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Recent Supreme Court Decisions Pave the Way for Congressional Discussion on Sentencing Guidelines

By Aisha Cornelius

In June 2004, a divided U.S. Supreme Court decided the controversial case of *Blakely v. Washington*, 124 S. Ct. 2531, in which it addressed the constitutionality of a judge, rather than a jury, deciding facts that increased a defendant's sentence. Two recent Supreme Court decisions, *United States v. Booker* and *United States v. Fanfan* (consolidated at 125 S. Ct. 738), have clarified the holding in *Blakely*.

In *Blakely*, the defendant, Ralph Blakely, admitted to kidnapping his estranged wife after she filed for divorce. He bound her with duct tape and forced her into a wooden box at knife point. He then forced his 13-year-old son to follow him in another car while he drove to a friend's house with the box in the bed of his pickup truck.

Blakely was charged with first-degree kidnapping, which was reduced to second-degree kidnapping per a plea agreement. In Washington, second-degree kidnapping carries a maximum term of 10 years, but the state's Sentencing Reform Act established smaller sentencing ranges based on the facts of the case and the criminal history of the defendant. The facts admitted by Blakely supported a 46- to 53-month sentence. However, the Washington sentencing statute, which was similar to the Federal Sentencing Guidelines, required a court to impose a longer sentence than the standard range if it found "substantial and compelling reasons justifying an exceptional sentence." The facts a judge considered did not have to be admitted by the defendant or decided by a jury.

In *Blakely*, a judge found that the defendant acted with "deliberate cruelty" in a domestic violence situation, and imposed an "excep-

tional" sentence of 90 months. Blakely appealed the case, asserting that the sentence deprived him of his constitutional right to have a jury determine all facts legally essential to his sentence.

In the decision, which was supported by five justices, the Supreme Court relied on the *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and held that a sentence cannot be imposed beyond the statutory maximum for an offense unless the relevant facts are found beyond a reasonable doubt by a jury or admitted to by the defendant. In *Blakely*, the state argued that the statutory maximum for the offense was 10 years, but the Supreme Court held that the applicable maximum was actually 53 months,

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Bert Brandenburg,
Justice at Stake Campaign

since that was the maximum that could have been imposed without the judge determining certain facts. The Court, however, stopped short of holding that the Washington sentencing scheme was unconstitutional.

Federal courts were therefore uncertain how to proceed under the Federal Sentencing Guidelines.

In *Booker* and *Fanfan*, the Supreme Court clarified the applicability of the *Blakely* decision to the Guidelines. In *Booker*, the sentencing judge had found additional facts under a preponderance of the evidence standard and imposed a longer sentence, but in *Fanfan*, the sentencing judge refused to impose an increase despite his factual findings.

Both cases were consolidated on appeal, and a divided Supreme Court issued a two-part decision. The first part held that *Blakely* did apply to the Federal Sentencing

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Guidelines, which were a violation of the Sixth Amendment guarantee to a trial by jury. The second part of the decision held that the Guidelines were no longer mandatory. The Court felt that making the Guidelines advisory was a preferred alternative over complete invalidation.

The court's decision significantly changed a sentenc-

ing scheme that has been in place since the Guidelines became effective in 1987, though the effect may not be as drastic as some are predicting. Some feel, however, that making the Guidelines advisory allows courts to act independently instead of being mandated by legislation.

Inflexible sentences, as outlined in the Guidelines, were an attempt to rectify the situation of greatly different sentences for similar crimes. After the Supreme Court's holding in *Booker/Fanfan*, Congress may choose to react by creating another sentencing scheme, such as providing a series of mandatory minimums for

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Linda Amdur,
Defense Attorney

most federal offenses.

Whatever action is taken, the *Booker/Fanfan* decision has set the stage for the first major criminal sentencing debate in Congress in a generation, according to a national partnership working for fair and impartial courts called the Justice at Stake Campaign. “If a court can't treat different cases differently, then equal

justice is turned on its head,” said Bert Brandenburg, executive director.

Illinois federal defense attorney Linda Amdur is not so sure that the Justice Department will be so quick to ask Congress to act. “The way courts will react is not entirely clear and all parties involved may opt to wait and see how it all plays out instead of rushing to create another law that may be unconstitutional,” she said.

As Justice Breyer wrote in *Booker/Fanfan*, “The ball now lies in Congress' court.”

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We will be running Letters to
the Editor and Opinion pieces
in future issues.

Loyola Alumna and Illinois
Attorney General Lisa Madigan
argued *Illinois v. Caballes* in front
of the Supreme Court last year.

To see if the Court found her
argument on behalf of the State
persuasive, turn to Page 11.