

STATEMENT OF TIMOTHY C. STANCEU  
CHIEF JUDGE  
UNITED STATES COURT OF INTERNATIONAL TRADE  
BEFORE THE  
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT  
COMMITTEE ON APPROPRIATIONS  
UNITED STATES HOUSE OF REPRESENTATIVES

April 18, 2018

Chairman Graves, Ranking Member Quigley, and members of the Subcommittee,

Thank you for providing me the opportunity to submit this statement on behalf of the United States Court of International Trade, which is established under Article III of the Constitution with exclusive nationwide jurisdiction over civil actions arising out of the customs and international trade laws of the United States.

The Court's Fiscal Year 2019 budget request is \$21,157,000, which is comprised of \$2,087,000 for mandatory appropriations and \$19,070,000 for discretionary appropriations. The discretionary portion of the request represents an increase of \$561,000, or 3 percent, from the Fiscal Year 2018 assumed discretionary appropriations of \$18,509,000. The Court appreciates that final enacted Fiscal Year 2018 appropriations of \$18,889,000 fully funded the Court's request. The Court will update its Fiscal Year 2019 request to account for final Fiscal Year 2018 appropriations and transmit revised Fiscal Year 2019 appropriations requirements to the Subcommittee.

Requested Fiscal Year 2019 increases reflect the necessary adjustments to the base in order to maintain current services, fund essential on-going operations and initiatives, and provide for adjustments in pay and benefits. It also accounts for other inflationary factors applied to the base, including an increase in pro-rata costs paid to the Federal Protective Service (FPS) for the critical and necessary security of the Federal Complex (including the Court) in lower Manhattan. Further, it reflects adjustments for security costs paid to the U.S. Marshals Service for the Court's internal security officers.

The Court remains committed to the efficient and conservative management of its resources through sound fiscal practices. The Court continues to utilize cost containment strategies in keeping with the overall administrative policies and practices

of the Judicial Conference, particularly regarding security costs, equipment costs, technology, contractual obligations, and personnel. This is consistent with the Court's long-standing policy of requesting only funds that are absolutely needed for fulfilling the Court's judicial responsibilities, such as increases for pay, benefits, and other inflationary factors, and for essential on-going operations and initiatives of the Court.

As part of our cost containment efforts, in Fiscal Year 2017 the Court released 6,000 square feet of space back to the General Services Administration (GSA) for future utilization by the U.S. Marshals Service. This results in approximately \$132,000 in savings each year while simultaneously improving our security.

In Fiscal Year 2017, the Court entered into an agreement with GSA to fund a facilities security project to bring the building's blast protection to Level IV performance criteria in accordance with Interagency Security Committee (ISC) Standards promulgated by the U.S. Department of Homeland Security. The total cost of the project is \$5.7 million, of which \$800,000 was funded in Fiscal Year 2017 from chambers staff vacancies associated with judicial vacancies. The remaining \$4.9 million is being amortized through an addition to our GSA rent bill of \$979,000 per year through 2022. This project, combined with savings for released space and GSA rent inflation, results in a net increase in the Court's rent bill by \$759,000 in Fiscal Year 2019.

The Court continues to meet the objectives set forth in its Strategic Plan through the use of its annual appropriations and the Judiciary Information Technology Fund. These objectives serve the goal of furthering access to the Court through the effective and efficient delivery of services and information to litigants, the bar, the public, judges, and staff. For a national court, this access is critical to realizing the mission of resolving disputes by (1) providing cost effective, courteous, and timely service; (2) providing independent, consistent, fair, and impartial interpretation and application of the customs and international trade laws; and (3) fostering improvements in customs and international trade law and practice, as well as in the overall administration of justice.

Technology remains a critical component of the Court's commitment to high quality service to its various constituencies. To this end, the requested appropriation will enable the Court to support and maintain its information technology program and, in particular, maintain and enhance the security of that program. The program includes cyclical maintenance and, when necessary, replacement, of hardware and software to ensure that the Court's infrastructure will continue to support its present and future technological and telecommunications needs. During Fiscal Year 2017, the Court used its Judiciary Information Technology Fund to strengthen its technological capabilities by: (1) replacing network switches that have reached the end of their useful life; (2) upgrading Windows Server operating systems; (3) purchasing security tools to improve the Court's cybersecurity posture; (4) upgrading and support existing software applications; (5) purchasing new software applications to ensure the continued

operational efficiency of the Court; and (6) replacing computers and peripheral equipment as needed, on a cyclical basis.

In Fiscal Year 2018, the Court plans to expend funds on essential information technology projects to: (1) contract with IT security services to enhance the Court's cybersecurity program; (2) upgrade and support existing software applications; (3) continue to maintain and support our video conference system, digital recording system, data network and voice connections, Virtual Private Network (VPN), Voice Over Internet Protocol (VOIP), and Judiciary Data Communications Network (DCN); and (4) replace computers and peripheral equipment and mobile devices in accordance with the Judiciary's cyclical replacement program. Additionally, the Court will continue to support its long-standing commitment to provide developmental and educational programs for staff on subjects pertaining to technology, cybersecurity, and job-related skills.

In Fiscal Year 2019, the Court will continue to use common and individual office space with maximum efficiency. The Court also will continue its cyclical replacement and maintenance program for equipment and furnishings with the objective of furthering efficiency and cost-effectiveness. Moreover, the Fiscal Year 2019 request once again includes funds for the continued upgrade, support, and maintenance of the Court's internal and perimeter security systems. Further, the Court will continue its efforts to address the educational needs of the bar and Court staff. Finally, the Court will build on its prior efforts to achieve cost savings when negotiating contracts with GSA, FPS, and vendors providing goods and services.

