

UNITED STATES SENTENCING COMMISSION
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January 21, 2005

MEMORANDUM TO ALL: **CHIEF JUDGES, UNITED STATES COURTS OF APPEALS
JUDGES, UNITED STATES DISTRICT COURTS
UNITED STATES MAGISTRATE JUDGES
CIRCUIT COURT EXECUTIVES
DISTRICT COURT EXECUTIVES
CLERKS, UNITED STATES COURTS OF APPEALS
CLERKS, UNITED STATES DISTRICT COURTS
CHIEF PROBATION OFFICERS**

SUBJECT: Documentation Required to be Sent to the Sentencing Commission

On January 12, 2005, the Supreme Court issued its opinion in U.S. v. Booker, ___ S.Ct. ___, 2005 WL 50108 (Jan. 12, 2005), in which two provisions of the Sentencing Reform Act of 1984, 18 U.S.C. §§ 3553(b)(1) and 3742(e), were severed and excised. The opinion makes clear that “with these two sections excised...the remainder of the Act satisfies the Court’s constitutional requirements.” Booker at 16 (opinion of BREYER, J.).

This memorandum reiterates and emphasizes the importance of continuing to submit sentencing documents to the Sentencing Commission in accordance with the requirements of 28 U.S.C. § 994(w). This subsection of the statute requires the Chief Judge in each district to ensure that a report of sentence be submitted to the Commission within 30 days of entry of judgment. It also requires that five specific sentencing documents (judgment and commitment order, statement of reasons [including the reasons for any departures], any plea agreement, indictment or other charging document, and presentence report) be included with the report, along with any other information the Commission deems appropriate.

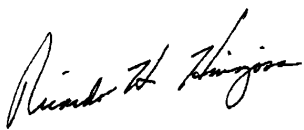
Booker makes clear that “the Sentencing Commission remains in place, writing Guidelines, collecting information about actual district court decisions, undertaking research, and revising guidelines accordingly. See 28 U.S.C.A. § 994.” Booker at 21 (opinion of BREYER, J.). The collection and analysis of sentencing data continue to be extremely important aspects of the Commission’s work. Since Booker makes no change in the document submission requirements of 28 U.S.C. § 994(w), it is imperative that all districts continue to make these submissions to the Commission in a timely manner.

It is particularly important that judges continue to comply with the requirements of 28 U.S.C. § 3553(c) by providing a complete statement of reasons for imposing the sentence. From the standpoint of the Commission and the judiciary as a whole it will be necessary to be able to capture information about any sentence that varies from the guidelines and the reasons for such a variance. Unless sentencing judges comply with § 3553(c) by giving specific reasons for sentences that vary from the guidelines, the Commission will be unable to provide complete information. Providing specific, detailed information in the statement of reasons will also assist the courts of appeals in reviewing sentences for reasonableness.

The documentation will be useful to the Judiciary, the Commission, and the Congress as we strive to continue to carry out the goals cited by the Supreme Court, to “provide certainty and fairness in meeting the purposes of sentencing [while] avoiding unwarranted sentencing disparities . . . [and] maintaining sufficient flexibility to permit individualized sentences when warranted.” Booker at 21 (opinion of BREYER, J.) (quoting 28 U.S.C. § 991(b)(1)(B)).

In the weeks that follow, the Commission will be working with the Criminal Law Committee to determine whether revisions to any of the sentencing forms would be advisable. In the meantime, we would ask courts to refrain from modifying locally the Statement of Reasons adopted by the Judicial Conference at its September 2003 session. JCUS-SEP 03, p. 18. If you have suggestions for revising any of these forms, please communicate them to Kim Whatley at the AO at e-mail address Kim_Whatley@ao.uscourts.gov who will compile them for consideration by the Committee and Commission.

Thank you for your prompt attention to this memorandum.



Ricardo H. Hinojosa
Chair, United States Sentencing Commission



Sim Lake
Chair, Criminal Law Committee of
the Judicial Conference of the
United States