



The Resource Page



SENTENCING AFTER *BLAKELY*

ANNE SKOVE, *BLAKELY v. WASHINGTON: IMPLICATIONS FOR STATE COURTS* (2004). Available at http://www.ncsconline.org/WC/Publications/KIS_SentenBlakely.pdf

As many of you know, the U.S. Supreme Court's June decision in *Blakely v. Washington*, 124 S. Ct. 2531 (2004), invalidated an upward sentence departure that was based on the fact findings of a judge, not a jury. Substantial questions have been raised as to the impact of *Blakely* on sentencing guidelines and practices in state and federal court.

Anne Skove, an attorney in the Knowledge & Information Services section of the National Center for State Courts, has prepared a detailed memorandum providing a preliminary appraisal of questions raised by *Blakely* and its potential impact. The memo includes a state-by-state review of practices and a discussion of potential impacts on sentencing guidelines, pleas, jury trials, and court budgets.

Skove's analysis will not be the last word on this topic and she does not claim otherwise. Everyone's analysis is tentative at this point. But she has provided a useful starting point for anyone beginning their consideration of the impact of *Blakely*. For some of the issues, she suggests that the answers are uncertain at present, but suggests some ways in which application of *Blakely* may play out. For example, she reviews its potential impact on probation and parole, including revocation hearings. She asks, "Are the fact-finding processes in probation and parole decisions similar enough to a presumptive sentence to come under *Blakely*'s purview?" Although no final answer is given to that question, she reviews cases and practices from around the states that suggest potential answers. She also reviews potential impacts on consideration of criminal history information, mandatory minimum sentences, truth-in-

sentencing provisions, consecutive sentences, and due process notice issues.

Final sections include a review of solutions already in use around the country. Kansas, for example, had already determined that *Apprendi v. New Jersey*, 530 U.S. 466 (2000), required jury findings for upward sentencing departures and provided for bifurcated jury trials. Thus, jury instructions for such a procedure already exist in Kansas. Skove suggests that a new statute may not be needed in many states to allow bifurcated trials. Other options—rights waivers, making guidelines voluntary, and amending guidelines—are also discussed.

Skove's memorandum provides a useful overview of the *Blakely* decision and its aftermath.



BROWN V. BOARD OF EDUCATION EDUCATIONAL MATERIALS

MARGARET FISHER, *JUDGES IN THE CLASSROOM: BROWN V. BOARD OF EDUCATION* (2004).

Available at <http://www.courts.wa.gov/education/lessons/BrownvBoard.doc>

Many commemorations have been held in connection with the 50th anniversary of the decision in *Brown v. Board of Education*, 347 U.S. 483 (1954). For any judge who might have an opportunity to make a presentation to a school group, Margaret Fisher of the Washington State Administrative Office of the Courts has put together an excellent set of teaching materials on the case.

The materials are designed for a one-hour class to a high-school group. Students are given roles to get them involved and work through the facts of the case in some detail. They are given a good background of the racial segregation prevalent as of the 1950s and of the available options for dealing with it. Suggestions are made for judges to conclude with comments regarding the role of the courts in handling the case.



JUDICIAL ETHICS

ABA Joint Commission to Evaluate the Code of Judicial Conduct

<http://www.abanet.org/judicialethics/drafts.html>

The ABA Joint Commission to Evaluate the Code of Judicial Conduct is now seeking comments on its draft proposals of new provisions for Canons 3 and 4. Comments were previously sought on Canons 1 and 2. (See Resource Page, Summer 2003.)

You can review the proposals—and a redlined version showing the changes—at the web address listed above. Comments and suggestions regarding the proposed changes to Canons 3 and 4 may be sent until October 8, 2004 to Eileen Gallagher at gallaghe@staff.abanet.org or by mail to her attention at the American Bar Association, 321 North Clark Street, Chicago, Illinois 60610.

Proposed changes to Canons 3 and 4 include:

- Adding "ethnicity" and "sexual orientation" to the list of factors that must not be the basis for discrimination in the policies of groups to which judges may belong.
- Limiting a judge's use of judicial letterhead to write a letter of recommendation to situations in which the judge's statements are based upon "information obtained through the judge's expertise or experience as a judge."
- Providing examples of when appearances by judges before various governmental bodies are permissible.
- Allowing a judge to speak, be recognized, or honored at an event sponsored by a variety of law-related entities—even when the event raises funds for its sponsor.
- Providing that a judge shall not disclose or use nonpublic information acquired as a judge for any purpose unrelated to their judicial duties.