I personally extend my deepest appreciation to the Subcommittee and the entire Congress for recognizing the needs of the Court by providing adequate funding in past fiscal years to maintain current services and enable the court to fulfill its commitment to the administration of justice for all.

The Court's "General Statement and Information" and "Justification of Changes," which provide more detailed descriptions of each line item adjustment, were submitted as part of the Judiciary Fiscal Year 2019 Congressional Budget Justification. If the Committee requires any additional information, we will be pleased to provide it.

**STATEMENT OF SHARON PROST  
CHIEF JUDGE, UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT  
BEFORE THE  
SUBCOMMITTEE ON FINANCIAL SERVICES AND  
GENERAL GOVERNMENT  
COMMITTEE ON APPROPRIATIONS  
UNITED STATES HOUSE OF REPRESENTATIVES**

**April 18, 2018**

Chairman Graves, Ranking Member Quigley, and members of the Subcommittee, thank you for affording me the opportunity to submit this statement in support of the United States Court of Appeals for the Federal Circuit's fiscal year 2019 budget request. I am Sharon Prost, and my tenure as Chief Judge began on May 31, 2014. This is my third budget statement to you on behalf of our Court.

As you know, the United States Court of Appeals for the Federal Circuit is located in Washington, D.C., and the Court has exclusive nationwide jurisdiction over a large and diverse subject area. The Federal Circuit's jurisdiction includes appeals in all patent cases nationwide, all government contract cases, all international trade cases, all government personnel cases, all cases involving monetary claims against the United States under the Tucker Act, and appeals of cases involving veterans' claims.

Our workload is growing at an unprecedented rate. Three years ago I noted that passage of the Leahy-Smith America Invents Act, Pub. L. No. 112-29 (the AIA), enacted on September 16, 2011, appeared to be driving a substantial increase in the number of patent case appeals being filed at our Court. Specifically, I reported that in 2014 "the Court experienced its highest caseload in five years." Between 2014 through 2017, our caseload has increased by an average of almost nine-percent each year. This past year, we again experienced our highest two-year caseload in over two decades, and our three-year average caseload is the highest in the history

of our Court. A significant majority of that increase is attributable to litigation arising within the Court's intellectual property jurisdiction, a practice area recognized to be "unusually complex and technical . . . [and] extraordinarily time consuming." S. Rep. No. 97-275, at 7 (1981), reprinted in 1982 U.S.C.C.A.N. 11, 17.

Passage of the AIA markedly increased our workload. One of the intended benefits of the AIA was the thought that parties faced with the prospect of costly and protracted litigation in federal court would instead elect to pursue a remedy from the Patent Trial and Appeal Board (PTAB), a newly created adjudicative dispute resolution forum administered by the United States Patent and Trademark Office and implemented by 260 judges who preside over PTAB proceedings. The hope was that an anticipated growth in appeals from the newly created PTAB would be offset by a comparable reduction in the number of appeals arising from litigation in the federal district courts. However, it is still premature to conclude this shift is happening. In FY 2016, we reported a significant and continued increase in appeals from both PTAB and federal district courts since the implementation of the AIA in FY 2013. This past year, though, we saw a drop off in filings from both PTAB and the federal district courts. At this point, we are unable to conclude whether this past year's filing numbers reflect a stabilization of our case filings, whether we are beginning to see a shift in federal district court cases from the AIA, or whether some other factor contributed to the decrease in these cases.

Three other areas of our caseload are noteworthy this year. While our patent cases continue to fluctuate, we saw a significant increase of almost 28 percent in our veteran benefits cases from the United States Court of Appeals for Veterans Claims. We anticipate veteran benefits appeals will continue to grow based on the current number of, and increase in, pending cases before the Court of Appeals for Veterans Claims. Appeals from the United States Court of Federal Claims have increased steadily over the past five fiscal years, with an average annual increase of 4.2 percent. Finally, we believe appeals from the United States Merit Systems Protection Board are atypically low, due in part to the Board currently lacking a quorum and being therefore unable to issue final decisions. We expect a spike in these appeals once the Board is able to resume issuing decisions.

Appeals to the Federal Circuit come from all of the 94 United States District Courts, the United States Court of Federal Claims, the United States Court of International Trade, and the United States Court of Appeals for Veterans Claims. The Court also hears appeals from certain administrative agency decisions, including the United States Merit Systems Protection Board, the Board of Contract Appeals, the United States Patent and Trademark Office's Patent Trial and Appeal Board, and the Trademark Trial and Appeal Board. In addition, the Court reviews decisions of the United States International Trade Commission, the Office of Compliance, and the Government Accountability Office Personnel Appeals Board.

As is the case with all courts, the overwhelming majority of the Court's budget funds expenses that, although not "mandatory," as that term is defined (reserved for judges' salaries), are nevertheless "practical must pays" necessary to support essential ongoing operations of the Court. These costs include, but are not limited to, salaries, benefits, within-grade increases and promotions, library services and computer-assisted legal research, rent, physical security, and standardized inflationary adjustments applicable across multiple expense categories.

For fiscal year 2019, I ask Congress to provide the funds I have identified as necessary for the Court to sustain current services and to continue to operate in an efficient and effective manner. With these goals in mind, the Federal Circuit's 2019 budget request totals \$34,292,000, which includes \$3,018,000 for mandatory expenses and \$31,274,000 for discretionary expenses.

