *Report on the Impact of United States v. Booker on Federal Sentencing*. In his testimony, Judge Hinojosa discussed the three-step approach to determining federal sentences under the framework set forth by *Booker*, explaining that—

[f]irst, pursuant to 18 U.S.C. § 3553(a)(4), a sentencing court must determine and calculate the applicable guideline sentencing range, since sentencing courts cannot consider the sentencing guideline range as required by *Booker* if one has not been determined. Second, the court should consider any traditional departure factor that may be applicable under the sentencing guidelines, since 18 U.S.C. § 3553(a)(5), which contemplates consideration of policy statements issued by the Commission, including departure authority, remains intact after *Booker*. Third, after consideration of the applicable guideline sentencing range and guideline departure factors, the court should consider the other applicable sentencing factors set forth under 18 U.S.C. § 3553(a) and if the court determines that a guidelines sentence (including any applicable departures) does not meet the purposes of sentencing, it may impose a non-guidelines sentence pursuant to *Booker*.

Another issue addressed in Judge Hinojosa's testimony was the weight sentencing courts should accord the guidelines:

During the process of developing the initial set of guidelines and refining them throughout the ensuing years, the Commission has considered the very factors listed at section 3553(a) that were cited with approval in *Booker*. . . . In addition, Congress through its actions has indicated its belief that the federal sentencing guidelines generally achieve the statutory purposes of sentencing. Pursuant to 28 U.S.C. § 994(p), the Commission is required to submit all guidelines and guideline amendments for congressional review before they become effective. To date, the initial set of guidelines and over 680 amendments, many of which were promulgated in response to congressional directives, have withstood congressional scrutiny. Such congressional approval can only be interpreted as a sign that Congress believes the federal sentencing guidelines generally achieve the statutory purposes of sentencing. In short, sentencing courts should give substantial weight to the federal sentencing guidelines as they are the product of years of careful study and represent the integration of multiple sentencing factors.

The entire text of Judge Hinojosa's testimony may be found on the Commission's web site at [http://www.ussc.gov/booker\\_report/03\\_16\\_06Booker%20Testimony.pdf](http://www.ussc.gov/booker_report/03_16_06Booker%20Testimony.pdf). ■

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Priorities *continued from page 3*

- The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109–59, which increases the penalties for tampering with the packaging and marking of hazardous materials, to imprisonment of not more than five years and not more than ten years if death or serious bodily injury results.

In addition, the Commission voted to —

- continue its policy work regarding the implementation of further commentary to 1B1.13 (Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons); and
- resolve a number of circuit conflicts regarding the sentencing guidelines. ■

# Amendment Package Sent to Congress

On May 1, 2006, the United States Sentencing Commission sent to Congress a package of sentencing guideline amendments regarding offenses such as terrorism, firearms, and steroids. The amendments become effective November 1, 2006, unless disapproved by Congress.

The Commission re-promulgated as permanent amendments —

- an emergency amendment to the sentencing guidelines that increased the penalties for offenses involving anabolic steroids. The emergency amendment implemented a congressional directive in the United States Parole Commission Extension and Sentencing Commission Authority Act of 2005 and became effective March 27, 2006. The amendment changes the manner in which anabolic steroids are treated by the guidelines and provides penalty enhancements for certain steroid offenses.
- an emergency amendment to the sentencing guideline for obstruction of justice, implementing a directive in the Intelligence Reform and Terrorism Prevention Act of 2004. This amendment provides a substantial increase in the sentence when the statutory maximum term of imprisonment relating to international or domestic terrorism is applicable. The emergency amendment became effective October 24, 2005.
- an emergency amendment implementing the directive in the Family Entertainment and Copyright Act of 2005 regarding persons convicted of certain intellectual property rights crimes. The emergency amendment, which took effect on October 24, 2005, provides an enhancement if the offense involved a pre-release work and provides a penalty increase for cases in which a copyrighted work is transferred through file sharing.

The Commission also promulgated —

- an amendment implementing a number of provisions of the Intelligence Reform and Terrorism Prevention Act of 2004. The amendment addresses new offenses created by the Act relating to (1) participation in nuclear and weapons of mass destruction threats to the U.S.; (2) the production or transfer of missile systems designed to destroy aircraft; (3) production, transfer, receipt, possession, or threat to use, any radiological dispersal device; and (4) the production, acquisition, transfer, or possession of, or the threat to use the variola virus.
- an amendment to the firearms guideline that, among other things, provides an enhancement if the offense involved a firearm with altered or obliterated serial numbers or if the defendant engaged in the trafficking of firearms.
- an amendment deleting the portion of 2004 commentary to the organizational sentencing guidelines relating to waiver of attorney-client privileges and work product protections. The Commission held public hearings on November 15, 2005, and March 15, 2006, concerning this issue.
- a policy statement regarding Bureau of Prisons's motions for reductions in term of imprisonment. The Commission also voted to seek further public comment on the issue.
- a policy statement restating a crime victim's "right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding," in response to the Justice for All Act of 2004.

