

# Federal Sentencing After *Booker*

*a Federal Judicial Center broadcast on the FJTN*

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Outline of Program with Citations to Statutory Provisions,  
Cases, and Other Materials Referenced During Program



The Federal Judicial Television Network  
bringing you education and information from the Administrative Office of the U.S. Courts, the  
Federal Judicial Center, and the U.S. Sentencing Commission

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The Federal Judicial Center is the research and education agency of the federal judicial system. It was established by Congress in 1967 (28 U.S.C. §§ 620–629), on the recommendation of the Judicial Conference of the United States.

By statute, the Chief Justice of the United States chairs the Center's Board, which also includes the director of the Administrative Office of the U.S. Courts and seven judges elected by the Judicial Conference.

The organization of the Center reflects its primary statutory mandates. The Education Division plans and produces education and training programs for judges and court staff, including satellite broadcasts, video programs, publications, curriculum packages for in-court training, and Web-based programs and resources. The Research Division examines and evaluates current and alternative federal court practices and policies. This research assists Judicial Conference committees, who request most Center research, in developing policy recommendations. The Center's research also contributes substantially to its educational programs. The two divisions work closely with two units of the Director's Office—the Systems Innovations & Development Office and Communications Policy & Design Office—in using print, broadcast, and on-line media to deliver education and training and to disseminate the results of Center research. The Federal Judicial History Office helps courts and others study and preserve federal judicial history. The International Judicial Relations Office provides information to judicial and legal officials from foreign countries and assesses how to inform federal judicial personnel of developments in international law and other court systems that may affect their work.

# Federal Sentencing After *Booker*

## PANEL DISCUSSION

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## INTERVIEW WITH JUDGE RICARDO HINOJOSA

*Chair, U.S. Sentencing Commission*

The following pages are broken out into headings that follow the panel's discussion. They include citations and other references along with space for note taking. The program segments are:

### **Panel Discussion**

What Parts of the Sentencing Reform Act Survive?.....	2
Elements of a Regime of Advisory Guideline Sentencing.....	3
Charging Stage .....	4
Pleas .....	4
Pretrial Supervision.....	5
Trials .....	5
Presentence Report.....	6
Sentencing Hearing.....	7
Statement of Reasons .....	8
Appeal .....	9
Restitution/Criminal Forfeiture .....	10
Application to What Cases? .....	11

### **Interview with Judge Ricardo Hinojosa (S.D. Tex.)**

<b><i>chair, U.S. Sentencing Commission</i></b> .....	12
Documentation Required to be Sent to the Sentencing Commission, Where to Send Suggestions for Revisions to Forms.....	12
Statement of Reasons .....	12
Commission Hearings, February 15-16 .....	13
Role of Commission .....	13
<b>Resources</b> .....	14

## **What Parts of the Sentencing Reform Act Survive?**

- *U.S. v. Booker*, 543 U.S. —, 125 S. Ct. 738 (2005) (Breyer, J. opinion of the Court) (severing and excising 18 U.S.C. §§ 3553(b)(1) and 3742(e) “and statutory cross references to these two sections consequently invalidated”)  
<http://www.supremecourtus.gov/opinions/04pdf/04-104.pdf>
- Provisions discussed as possibly getting more attention post-*Booker*: §§ 3551, 3553(a), (a)(2)(A)–(D), 3661, 3582(a)
- Provisions discussed as possibly confusing: § 3553(b)(2)(A) (sentencing in child crimes and sexual offenses)
- Provision discussed as possibly receiving increased emphasis in presentence report in advisory guideline system: U.S.S.G. § 5H (specific offender characteristics)

## **Elements of a Regime of Advisory Guideline Sentencing**

- Post-*Booker* cases discussed applying advisory guidelines:

*U.S. v. Wilson*, No. 2:03-CR-00882 (D. Utah Jan. 13, 2005) (Cassell, J.)

<http://www.utd.uscourts.gov/reports/wilson.pdf>

*U.S. v. Ranum*, No. 04-CR-31 (E.D. Wis. Jan. 19, 2005) (Adelman, J.)

[http://sentencing.typepad.com/sentencing\\_law\\_and\\_policy/files/us\\_v\\_ranum.rtf](http://sentencing.typepad.com/sentencing_law_and_policy/files/us_v_ranum.rtf)

*U.S. v. Barkley*, No. 04-CR-119 (N.D. Okla. Jan. 24, 2005) (Holmes, J.)

[http://sentencing.typepad.com/sentencing\\_law\\_and\\_policy/files/cj\\_holmes\\_barkley\\_opinion.pdf](http://sentencing.typepad.com/sentencing_law_and_policy/files/cj_holmes_barkley_opinion.pdf)

*U.S. v. Huerta-Rodriguez*, No. 8:04-CR-365 (D. Neb. Feb. 1, 2005) (Bataillon, J.)