I wish to thank the Subcommittee for the funding level we received in the recently enacted FY 2018 appropriation. The Court will be updating its FY 2019 Budget Request in the judiciary's upcoming budget re-estimate. I also wish to highlight that with the funds the Subcommittee appropriated for FY 2018, the Federal Circuit will be able to hire a new Information Security Officer. In addition, the Court will be able to fund our investment in cybersecurity improvements, including purchasing necessary safeguards (hardware and software) to meet continuing requirements to improve our cybersecurity posture.

I also wish to express my sincere appreciation to the Subcommittee for recognizing the Federal Circuit's ongoing needs in all the previously enacted appropriations for our Court. In prior years, the Court has been able to fulfill its mission to adjudicate cases in a timely fashion because the

funds Congress appropriated allowed us to maintain the optimal level of court operations and services. I, my fellow judges, and our entire staff understand full well the importance of making the best possible use of every taxpayer dollar entrusted to our stewardship. We have worked hard to contain costs despite a workload that—notwithstanding a slight decrease in case filings this past year—remains 9.6 percent above our five-year caseload average.

The AIA is intended to incentivize innovation by making it easier for American entrepreneurs and businesses to quickly bring their inventions to the market. The success or failure of the AIA in bringing about that result depends in no small part on the maintenance of a system that minimizes costly delays and unnecessary litigation. Our Court is working hard to ensure we manage the processes supporting the timely and appropriate resolution of litigation arising in this practice area and across our jurisdictional portfolio as effectively and efficiently as possible. We do so by recognizing that challenges also present opportunities.

Over the past year, our Clerk's Office has been reviewing and updating our internal case management processes with a focus on decreasing processing time, expanding internal quality control review of case filings, and simplifying processes to accommodate our historically above-average case numbers. At the same time, we have expanded our efforts at public outreach to provide better assistance to litigants and members of the bar conducting business in our Court. Specifically, we have created new public service lines to provide direct and immediate support from Clerk's Office staff to litigants and members of the bar. We also have expanded available resources on our website and communications to the public on operational changes. These changes were most recently seen as part of our Court's implementation of the federal judiciary's next generation of the electronic Case Management and Electronic Case Filing (CM/ECF) system in March 2018, and these initiatives already have received favorable feedback from practitioners.

However, in addition to our need to continue to improve the security of our cyber assets, we still face two of the potential challenges I reported in my fiscal year 2018 statement, perhaps more acutely now than then. Although we are not seeking funding at this time to address these challenges, our future budget requests may.

First, we now have five judges eligible to elect senior status at any time. When a judge elects senior status, this Court must provide staff positions for a law clerk and a judicial assistant to support the judge's continuing work. Because our staffing numbers remain relatively fixed, if one or more judges elect senior status, we likely will be faced with the prospect of having to request additional funding to pay for personnel, or reduce our fully employed support staff by two positions to staff a new senior judge's chambers. Given the workload, added funding for chambers staff would obviously be our first preference. I will continue to monitor this situation closely

Second, we continue to pursue actionable alternatives to reduce, reallocate and reconfigure existing space that will support a reduction in facilities costs. Although we achieved the judiciary's three percent space reduction goal, we have identified no cost-saving alternatives to renewing the lease at our off-site location for senior judges. As previously noted, the lease for that space was coordinated with the Administrative Office of the United States Courts (AOUSC), negotiated by GSA, and supported by Congress. Investments were made to configure the space to support the mission performed by the judges and chambers staff who work out of that facility, and the facility's proximity to our main courthouse enables us to move the copious quantities of documents associated with appellate litigation back and forth with organic manpower and at no additional cost to the government. That lease is due to expire in early 2021. The Court has initiated action with the AOUSC to ask GSA to renew that lease in order to forgo the excessive cost and operational disruption of letting it expire, which would include a requirement to find new and likely more expensive space for the Court's senior judges.

Chairman Graves and Ranking Member Quigley, I would be pleased to provide any additional information that the Subcommittee may require or to meet with Committee members or staff to discuss our budget request in further detail. Thank you for this opportunity to present my views.



STATEMENT OF HON. JEREMY D. FOGEL, DIRECTOR  
FEDERAL JUDICIAL CENTER  
BEFORE THE  
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL  
GOVERNMENT  
COMMITTEE ON APPROPRIATIONS  
UNITED STATES HOUSE OF REPRESENTATIVES

April 18, 2018

Chairman Graves, Ranking Member Quigley, and members of the Subcommittee:

My name is Jeremy Fogel. I have been a United States District Judge in the Northern District of California since 1998 and the Director of the Federal Judicial Center since October 2011. As in prior years, I appreciate the opportunity to provide you with this statement in support of our 2019 appropriation request. The Center's Board, which the Chief Justice chairs and on which the Director of the Administrative Office of the U. S. Courts serves, has approved this request.

The Center's Fiscal Year 2019 Request

The Center's FY19 request is \$29,064,000, an increase of \$542,000 (or 1.9 percent), over the assumed FY 2018 appropriation of \$28,522,000, which is the midpoint between the House mark and the enacted FY17 appropriation. The increase of \$542,000 represents solely standard adjustments to our 2018 base to maintain current services.

We thank the Subcommittee for its support in the recently enacted FY 2018 omnibus appropriations bill. The \$29,265,000 provided fully funds the Center's request. The Center will update its FY 2019 request, which consists of base adjustment only, to account for final FY 2018 appropriations, and transmit revised FY 2019 appropriations requirements to the Subcommittee.

