SUPREME COURT OF THE UNITED STATES

Nos. 04–104 and 04–105

UNITED STATES, PETITIONER

04–104 *v.*

FREDDIE J. BOOKER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

UNITED STATES, PETITIONER

04–105 *v.*

DUCAN FANFAN

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

[January 12, 2005]

JUSTICE STEVENS delivered the opinion of the Court in part.*

The question presented in each of these cases is whether an application of the Federal Sentencing Guidelines violated the Sixth Amendment. In each case, the courts below held that binding rules set forth in the Guidelines limited the severity of the sentence that the judge could lawfully impose on the defendant based on the facts found by the jury at his trial. In both cases the courts rejected, on the basis of our decision in *Blakely* v. *Washington*, 542 U. S. ___ (2004), the Government's recommended application of the Sentencing Guidelines because the proposed

*JUSTICE SCALIA, JUSTICE SOUTER, JUSTICE THOMAS, and JUSTICE GINSBURG join this opinion.

sentences were based on additional facts that the sentencing judge found by a preponderance of the evidence. We hold that both courts correctly concluded that the Sixth Amendment as construed in *Blakely* does apply to the Sentencing Guidelines. In a separate opinion authored by JUSTICE BREYER, the Court concludes that in light of this holding, two provisions of the Sentencing Reform Act of 1984 (SRA) that have the effect of making the Guidelines mandatory must be invalidated in order to allow the statute to operate in a manner consistent with congressional intent.

I

Respondent Booker was charged with possession with intent to distribute at least 50 grams of cocaine base (crack). Having heard evidence that he had 92.5 grams in his duffel bag, the jury found him guilty of violating 21 U. S. C. §841(a)(1). That statute prescribes a minimum sentence of 10 years in prison and a maximum sentence of life for that offense. §841(b)(1)(A)(iii).

Based upon Booker's criminal history and the quantity of drugs found by the jury, the Sentencing Guidelines required the District Court Judge to select a "base" sentence of not less than 210 nor more than 262 months in prison. See United States Sentencing Commission, Guidelines Manual §§2D1.1(c)(4), 4A1.1 (Nov. 2003) (hereinafter USSG). The judge, however, held a post-trial sentencing proceeding and concluded by a preponderance of the evidence that Booker had possessed an additional 566 grams of crack and that he was guilty of obstructing justice. Those findings mandated that the judge select a sentence between 360 months and life imprisonment; the judge imposed a sentence at the low end of the range. Thus, instead of the sentence of 21 years and 10 months that the judge could have imposed on the basis of the facts proved to the jury beyond a reasonable doubt, Booker received a

30-year sentence.

Over the dissent of Judge Easterbrook, the Court of Appeals for the Seventh Circuit held that this application of the Sentencing Guidelines conflicted with our holding in *Apprendi* v. *New Jersey,* 530 U. S. 466, 490 (2000), that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 375 F. 3d 508, 510 (2004). The majority relied on our holding in *Blakely* v. *Washington*, 542 U. S. ___ (2004), that "the 'statutory maximum' for *Apprendi* purposes is the maximum sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant.*" *Id.,* at ___ (slip op., at 7). The court held that the sentence violated the Sixth Amendment, and remanded with instructions to the District Court either to sentence respondent within the sentencing range supported by the jury's findings or to hold a separate sentencing hearing before a jury.

Respondent Fanfan was charged with conspiracy to distribute and to possess with intent to distribute at least 500 grams of cocaine in violation of 21 U. S. C. §§846, 841(a)(1), and 841(b)(1)(B)(ii). He was convicted by the jury after it answered "Yes" to the question "Was the amount of cocaine 500 or more grams?" App. C to Pet. for Cert. in No. 04–105, p. 15a. Under the Guidelines, without additional findings of fact, the maximum sentence authorized by the jury verdict was imprisonment for 78 months.

A few days after our decision in *Blakely*, the trial judge conducted a sentencing hearing at which he found additional facts that, under the Guidelines, would have authorized a sentence in the 188-to-235 month range. Specifically, he found that respondent Fanfan was responsible for 2.5 kilograms of cocaine powder, and 261.6 grams of crack. He also concluded that respondent had been an

organizer, leader, manager, or supervisor in the criminal activity. Both findings were made by a preponderance of the evidence. Under the Guidelines, these additional findings would have required an enhanced sentence of 15 or 16 years instead of the 5 or 6 years authorized by the jury verdict alone. Relying not only on the majority opinion in *Blakely*, but also on the categorical statements in the dissenting opinions and in the Solicitor General's brief in *Blakely*, see App. A to Pet. for Cert. in No. 04–105, pp. 6a–7a, the judge concluded that he could not follow the particular provisions of the Sentencing Guidelines "which involve drug quantity and role enhancement," *id.,* at 11a. Expressly refusing to make "any blanket decision about the federal guidelines," he followed the provisions of the Guidelines that did not implicate the Sixth Amendment by imposing a sentence on respondent "based solely upon the guilty verdict in this case." *Ibid.*

