

## MEMORANDUM

**TO:** Judge Hinojosa, Chair  
Tim McGrath, Staff Director

**FROM:** Linda Drazga Maxfield  
Office of Policy Analysis

**DATE:** April 13, 2005

**SUBJECT:** Numbers on Post-Booker Sentencings: Data extract on April 5, 2005

Attached are exhibits presenting data on post-Booker cases received, coded, and edited as part of the Commission's post-Booker project. The numbers are prepared using data extracted at close-of-business on April 5, 2005.

Three exhibits are attached. The first presents statistics for the proportions of post-Booker cases that fall within the guideline range and outside of the guideline range.

- 61.4 percent are within the guideline range. This compares to 65.0 percent in FY02.
- 1.8 percent are above-range sentences. This compares to 0.8 percent in both FY02.
  - Comprising the 1.8 percent of sentences above the guideline range is 0.8 percent classified as an upward departure from the guideline range. The other 0.9 percent of all cases either cite no reason, or cite *US v Booker* or 18 USC § 3553 as a reason, for the sentence above the guideline range.
- 22.4 percent are government-sponsored below-range sentences.
  - The largest proportion (nearly 68% of this category) is due to §5K1.1 substantial assistance departure sentences.
- 14.4 percent are other below-range sentences.
  - The 14.4 percent is comprised of 5.3 percent classified as a “downward departure” from the guideline range. The remaining 9.1 percent either cite no reason, or cite *US v Booker* or 18 USC § 3553 as a reason, for the below-range sentence.

The second exhibit presents the distribution of the post-Booker cases among offense types and the third exhibit presents the distribution of the cases among the judicial circuits and districts.

## Comparison of Sentence Imposed and Position Relative to the Guideline Range

Cases Sentenced After US v Booker with Data Available to USSC on April 5, 2005

	N	%
<b>TOTAL<sup>1</sup></b>	<b>8,969</b>	<b>100.0</b>
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<b>WITHIN GUIDELINE RANGE</b>	<b>5,503</b>	<b>61.4</b>
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<b>ABOVE GUIDELINE RANGE</b>	<b>157</b>	<b>1.8</b>
“Upward departure” from the guideline range	73	0.8
Otherwise above the guideline range <sup>2</sup>	84	0.9
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<b>GOVERNMENT-SPONSORED BELOW RANGE</b>	<b>2,013</b>	<b>22.4</b>
§5K1.1 Substantial Assistance departure	1,366	15.2
§5K3.1 EDP/Fast-Track departure	503	5.6
Departure pursuant to a plea agreement	144	1.6
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<b>OTHER BELOW RANGE</b>	<b>1,296</b>	<b>14.4</b>
“Downward departure” from guideline range	479	5.3
Otherwise below the guideline range <sup>3</sup>	817	9.1

<sup>1</sup>This table reflects the 9,282 cases sentenced on or after January 12, 2005, with court documentation cumulatively received, coded and edited at the U.S. Sentencing Commission by April 5, 2004. Of this total, there are 313 cases excluded for one of two general reasons. Some excluded cases involve state assimilation, misdemeanor, or other offenses which do not reference a sentencing guideline. Other excluded cases have information missing from the submitted documents that prevents the comparison of the sentence and the guideline range. As missing documents are received, subsequent U.S. Sentencing Commission data releases will incorporate the new information.

<sup>2</sup>All cases explicitly citing either US v Booker or 18 USC § 3553 as a reason for a sentence above the guideline range are classified into this category. This category also includes cases that do not provide a reason for the above-guideline sentence.

<sup>3</sup>All cases explicitly citing either US v Booker or 18 USC § 3553 as a reason for a sentence below the guideline range are classified into this category. This category also includes cases that do not provide a reason for the below-guideline sentence.

SOURCE: U.S. Sentencing Commission, Special Post-Booker Coding Project, BOOKER05 (data extraction on April 5, 2005; prepared on April 12, 2005). Numbers may not sum to 100 percent due to rounding.

**GUIDELINE OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY<sup>1</sup>**  
**Special Post-Booker Coding Project (Data Extracted 04/05/05)**

<b>PRIMARY OFFENSE</b>	<b>Number</b>	<b>Percent</b>
<b>TOTAL</b>	<b>9,282</b>	<b>100.0</b>
<b>Murder</b>	14	0.2
<b>Manslaughter</b>	10	0.1
<b>Kidnapping/Hostage Taking</b>	8	0.1
<b>Sexual Abuse</b>	46	0.5
<b>Assault</b>	80	0.9
<b>Robbery</b>	174	1.9
<b>Arson</b>	4	0.0
<b>Drugs - Trafficking</b>	3,298	35.5
<b>Drugs - Communication Facility</b>	47	0.5
<b>Drugs - Simple Possession</b>	70	0.8
<b>Firearms</b>	1,122	12.1
<b>Burglary/B&amp;E</b>	5	0.1
<b>Auto Theft</b>	10	0.1
<b>Larceny</b>	242	2.6
<b>Fraud</b>	873	9.4
<b>Embezzlement</b>	68	0.7
<b>Forgery/Counterfeiting</b>	132	1.4
<b>Bribery</b>	22	0.2
<b>Tax</b>	78	0.8
<b>Money Laundering</b>	97	1.0
<b>Racketeering/Extortion</b>	76	0.8
<b>Gambling/Lottery</b>	9	0.1
<b>Civil Rights</b>	6	0.1
<b>Immigration</b>	2,280	24.6
<b>Pornography/Prostitution</b>	148	1.6
<b>Prison Offenses</b>	52	0.6
<b>Administration of Justice Offenses</b>	128	1.4
<b>Environmental/Wildlife</b>	28	0.3
<b>National Defense</b>	3	0.0
<b>Antitrust</b>	2	0.0
<b>Food &amp; Drug</b>	4	0.0
<b>Other Miscellaneous Offenses</b>	146	1.6

<sup>1</sup>Of the 9,282 cases, zero were excluded due to missing information on primary offense category.