The Center's Contribution to the Courts

The Center's statutory mission is to further the development and adoption of improved judicial administration in the federal courts. Its major statutory functions are research and education for the federal courts.

Research

Our independent, impartial, empirical research on federal litigation and judicial administration contributes directly to changes in procedures and policies that help courts operate efficiently and resolve cases fairly and expeditiously. It also informs our education about effective practices in the courts.

The courts, and particularly the Judicial Conference of the United States, as well as Congress and the public, are regular consumers of the Center's research projects. They rely on the Center for thorough, unbiased, well-documented research. Most of the approximately fifty major research projects and activities underway in 2018 were requested by the Judicial Conference and its committees.

### Education and Training

Center education programs teach judges and court staff about essential skills and knowledge and how to apply them to perform their jobs well.

Orientation programs enable new judges to assume their responsibilities quickly. Continuing education programs educate judges on topics ranging from case-management techniques and new statutes and case law to issues in science and technology that arise in litigation.

Court staff, who play a critical role in supporting judges and ensuring the efficient operation of the courts, rely on the Center for educational programs and materials that help them do their jobs well.

The need for education and training is great. Educating judges about new legal developments, ethical requirements and effective case management practices always has been and will continue to be necessary. Judges and court managers also seek additional education in effective court management to help address the challenging fiscal climate, use technology effectively and maintain a productive workforce. Probation and pretrial services officers benefit from learning about effective supervision tools that can help protect public safety, rehabilitate offenders, and reduce recidivism. In 2018 the Center also will provide enhanced education and training for judges and staff on workplace conduct and on cybersecurity, two high priority issues for the federal judiciary.

The Center delivers education through in-person programs and a variety of media to provide education and information to judges and staff efficiently. The delivery tools we use include hard-copy publications, and an array of technologies, including our internal and external web sites, web applications, teleconferencing, web-conferencing, podcasts, and streaming video. All of these delivery means help us meet the various needs of a diverse population of judges, managers, and staff in a cost-effective way.

The Center's public website, [www.fjc.gov](http://www.fjc.gov), contains a wealth of information about the Center and its programs, reports, and publications.

### Conclusion

Thank you for your careful consideration of our request. I respectfully urge you to provide the Center the 1.9% increase it needs in 2019 to execute its mission. I would be pleased to respond to any questions you may have.

**STATEMENT OF HONORABLE WILLIAM H. PRYOR JR**  
**ACTING CHAIR**  
**UNITED STATES SENTENCING COMMISSION**  
**BEFORE THE SUBCOMMITTEE ON**  
**FINANCIAL SERVICES AND GENERAL GOVERNMENT**  
**OF THE COMMITTEE ON APPROPRIATIONS OF THE**  
**UNITED STATES HOUSE OF REPRESENTATIVES**  
**APRIL 18, 2018**

Chairman Graves, Ranking Member Quigley, and members of the Subcommittee, the United States Sentencing Commission (the “Commission”) appreciates the opportunity to submit this statement in support of its fiscal year 2019 appropriations request. The Commission’s statutory mission—to ensure sound and just federal sentencing policy while prioritizing limited resources to best ensure public safety, as set forth in the Sentencing Reform Act of 1984—continues to be of tremendous importance. Full funding of the Commission’s fiscal year 2019 request will ensure that the Commission can continue to fulfill its statutory mission.

**RESOURCES REQUESTED**

The fiscal year 2019 request for the U.S. Sentencing Commission totals \$18,548,000 to maintain current services in order to continue to fulfill the statutory duties envisioned by the Sentencing Reform Act of 1984. The fiscal year 2019 request reflects a 1.8 percent increase above a fiscal year 2018 assumed appropriation of \$18,219,000. The fiscal year 2018 enacted level of \$18,699,000 fully funded the Commission’s request. The Commission will update its fiscal year 2019 request to account for final fiscal year 2018 appropriations, and transmit revised fiscal year 2019 appropriations requirements to the Subcommittee. The Commission is not requesting program increases in fiscal year 2019, consistent with its request from fiscal year 2018. The Commission continues to maximize its existing resources and appreciates the funding Congress has provided for the Commission’s fulfillment of its statutory duties.

**JUSTIFICATION FOR APPROPRIATIONS REQUEST**

The statutory duties of the Commission include: (1) promulgating sentencing guidelines to be determined, calculated, and considered in all federal criminal cases; (2) collecting sentencing data systematically to detect new criminal trends, to determine if federal crime policies are achieving their intended goals, and to 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 specialized training to judges, probation officers, staff attorneys, law clerks, prosecutors, defense attorneys, and other members of the federal criminal justice community on federal sentencing issues, including application of the guidelines.

The Commission sits at the intersection of all three branches of government and synthesizes their interests to effectuate sound federal sentencing policy. Consistent with statutory guidance and Supreme Court case law, the Commission has continued its core mission

to promulgate new guidelines and guideline amendments in response to legislation, sentencing data, and feedback from sentencing courts, Congress, the Executive Branch, federal defenders, and others in the federal criminal justice community. The Commission continues to expand its specialized training on guideline application and federal sentencing issues to federal judges, probation officers, staff attorneys, law clerks, prosecutors, defense attorneys, and others.

The Commission actively seeks to increase the fairness and effectiveness of sentencing and improve recidivism outcomes, thereby saving federal resources. The Commission's efforts are calibrated to prioritize public safety and to promote the statutory purposes of sentencing. The Commission will continue these efforts in fiscal year 2019.

