



EDITORS

Douglas A. Berman
Frank O. Bowman III
Steven L. Chanenson
Nora V. Demleitner
Jelani Jefferson Exum
Judge Nancy Gertner (Ret.)
Mark D. Harris
Paul J. Hofer
Michael M. O'Hear

EDITORS EMERITI

Marc Miller
Aaron Rappaport

FOUNDING EDITORS

Daniel J. Freed
Marc Miller

ADVISORY BOARD

Albert W. Alschuler
Andrew Ashworth
Judy Clarke
Richard S. Frase
Roger W. Haines Jr.
Thomas W. Hillier II
Magdeline E. Jensen
Marc Mauer
Linda Drazga Maxfield
Barbara Meierhoefer
Jon O. Newman
Charles J. Ogletree
Dale G. Parent
Kevin R. Reitz
Jon M. Sands
Michael E. Smith
Kate Stith
Michael Tonry
Ronald F. Wright
Kimba M. Wood
Franklin E. Zimring

EDITOR'S NOTES

It has now been more than two years since then–Attorney General Eric Holder began delivering major policy speeches expressing concerns about mass incarceration in the United States. Most prominently, in an August 2013 speech, Holder called some federal mandatory minimum prison terms “excessive” and “draconian” while expressing support for statutory sentencing reform proposals then being considered in Congress. Fast-forward two years: Eric Holder is no longer Attorney General, and a wide array of statutory sentencing reform proposals are still being considered in Congress. Though a political consensus has developed around the notion that statutory reform should focus on reducing sentences for nonviolent drug offenders, Congress continues to debate the details of just where and how federal statutory reforms should be focused. Part of this issue of FSR collects data concerning what we know about the sentencing of federal drug offenders and reprints a debate involving the concerns of two prominent advocacy groups about whether these and other data justify considerable reform of statutory minimum sentencing terms for certain drug offenders.

Meanwhile, as Congress continues to chart a slow and uncertain statutory reform path, this past summer the Supreme Court finally acted decisively about the (lack of) meaning of the so-called residual clause of the Armed Career Criminal Act (ACCA). Specifically, the Justices in *Johnson v. United States* concluded that this clause was unconstitutionally vague and, in this way, blazed a quick and certain path for statutory reform in another federal sentencing arena. As materials in this FSR issue detail, this *Johnson* ruling can have—and already has started to have—a significant impact on a number of current federal cases involving both ACCA and parallel statutory and guideline provisions. And, due to possible retroactive application to prior cases and emergency guideline amendments already proposed by the U.S. Sentencing Commission, many federal sentencing practitioners will be busy working through the potential impact of *Johnson* for past, present, and future cases while we all continue to await more deliberative statutory sentencing reforms from Congress.



Please send articles and editorial correspondence to:

Publication Manager
Federal Sentencing Reporter
E-mail: berman.43@osu.edu

Federal Sentencing Reporter (ISSN 1053-9867, e-ISSN 1533-8363) is published five times a year (February, April, June, October, December) by University of California Press, 155 Grand Avenue, Suite 400, Oakland, CA 94612-3764 for the Vera Institute of Justice. Periodicals postage paid at Oakland, CA, and additional mailing offices. POSTMASTER: Send address changes to *Federal Sentencing Reporter*, University of California Press, 155 Grand Avenue, Suite 400, Oakland, CA 94612-3764. E-mail: customerservice@ucpressjournals.com.

See www.ucpressjournals.com for single issue and subscription orders, and claims information. Domestic claims for nonreceipt of issues should be made within 90 days of the mail date; overseas claims within 180 days. Mail dates can be checked at www.ucpressjournals.com/ucpress.asp?page=ReleaseSchedule. University of California Press does not begin accepting claims for an issue until thirty (30) days after the mail date.

Inquiries about advertising can be sent to adsales@ucpressjournals.com. For complete abstracting and indexing coverage for the journal, please visit www.ucpressjournals.com. All other inquiries can be directed to customerservice@ucpressjournals.com.