SOURCE: U.S. Sentencing Commission, Special Post-Booker Coding Project, BOOKER05 (data extracted on April 5, 2005; table prepared on April 12, 2005). Percents may not sum to 100 percent due to rounding

**GUIDELINE OFFENDERS IN EACH CIRCUIT AND DISTRICT**  
**Special Post-Booker Coding Project (Data Extracted 04/05/05)**

<b>CIRCUIT</b>			<b>CIRCUIT</b>		
District	Number	Percent	District	Number	Percent
<b>TOTAL</b>	<b>9,282</b>	<b>100.0</b>			
<b>D.C. CIRCUIT</b>	<b>79</b>	<b>0.9</b>	<b>FIFTH CIRCUIT</b>	<b>2,173</b>	<b>23.4</b>
District of Columbia	79	0.9	Louisiana		
			Eastern	74	0.8
			Middle	19	0.2
<b>FIRST CIRCUIT</b>	<b>180</b>	<b>1.9</b>	Western	97	1.0
Maine	38	0.4	Mississippi		
Massachusetts	22	0.2	Northern	27	0.3
New Hampshire	42	0.5	Southern	81	0.9
Puerto Rico	63	0.7	Texas		
Rhode Island	15	0.2	Eastern	78	0.8
			Northern	163	1.8
<b>SECOND CIRCUIT</b>	<b>364</b>	<b>3.9</b>	Southern	1,014	10.9
Connecticut	31	0.3	Western	620	6.7
New York			<b>SIXTH CIRCUIT</b>	<b>644</b>	<b>6.9</b>
Eastern	180	1.9	Kentucky		
Northern	53	0.6	Eastern	85	0.9
Southern	0	0.0	Western	51	0.5
Western	57	0.6	Michigan		
Vermont	43	0.5	Eastern	76	0.8
			Western	53	0.6
<b>THIRD CIRCUIT</b>	<b>461</b>	<b>5.0</b>	Ohio		
Delaware	20	0.2	Northern	103	1.1
New Jersey	150	1.6	Southern	67	0.7
Pennsylvania			Tennessee		
Eastern	109	1.2	Eastern	92	1.0
Middle	93	1.0	Middle	36	0.4
Western	73	0.8	Western	81	0.9
Virgin Islands	16	0.2	<b>SEVENTH CIRCUIT</b>	<b>422</b>	<b>4.5</b>
			Illinois		
<b>FOURTH CIRCUIT</b>	<b>789</b>	<b>8.5</b>	Central	83	0.9
Maryland	112	1.2	Northern	119	1.3
North Carolina			Southern	48	0.5
Eastern	88	0.9	Indiana		
Middle	44	0.5	Northern	54	0.6
Western	57	0.6	Southern	46	0.5
South Carolina	105	1.1	Wisconsin		
Virginia			Eastern	52	0.6
Eastern	243	2.6	Western	20	0.2
Western	64	0.7			
West Virginia					
Northern	23	0.2			
Southern	53	0.6			

(continued)

<b>CIRCUIT</b>			<b>CIRCUIT</b>		
District	Number	Percent	District	Number	Percent
<b>EIGHTH CIRCUIT</b>	<b>828</b>	<b>8.9</b>	<b>TENTH CIRCUIT</b>	<b>756</b>	<b>8.1</b>
Arkansas			Colorado	108	1.2
Eastern	53	0.6	Kansas	142	1.5
Western	37	0.4	New Mexico	281	3.0
Iowa			Oklahoma		
Northern	59	0.6	Eastern	23	0.2
Southern	29	0.3	Northern	30	0.3
Minnesota	95	1.0	Western	43	0.5
Missouri			Utah	112	1.2
Eastern	169	1.8	Wyoming	17	0.2
Western	113	1.2			
Nebraska	163	1.8	<b>ELEVENTH CIRCUIT</b>	<b>915</b>	<b>9.9</b>
North Dakota	32	0.3	Alabama		
South Dakota	78	0.8	Middle	7	0.1
			Northern	36	0.4
<b>NINTH CIRCUIT</b>	<b>1,671</b>	<b>18.0</b>	Southern	50	0.5
Alaska	41	0.4	Florida		
Arizona	557	6.0	Middle	274	3.0
California			Northern	55	0.6
Central	62	0.7	Southern	284	3.1
Eastern	116	1.2	Georgia		
Northern	84	0.9	Middle	43	0.5
Southern	377	4.1	Northern	98	1.1
Guam	8	0.1	Southern	68	0.7
Hawaii	52	0.6			
Idaho	38	0.4			
Montana	53	0.6			
Nevada	30	0.3			
Northern Mariana Islands	4	0.0			
Oregon	79	0.9			
Washington					
Eastern	61	0.7			
Western	109	1.2			

SOURCE: U.S. Sentencing Commission, Special Post-Booker Coding Project, BOOKER05 (data extracted on April 5, 2005; table prepared on April 12, 2005). Percents may not sum to 100 percent due to rounding.