Furthermore, the Commission continues to refine its data collection, analysis, and reporting efforts to provide up-to-date data about federal sentencing practices and trends. The Commission disseminates sentencing information efficiently and effectively to fulfill its statutory duties to monitor the operation of the guidelines and to advise Congress on federal sentencing policy. In addition, the Commission analyzes major sentencing issues and regularly reports its findings and recommendations to Congress. Further, the Commission routinely responds to requests from Congress for data and analysis.

The demand for Commission work-products, information, and services continues to increase and expand, as evidenced by the high volume of inquiries for data throughout fiscal year 2017 from the Chairmen and Ranking Members of relevant congressional committees as well as interested congressional offices. This interest only increased in past years as Congress debated bipartisan legislation to reform the federal criminal justice system. The Commission will continue to provide thorough and reliable data in a timely fashion in response to any requests.

In addition, consistent with the priorities of the Judiciary Branch and in coordination with the Administrative Office of the United States Courts, the Commission is continually auditing and updating its cybersecurity measures and expects to invest significantly in that area for the foreseeable future.

## **SENTENCING POLICY DEVELOPMENT**

In fiscal year 2018 and looking forward to fiscal year 2019, the Commission will continue to prioritize ways the guidelines can be made fairer, more efficient, and more effective. In August 2017 the Commission published several proposed amendments to the guidelines held over from the previous amendment cycle. Among the proposed amendments are an expansion of the availability of alternatives to incarceration for certain federal offenders. The Commission is also considering amendments that would respond to recent legislative actions including implementation of the Bipartisan Budget Act of 2015, which increases penalties relating to fraudulent claims under social security programs. The Commission continues to address recommendations from its Tribal Issues Advisory Group regarding how tribal convictions are treated in Chapter Four of the *Guidelines Manual* and the definition of "court protection order"

in the guidelines. The Commission also voted on several long-term priorities, including an ongoing multi-year examination of the overall structure of the guidelines post-*United States v. Booker*.

The Commission has also continued its work on an emerging and urgent issue of public concern—synthetic drugs, including fentanyl, fentanyl analogues, synthetic cathinones, and synthetic cannabinoids. The Commission has issued several requests for public comment and published a proposed amendment to the guidelines pertaining to these substances. The proposals are informed by public comment and expert testimony received at four public hearings the Commission has conducted specifically on the issue of synthetic drugs during fiscal years 2017 and 2018, including fentanyl and fentanyl analogues. The Commission expects to promulgate an amendment addressing this critical issue in fiscal year 2018 and will continue to monitor this developing area in fiscal year 2019.

The Commission continues to review recent and prospective Supreme Court litigation that may directly or indirectly affect the Commission’s priorities and workload. For example, the Commission previously undertook an accelerated review of the guideline definition of “crime of violence” in the career offender guideline in response to uncertainty created by the Supreme Court’s decision in *Johnson v. United States* in which the court struck down as unconstitutionally vague the residual clause portion of the statutory definition of “violent felony” in the Armed Career Criminal Act (ACCA). The Commission released a report to Congress related to this subject entitled *Report to the Congress: Career Offender Sentencing Enhancements*. The report contained recommendations to Congress to narrow the scope of the directive in 28 U.S.C. § 994(h) to offenders with violence either in their instant offense or in their past, and the need for a uniform definition of “crime of violence.” The Judicial Conference of the United States, at the recommendation of the Criminal Law Committee, has endorsed the recommendations of the Commission.

## **COLLECTING AND REPORTING SENTENCING DATA**

The Commission's research staff regularly analyzes current and prior fiscal years' data to identify how courts are sentencing offenders and using the guidelines. Each year the Commission collects and analyzes data regarding every felony and class A misdemeanor offense sentenced during that year. Sentencing courts are statutorily required to submit five sentencing documents to the Commission within 30 days of entry of judgment in a criminal case: the charging document, the plea agreement, the presentence investigation report, the judgment and commitment order, and the statement of reasons form. The Commission analyzes these documents and collects and reports information of interest and importance to policy-makers and the federal criminal justice community.

The Commission's data collection, analysis, and reporting requirements are impacted by the high volume of cases sentenced in the federal system annually. The Commission received approximately 310,000 documents for the 66,873 individual original sentencings that occurred in

fiscal year 2017. The Commission routinely uses these analyses when considering proposed changes to the guidelines. Similarly, many analyses are published by the Commission as a resource for policy-makers and the criminal justice community.

Beginning in fiscal year 2016, courts began to use a more detailed Statement of Reasons (SOR) form. The new form provides much more detailed information regarding the specific reasons courts impose sentences, particularly when they impose sentences outside the guideline range. The new detailed SOR permits the Commission to receive more specific and granular feedback regarding the operation of the guidelines, but also requires greater resources to accurately collect and analyze the results. This new information was available for the first time in fiscal year 2017 and enhances the Commission's ability to monitor and report on the operation of the guidelines.

In addition to data on original sentencing, the Commission continues to devote significant resources to report timely data to Congress and the public on implementation of the 2014 "Drugs Minus 2" amendment which reduced penalties provided by the Drug Quantity Table by two offense levels across all drug types. As of January 2018, the Commission received documentation for 48,013 motions for retroactive application of the amendment. A total of 31,089 petitions (or 64.8%) were granted, with an average sentence reduction of 25 months.