[http://sentencing.typepad.com/sentencing\\_law\\_and\\_policy/files/judge\\_bataillon\\_huerta\\_ruling.pdf](http://sentencing.typepad.com/sentencing_law_and_policy/files/judge_bataillon_huerta_ruling.pdf)

## **Charging Stage**

- Case referred to in discussion of government's approach to charging: *Blakely v. Washington*, 542 U.S. —, 124 S. Ct. 2531 (2004)  
<http://www.supremecourtus.gov/opinions/03pdf/02-1632.pdf>
- Provision discussed regarding government's use of departure motions in advisory guidelines system: U.S.S.G. § 5K

## **Pleas**

## **Pretrial Supervision**

- Post-*Booker* case discussed where court considered defendant's pretrial behavior in arriving at sentence: *U.S. v. Myers*, No. 3:04-CR-147 (S.D. Iowa Jan. 26, 2005) (Pratt, J.)

[http://www.iasd.uscourts.gov/iasd/opinions.nsf/49bb3d458bfded386256863007bc595/b92471ad58f236cf86256f95007460cc/\\$FILE/Myers%201-26-05.pdf](http://www.iasd.uscourts.gov/iasd/opinions.nsf/49bb3d458bfded386256863007bc595/b92471ad58f236cf86256f95007460cc/$FILE/Myers%201-26-05.pdf)

## **Trials**

## **Presentence Report**

- Manual discussed regarding format and content of post-*Booker* presentence reports: Administrative Office of the U.S. Courts, *Publication 107: The Presentence Investigation Report* (Rev. March 2003)
- Memorandum discussed regarding post-*Booker* reporting requirements: United States Judicial Conference Committee on Criminal Law & United States Sentencing Commission, Memorandum on *Documentation to be Sent to Sentencing Commission* (Jan. 21, 2005)  
<http://www.ussc.gov> as “CLC/USSC Joint Memorandum to the Federal Judiciary”
- Provisions discussed regarding presentence report and post-*Booker* report’s inclusion of factors to be considered in imposing a sentence:  
18 U.S.C. §§ 3552, 3553(a)  
Fed. R. Crim. P. 11, 32(d)



## **Sentencing Hearing**

- Cases discussed regarding defendant's procedural protections:  
*Brady v. Maryland*, 373 U.S. 83 (1963)  
*Jencks v. U.S.*, 353 U.S. 657, 77 S. Ct. 1007 (1957)

## **Statement of Reasons**

## **Appeal**

- Grounds for appeal: including 18 U.S.C. §§ 3742(a), (b), (e), (f)
- Memorandum discussed regarding government's post-*Booker* sentencing policies and procedures: U.S. Dept. of Justice, *Memorandum on Department Policies and Procedures Concerning Sentencing* (Jan. 28, 2005)

[http://www.sentencing.typepad.com/sentencing\\_law\\_and\\_policy/files/dag\\_jan\\_28\\_comey\\_memo\\_on\\_booker.pdf](http://www.sentencing.typepad.com/sentencing_law_and_policy/files/dag_jan_28_comey_memo_on_booker.pdf)

## **Restitution/Criminal Forfeiture**

- Cases discussed regarding impact of *Booker*:

*Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2438 (2000)

*Blakely v. Washington*, 542 U.S. —, 124 S. Ct. 2531 (2004)

*Harris v. U.S.*, 536 U.S. 545, 122 S. Ct. 2406 (2002)

## **Application to What Cases?**

**Interview with Judge Ricardo Hinojosa (S.D. Tex.)  
chair, U.S. Sentencing Commission**

**Documentation Required to be Sent to the Sentencing Commission,  
Where to Send Suggestions for Revisions to Forms**

Memorandum on *Documentation to be Sent to Sentencing Commission* (Jan. 21, 2005)

<http://www.ussc.gov> as “CLC/USSC Joint Memorandum to the Federal Judiciary”)

**Statement of Reasons**

## **Commission Hearings, February 15-16**

### **Role of Commission**

## **Resources**

U.S. Sentencing Commission

<http://www.ussc.gov>

*Blogs*

Sentencing Law and Policy

<http://sentencing.typepad.com>

White Collar Crime Prof Blog

[http://lawprofessors.typepad.com/whitecollarcrime\\_blog/2005/02/the\\_booker\\_eff.html](http://lawprofessors.typepad.com/whitecollarcrime_blog/2005/02/the_booker_eff.html)

Federal Public Defenders in the circuits also maintain blogs. Go to

<http://circuitY.blogspot.com> (where Y is the number of the circuit)