*Amendments continued on page 6*

Amendments *continued from page 5*

- a new Chapter Three adjustment, responding to the Intellectual Property Protection and Courts Administration Act of 2004, regarding the false registration of a domain name.
- an amendment addressing a new offense created by the CAN-SPAM Act of 2003 regarding the transmission of commercial electronic messages that contain “sexually oriented material.”
- an amendment applying section 3C1.1 (Obstructing or Impeding the Administration of Justice) to offenses occurring before the start of an investigation if conduct was purposefully calculated, and likely, to thwart the investigation or prosecution of the offense of conviction.
- an amendment to the alien smuggling guideline (§2L1.1) that provides increased penalties for defendants convicted of 8 U.S.C. § 1327 involving an alien who is inadmissible because of “security or related grounds.” The amendment also provides sentence enhancements if the defendant smuggled a minor unaccompanied by the minor’s parent or grandparent; if an alien was involuntarily detained through coercion; and increased the existing enhancement for a case in which any person died as a result of the offense. The amendment also provides enhancements for fraudulently using a United States or foreign passport.

In response to the Stop Counterfeiting in Manufactured Goods Act, the Commission voted on August 30, 2006, to promulgate an emergency amendment to the sentencing guideline for criminal infringement of copyright or trademark.

The amendment clarifies that, in cases in which counterfeit labels are not affixed to goods, the “infringement amount” for purposes of section 2B5.3(b)(1) is based on the retail value of the genuine goods that the counterfeit label would help imitate if the counterfeit goods appear to be identifiable, genuine goods.

The emergency guideline amendment took effect September 12, 2006, and the Commission will continue its review of the criminal infringement of copyright and trademark guideline during its 2006–2007 amendment cycle. ■

## Commission Training Expands Post-Booker

Since the *Booker* decision, the Commission has conducted more than 200 programs regarding the application of the guidelines and the operation of the federal sentencing system since *Booker*, with participants including judges, probation officers, defense attorneys, prosecutors, circuit staff attorneys, law clerks, deputy clerks, foreign dignitaries, and corporate compliance officers.

In addition, commissioners and staff have participated in judicial conferences and workshops throughout the country and have met with judges in more than 25 cities. The Commission also continues to work collaboratively with the Department of Justice’s National Advocacy Center and the Federal Judicial Center to provide guidelines training for prosecutors, defense attorneys, judges, and probation officers. Over the last 18 months, the Commission has met with probation officers in more than 75 cities and has provided training for most of the circuit staff attorneys and a number of law clerks .

The Commission also held its Fifteenth Annual National Seminar on the Federal Sentencing Guidelines in Miami, Florida, May 31–June 2, 2006. More than 580 persons attended, including judges, prosecutors, and probation officers from 85 judicial districts. The Commission plans a continued emphasis on training throughout fiscal year 2007. ■

## Commission Names Judith Sheon Staff Director

The Sentencing Commission announced on January 10, 2006, the appointment of Judith W. Sheon as its new staff director, succeeding Timothy B. McGrath. Ms. Sheon had served as the Commission's interim staff director for seven months prior to her appointment and as the principal guidelines drafter and special counsel for the Sentencing Commission since December 1995.

“Judy Sheon has provided invaluable service to the Sentencing Commission in her ten years with our agency, and she has excelled in every capacity in which she has served,” said Commission chair, Judge Ricardo H. Hinojosa. “Judy brings to the position her exemplary team-building skills, a stalwart work ethic, a clear-headed approach to problem solving, and her devotion to the Commission. The Commission is delighted that she has accepted this most important position.”

Ms. Sheon graduated magna cum laude from the University of New Orleans in 1981 and cum laude from Tulane Law School in 1985. In 1986, she clerked for the Honorable Morey L. Sear in the United States District Court for the Eastern District of Louisiana, and from 1987 to 1990, she was a staff attorney and supervising staff attorney for the United States Court of Appeals for the Third Circuit. She served as an assistant legislative counsel in the Office of the Legislative Counsel for the United States House of Representatives from 1990 to 1995, where she specialized in defense readiness issues and nuclear weapons programs. ■

## Legislation Requires Use of New SOR Form

On March 9, 2006, the President signed into law the USA PATRIOT Improvement and Reauthorization Act, Pub. L. 109–177, which contains provisions relating to federal sentencing documentation required to be submitted to the Sentencing Commission. Specifically, the Act requires that the statement of reasons for the sentence be “stated on the written statement of reasons form issued by the Judicial Conference and approved by the United States Sentencing Commission.”

A revised Statement of Reasons Form AO 245B/C (Rev. 06/05), available at [http://jnet.ao.dcn/Forms/Forms\\_by\\_Form\\_Number.html](http://jnet.ao.dcn/Forms/Forms_by_Form_Number.html), was issued by the Executive Committee of the Judicial Conference of the United States and was deemed to fulfill the requirements of the USA PATRIOT Improvement and Reauthorization Act. The Commission approved this revised form, thereby fulfilling the requirements of the Act.

The Sentencing Commission jointly with the Judicial Conference of the United States issued a memorandum to the federal judiciary from the respective chairs of the Sentencing Commission and the Criminal Law Committee regarding the statutory requirement to use the Statement of Reasons Form in judgment in a criminal case. The memorandum is available on the Commission's website at [http://www.ussc.gov/general/june\\_9\\_letter.pdf](http://www.ussc.gov/general/june_9_letter.pdf).

With these actions, courts are required by statute to use and submit the entire SOR form to the Commission in every case sentenced. ■



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# GuideLines

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United States Sentencing Commission  
One Columbus Circle, N.E.  
Suite 2-500  
Washington, DC 20002-8002