The Commission also continues to work to develop sophisticated tools to automatically, and more efficiently, extract certain data fields from court documents and to expand the type of information the Commission can collect and analyze on a routine basis. A prime example of the Commission's use of data extraction is its new initiative to collect information regarding the nature of offenders' criminal history events. Previously, the Commission was able to collect only the number of criminal history points in the offenders' criminal histories. Due to ongoing investments in technological improvements, the Commission has begun to electronically extract information regarding the nature of those prior events. The Commission extracted criminal history information for a sample of federal offenders sentenced in fiscal years 2014 and 2015 and has already begun to use that new information in responding to certain congressional inquiries. In fiscal year 2018, the Commission began to extract that information for all federal offenders, not just a sample, and, resources permitting, the Commission intends to continue this endeavor going forward.

The Commission continues to focus on making its data and research more readily accessible and in more easily understood ways to Congress, the courts, the public, and the press. Analyses of the data extracted from the sentencing documents it receives are reported in the Commission's *Sourcebook of Federal Sentencing Statistics*, which is available in print and online. The Commission's web-based "Interactive Sourcebook of Federal Sentencing Statistics" (ISB) uses the same tables and figures but enhances the *Sourcebook* by adding analyses not found elsewhere, including analyses of sentence length by the primary guideline the court used at sentencing, amount of loss in fraud cases, and age of offenders in drug cases for each major drug type. The ISB allows users to recreate and customize tables and figures, for example by circuit,

district, or state, and has improved the transparency and accessibility of its sentencing data to the public.

In order to provide the timeliest information on national sentencing trends and practices, the Commission also disseminates on its website key aspects of this data on a quarterly basis and provides trend analyses of the changes in federal sentencing practices over time.

As required by 28 U.S.C. § 994(g) and 18 U.S.C. § 4047, when the Commission considers amendments to the guidelines, it also considers the impact of these amendments on the federal prison population. The Commission is asked often by Congress to complete prison and sentencing impact assessments for proposed legislation, and the Commission makes its prison and sentencing impact analyses available on its website.

The Commission also updated and expanded its Quick Facts series first introduced in fiscal year 2013. The Quick Facts series is designed to provide the concise facts about a single area of federal crime in an easy-to-read, two-page format. The Commission also updated the Quick Facts series in fiscal year 2017, including overviews of offenders in the Federal Bureau of Prisons, offenders convicted of offenses carrying mandatory minimum penalties, career offenders, “white-collar” offenders, drug trafficking offenders by drug type, robbery offenders, and many more.

## **CONDUCTING RESEARCH**

Research is a critical part of the Commission's overall mission. The Commission's research staff regularly analyzes current and prior fiscal years' data to identify how courts are sentencing offenders and using the guidelines. The Commission routinely uses these analyses when considering proposed changes to the guidelines. Similarly, many analyses are published by the Commission as a resource for policy-makers and the criminal justice community.

For example, the Commission continues to research and assess the impact of mandatory minimum penalties on federal sentencing, an issue particularly important because more than half (56.4%) of federal inmates in custody, as of February 2017, were convicted of an offense carrying a mandatory minimum penalty. The Commission's ongoing series of publications on the topic build on previous reports—including its 2011 *Mandatory Minimum Report*, which contained several general and specific recommendations to Congress. The Commission believes this new series will contribute significantly to the consideration of federal sentencing policy by Congress and others in fiscal years 2018 and 2019.

The Commission released the first three publications in this series in fiscal years 2017 and 2018. The Commission's 2017 *Overview of Mandatory Minimum Penalties in the Federal Criminal Justice System* highlights recent developments regarding the charging of offenses carrying a mandatory minimum penalty and provides updated sentencing data regarding the use and impact of mandatory minimum penalties. Among the findings in the publication, in fiscal

year 2016, the average sentence length for offenders convicted of an offense carrying a mandatory minimum penalty was 110 months of imprisonment, nearly four times the average sentence (28 months) for offenders not convicted of such an offense.

The second publication in this series, *Mandatory Minimum Penalties for Drug Offenses in the Federal Criminal Justice System*, focused on the impact of drug mandatory minimums in significant part because almost half (49.1%) of federal inmates as of September 30, 2016 were drug offenders, and almost three-quarters of them (72.3%) were convicted of an offense carrying a mandatory minimum penalty. This publication analyzes drug mandatory minimums, their impact on the federal prison population, and differences observed when analyzing each of the five most common drug types in the federal caseload. Among the findings in the publication is that in fiscal year 2016, over half (52.8%) of offenders convicted of an offense carrying a drug mandatory minimum penalty faced a mandatory minimum penalty of ten years or longer.

The most recent publication in this series, *Mandatory Minimum Penalties for Firearms Offenses in the Federal Criminal Justice System*, was just released in March 2018. This latest report focuses on the application of mandatory minimum penalties specific to firearms offenses, which are the second largest category (16.8%) of offenses carrying mandatory minimum penalties in the federal system following drug offenses. Among the findings in the publication is that offenders convicted under 18 U.S.C. § 924(c) received an average sentence of over 12 years of imprisonment in fiscal year 2016. The average sentence for offenders who were subject to the mandatory minimum penalty for multiple counts of conviction under section 924(c) were exceptionally long—almost 36 years—because the statute requires the sentences for each count to run consecutively. Black offenders were most impacted by this statutory provision as they accounted for more 70.5 percent of offender convicted of multiple counts under section 924(c). The Commission released this publication in March 2018.