Copying and permissions notice: Authorization to copy article content beyond fair use (as specified in Sections 107 and 108 of the U.S. Copyright Law) for internal or personal use, or the internal or personal use of specific clients, is granted by The Regents of the University of California on behalf of the Vera Institute of Justice for libraries and other users, provided that they are registered with and pay the specified fee through the Copyright Clearance Center (CCC), www.copyright.com. To reach the CCC's Customer Service Department, call (978) 750-8400 or write to info@copyright.com. For permission to distribute electronically, republish, resell, or repurpose material, and to purchase article offprints, use the CCC's Rightslink service, available on JSTOR at <http://www.jstor.org/r/ucal>. Submit all other permissions and licensing inquiries through the University of California Press's Rights and Permissions website, www.ucpressjournals.com/reprintInfo.asp, or via e-mail: journalspermissions@ucpress.edu.

Printed by The Sheridan Press, Hanover, PA.

© 2015 Vera Institute of Justice. All rights reserved.

Federal Sentencing Reporter Directory

Volume 19 (October 2006–June 2007)

- No. 1 *Victims and Sentencing I: Victim Impact Evidence, the Crime Victims' Rights Act and Kenna*
- No. 2 *Victims and Sentencing II: Beyond the CVRA*
- No. 3 *Claiborne & Rita: Reasonableness Review in the Supreme Court*
- No. 4 *Information-based Sentencing Analysis*
- No. 5 *Assessing Crack-Cocaine and Mandatory Minimum Sentencing Provisions*

Volume 20 (October 2007–June 2008)

- No. 1 *Learning from Libby*
- No. 2 *Prisoner Reentry*
- No. 3 *White-Collar Sentencing*
- No. 4 *Debates and Realities Surrounding Crack Retroactivity*
- No. 5 *American Criminal Justice Policy in a "Change" Election*

Volume 21 (October 2008–June 2009)

- No. 1 *Thoughts for the U.S. Sentencing Commission*
- No. 2 *Sex Offenders: Recent Developments in Punishment and Management*
- No. 3 *ABA Roundtable on "Second Look" Sentencing Reforms*
- No. 4 *On the Shoulders of Giants*
- No. 5 *"Fast-Track" Sentencing*

Volume 22 (October 2009–June 2010)

- No. 1 *Decreasing Incarceration in the Federal System*
- No. 2 *Booker at Five*
- No. 3 *State of Emergency: The California Correctional Crisis*
- No. 4 *Common Problems and Different Solutions*
- No. 5 *Judicial Discretion: A Look Forward and a Look Back Five Years After Booker*

Volume 23 (October 2010–June 2011)

- No. 1 *Life Without Parole*
- No. 2 *Criminal Justice Policy Two Years After the Change Election*

- No. 3 *The Fair Sentencing Act and Its Legal Aftermath*
- No. 4 *Advice for the U.S. Sentencing Commissioners*
- No. 5 *Sentencing and Social Science*

Volume 24 (October 2011–June 2012)

- No. 1 *Sentencing Within Sentencing*
- No. 2 *Federal Child Pornography Sentencing*
- No. 3 *Considering Costs and Other Data*
- No. 4 *Prisoner Rights and Habeas Corpus: Assessing the Impact of the 1996 Reforms*
- No. 5 *The Post-Booker Advisory Guidelines: Problem or Solution?*

Volume 25 (October 2012–June 2013)

- No. 1 *Tracking TRAC's New Sentencing Data*
- No. 2 *Right to Assistance of Counsel: New Developments, Open Questions*
- No. 3 *Risk, Sentencing & Reform*
- No. 4 *Realigning California Corrections*
- No. 5 *Examining the U.S. Sentencing Commission's Latest Federal Sentencing Reports*

Volume 26 (October 2013–June 2014)

- No. 1 *White-Collar Sentencing*
- No. 2 *New Momentum for Federal Sentencing Reform*
- No. 3 *Critical Issues in the Use of Risk Assessments, Prior Record Enhancements, and Probation/Parole Revocation*
- No. 4 *Is the Drug War Ending or Retrenching?*
- No. 5 *Gauging the Enduring Impact of Sentencing Reforms*

Volume 27 (October 2014–June 2015)

- No. 1 *Doing the Right Thing: The Evolving Role of Human Dignity in American Sentencing and Corrections*
- No. 2 *Military Sentencing: Another Federal Sentencing System (Part 1)*
- No. 3 *Military Sentencing: Another Federal Sentencing System (Part 2)*
- No. 4 *The Risk Assessment Era: An Overdue Debate*