The Commission also continues to focus its research on recidivism, drawing upon partnerships across the federal criminal justice system. The Commission combines its data with data from the Department of Justice and the Administrative Office of the U.S. Courts to develop a comprehensive trajectory of offenders prior to incarceration, during incarceration, and following reentry into the community.

In fiscal year 2017, the Commission published *Recidivism Among Federal Drug Trafficking Offenders*, which analyzed more than 10,000 federal drug trafficking offenders over an eight-year follow-up period. Among the findings in this publication is that one-half (50%) of federal drug traffickers released in 2005 recidivated by being rearrested for a new crime or rearrested for a violation of supervision conditions. While this figure is significant, it is substantially lower than the 76.9 percent of state drug offenders released in 2005 who recidivated within five years, as reported by the Bureau of Justice Statistics.

In fiscal year 2017, the Commission also published *The Past Predicts the Future: Criminal History and Recidivism of Federal Offenders*, which analyzed how various components of criminal history computations in Chapter Four of the *Guidelines Manual* are associated with



recidivism. In fiscal year 2018, the Commission published *The Effects of Aging on Recidivism Among Federal Offenders* which analyzes age at the time of release along with other factors. The Commission plans to continue this series with a study of violent offenders.

In March 2018, the Commission released *Recidivism Among Federal Offenders Receiving Retroactive Sentencing Reductions: The 2011 Fair Sentencing Act Guideline Amendment*. This study analyzes the recidivism rates for offenders who received the retroactive benefit of the guideline amendment implementing the Fair Sentencing Act of 2010, which reduced the statutory mandatory minimum penalties for crack cocaine offenses. While Congress did not make the statutory changes retroactive, the Commission did make the ensuing guideline amendment retroactive. The Commission found that recidivism rates were virtually identical for offenders who were released early through retroactive application of the FSA guideline amendment and offenders who had served their full sentences before the FSA guideline reduction retroactively took effect. Over a three-year period following their release, both groups had a recidivism rate of 37.9 percent.

As part of its statutory mission to avoid unwarranted sentencing disparities, the Commission also studies demographic and sentencing results. In fiscal year 2017, the Commission published *Demographic Differences in Sentencing: An Update to the 2012 Booker Report*, which examines whether the length of sentences imposed on federal offenders is correlated with demographic characteristics of those offenders. This report is the third analysis the Commission has published exploring the relationship between demographic factors, such as race and gender, and sentencing outcomes. The report generally finds that the demographic differences previously reported persist.

The Commission has also observed that many federal district courts have initiated specialized court programs to increase the use of alternatives to incarceration for certain types of offenders. As part of its recent consideration of alternatives to incarceration, in fiscal year 2017 the Commission published *Federal Alternative-to-Incarceration Court Programs*, a qualitative analysis of five of these programs. This publication reviewed the recent emergence on the federal level of alternative-to-incarceration court programs and considered how they fit within the framework of the Sentencing Reform Act of 1984 and the *Guidelines Manual*. The Commission also conducted a public hearing focusing on federal alternative-to-incarceration programs, at which the Commission received testimony from experts and federal district judges who have presided over three of these programs. As policymakers and federal court officials consider the efficacy and legal questions surrounding these programs, the Commission believes its publication will contribute significantly to their discussions.

The Commission also published *An Analysis of the Implementation of the 2014 Clemency Initiative*, which analyzes the almost 1,700 sentence commutations granted under President Obama's 2014 Clemency Initiative. It provides extensive data about the offenders who received a sentence commutation and the extent to which they appear to have met the announced criteria

for the initiative. It also provides data about additional offenders who appear to have met the criteria but who did not receive a sentence commutation.

The information and data contained in the Commission's reports and publications continue to contribute significantly to the consideration of federal sentencing policy by Congress and others.

## **RESPONDING TO CONGRESSIONAL INQUIRIES**

Each year the Commission receives frequent inquiries from Congress to complete prison and sentencing impact assessments using real-time data of sentencing trends related to proposed and pending legislation. These assessments are often complex and time-sensitive and require highly specialized Commission resources.

In fiscal year 2016 and fiscal year 2017, the Commission experienced a surge in sentencing data inquiries, particularly from the Chairmen and Ranking Members of relevant congressional committees, as well as interested congressional offices. This increase was spurred by Congress' ongoing consideration of bipartisan legislation to reform the federal criminal justice system. In fiscal year 2017 and fiscal year 2018, the Commission responded to numerous requests from Congress and has also already responded to dozens of data inquiries from the U.S. House and Senate Judiciary Committees.

The Commission also fills more general data requests from Congress on issues such as drug trafficking, immigration, fraud, and sex offenses and provides circuit, district, and state-wide data analyses to House and Senate Judiciary Committee members and, on an as-requested basis, to other members of Congress.

The Commission also responds to numerous requests for data analyses from federal judges, including specific data requests relating to pending cases. The Commission's ability to provide these analyses on demand and with real-time data provides a unique and helpful resource to judges.

## **TRAINING, OUTREACH, AND ENGAGEMENT**

The Commission continues to fulfill its statutory duty to provide seminars, workshops, and training programs for judges, probation officers, law clerks, prosecutors and defense attorneys on federal sentencing issues, including application of the guidelines. In fiscal year 2017, commissioners and Commission staff conducted training programs with members of the federal courts, practitioners, and others involved in the sentencing process in nearly all 94 federal districts, through discrete education programs, including programs for specific districts and circuits, specialized training for new probation officers and for federal prosecutors, and training programs for district and circuit court judges.

In fiscal year 2016, the Commission identified a need for training federal judges on sentencing guidelines and related issues. As a result, in June 2016 and June 2017, the Commission initiated annual training seminars specifically tailored to federal judges. Approximately 100 federal judges attended each program. The 2018 annual seminar for judges will be held in San Francisco, California, and resources permitting the Commission intends to meet this specialized training need on an annual basis going forward.

In fiscal year 2017, the Commission held two annual national training seminars in Baltimore, Maryland and Denver, Colorado, with a total attendance of more than 800, including federal probation officers, prosecutors, defense attorneys, and judges. Commissioners and Commission staff also participated in numerous academic programs, symposia, and circuit conferences as part of the ongoing discussion around federal sentencing issues. In fiscal year 2018, the Commission will hold one, larger national seminar in San Antonio, Texas.

In fiscal years 2017 and 2018, in a collaborative effort, the Commission's Office of General Counsel, Office of Education and Sentencing Practice, and Office of Legislative and Public Affairs provided guideline and federal sentencing training to congressional offices at their request. Commission staff also held multiple data briefings for congressional staffers on Capitol Hill to present findings from the Commission's recent reports and take questions from attendees. The Commission also provided general educational trainings on the guidelines to interested public service and advocacy groups. The Commission stands ready in fiscal year 2018, as well as fiscal year 2019, to continue to offer individualized and group educational training opportunities to congressional staff as Congress considers sentencing and crime policy.

The Commission increasingly is relying on distance and online learning as part of its cost-containment efforts. The Commission continued to conduct sentencing-related webinars and webcasts in fiscal year 2017 and will increase its distance learning offerings in fiscal year 2018 and fiscal year 2019. In fiscal year 2016, for the second year the Commission released an online interactive e-Learning program to educate the public as well as judges, probation officers, and practitioners, about guideline amendments, including the August 2016 crime of violence amendment. In fiscal year 2017 for the third year, the Commission developed an online interactive e-Learning program to educate the public, as well as judges, probation officers, and practitioners, about recurring issues in guideline application related to criminal history determinations. This work continues in fiscal year 2018.

The Commission coordinates with the Administrative Office of the U.S. Courts to meet with all those nominated to a federal judgeship and inform them of upcoming judge trainings and other Commission resources. At the same time, the Commission continues to coordinate with the Federal Judicial Center on dissemination of information to new judges and, in fiscal year 2017, each newly appointed judge received a copy of the Commission's publication, *Federal Sentencing: The Basics*, a comprehensive primer on the federal sentencing system which was also turned into an interactive e-Learning course.

A primer is sent to each newly appointed judge, and the online course is assigned by the Federal Judicial Center as a prerequisite for attending Phase I training for District Court Judges. “The Basics” has become a standard recommended course for those new to federal sentencing, or for those wanting a refresher before attending an in-district Commission training program. The Commission plans to release several scenario-based e-Learning courses on frequently recurring guideline application issues in fiscal year 2018.

In fiscal year 2016, the Commission launched a redesigned website modernizing the aesthetic and improving search functionality. The redesigned site improves navigation of the online versions of the *Guidelines Manual* and *Sourcebook of Federal Sentencing Statistics*. The redesigned site is a more robust resource for policy-makers and the federal courts, and describes and contextualizes the Commission’s policy work, thereby increasing public engagement in the guideline amendment process. In fiscal year 2017, the Commission received over 1.5 million hits and averaged approximately 29,000 users each month.

The Commission also has undertaken several additional projects aimed at improving access to the *Guidelines Manual*, including a new interactive online manual that will provide the user the history of each guideline provision and a web-based application which enables the user to efficiently access the *Guidelines Manual* on a variety of devices, including desktops and mobile devices. Launched in March 2018, the Guidelines app is accessible through any internet browser and features new tools to assist in understanding and applying the federal sentencing guidelines. The Commission also made efforts to improve online access to historical documents by converting and publishing many of the Commission’s archived records. These projects will help court personnel, legislators, and other criminal justice stakeholders refer to important Commission documents in their legal research and policy work.

In fiscal year 2017, the Commission also increased its public outreach efforts through the new cloud communications tool and an expanded social media presence. The Commission established its first social media account three years ago and continues to gain followers. In fiscal year 2017, the Commission established a new LinkedIn profile as an additional communication tool. The Commission will continue to improve its website, social media, online education and outreach efforts.

In fiscal year 2017, the Commission received a record amount of public comment on proposed priorities and amendments. The Commission continues to receive substantial public comment in fiscal year 2018. To manage and streamline the intake process, the Commission recently designed a digital public comment database that enables the Commission to organize, distribute, and archive public comment in a timely and less resource-intensive fashion. The Commission will continue to utilize and improve the database as the Commission’s engagement with the public continues to grow.

## **SUMMARY**

The Commission is an expert, bipartisan body that works collaboratively with all three branches of government on matters of federal sentencing policy. The Commission remains uniquely positioned to assist the federal criminal justice community, including Congress, to ensure sound and just federal sentencing policy and to prioritize limited resources to best safeguard public safety.

The demand for the Commission's various work products continues to increase. In recent years, the Commission has prioritized increased public access to its sentencing data, information, analyses, and training. The Commission has expanded the availability of resources on its website and will continue doing so in fiscal year 2019.

The Commission appreciates the funding it has received from Congress and respectfully submits that full funding of its fiscal 2019 appropriations request of \$18,548,000 will ensure that the Commission can continue to fulfill its various statutory duties efficiently and effectively.