Following the denial of its motion to correct the sentence in Fanfan's case, the Government filed a notice of appeal in the Court of Appeals for the First Circuit, and a petition in this Court for a writ of certiorari before judgment. Because of the importance of the questions presented, we granted that petition, 542 U. S. ___ (2004), as well as a similar petition filed by the Government in Booker's case, 542 U. S. ___ (2004). In both petitions, the Government asks us to determine whether our *Apprendi* line of cases applies to the Sentencing Guidelines, and if so, what portions of the Guidelines remain in effect.[1]

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[1] The questions presented are:

"1. Whether the Sixth Amendment is violated by the imposition of an enhanced sentence under the United States Sentencing Guidelines based on the sentencing judge's determination of a fact (other than a prior conviction) that was not found by the jury or admitted by the defendant.

"2. If the answer to the first question is 'yes,' the following question is presented: whether, in a case in which the Guidelines would require the

In this opinion, we explain why we agree with the lower courts' answer to the first question. In a separate opinion for the Court, JUSTICE BREYER explains the Court's answer to the second question.

II

It has been settled throughout our history that the Constitution protects every criminal defendant "against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship,* 397 U. S. 358, 364 (1970). It is equally clear that the "Constitution gives a criminal defendant the right to demand that a jury find him guilty of all the elements of the crime with which he is charged." *United States* v. *Gaudin,* 515 U. S. 506, 511 (1995). These basic precepts, firmly rooted in the common law, have provided the basis for recent decisions interpreting modern criminal statutes and sentencing procedures.

In *Jones* v. *United States*, 526 U. S. 227, 230 (1999), we considered the federal carjacking statute, which provides three different maximum sentences depending on the extent of harm to the victim: 15 years in jail if there was no serious injury to a victim, 25 years if there was "serious bodily injury," and life in prison if death resulted. 18 U. S. C. §2119 (1988 ed., Supp. V). In spite of the fact that the statute "at first glance has a look to it suggesting [that the provisions relating to the extent of harm to the victim] are only sentencing provisions," 526 U. S., at 232, we concluded that the harm to the victim was an element of the crime. That conclusion was supported by the statutory text and structure, and was influenced by our desire to

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court to find a sentence-enhancing fact, the Sentencing Guidelines as a whole would be inapplicable, as a matter of severability analysis, such that the sentencing court must exercise its discretion to sentence the defendant within the maximum and minimum set by statute for the offense of conviction." Pet. for Cert. (I).

avoid the constitutional issues implicated by a contrary holding, which would have reduced the jury's role "to the relative importance of low-level gatekeeping." *Id.,* at 244. Foreshadowing the result we reach today, we noted that our holding was consistent with a "rule requiring jury determination of facts that raise a sentencing ceiling" in state and federal sentencing guidelines systems. *Id.*, at 251, n. 11.

In *Apprendi* v. *New Jersey,* 530 U. S. 466 (2000), the defendant pleaded guilty to second-degree possession of a firearm for an unlawful purpose, which carried a prison term of 5-to-10 years. Thereafter, the trial court found that his conduct had violated New Jersey's "hate crime" law because it was racially motivated, and imposed a 12-year sentence. This Court set aside the enhanced sentence. We held: "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Id.,* at 490.

The fact that New Jersey labeled the hate crime a "sentence enhancement" rather than a separate criminal act was irrelevant for constitutional purposes. *Id.,* at 478. As a matter of simple justice, it seemed obvious that the procedural safeguards designed to protect Apprendi from punishment for the possession of a firearm should apply equally to his violation of the hate crime statute. Merely using the label "sentence enhancement" to describe the latter did not provide a principled basis for treating the two crimes differently. *Id.,* at 476.

In *Ring* v. *Arizona,* 536 U. S. 584 (2002), we reaffirmed our conclusion that the characterization of critical facts is constitutionally irrelevant. There, we held that it was impermissible for "the trial judge, sitting alone" to determine the presence or absence of the aggravating factors required by Arizona law for imposition of the death penalty. *Id.,* at 588–589. "If a State makes an increase in a

defendant's authorized punishment contingent on the finding of a fact, that fact—no matter how the State labels it—must be found by a jury beyond a reasonable doubt." *Id.,* at 602. Our opinion made it clear that ultimately, while the procedural error in Ring's case might have been harmless because the necessary finding was implicit in the jury's guilty verdict, *id.*, at 609, n. 7, "the characterization of a fact or circumstance as an 'element' or a 'sentencing factor' is not determinative of the question 'who decides,' judge or jury," *id.,* at 605.

In *Blakely* v. *Washington*, 542 U. S. ___ (2004), we dealt with a determinate sentencing scheme similar to the Federal Sentencing Guidelines. There the defendant pleaded guilty to kidnaping, a class B felony punishable by a term of not more than 10 years. Other provisions of Washington law, comparable to the Federal Sentencing Guidelines, mandated a "standard" sentence of 49-to-53 months, unless the judge found aggravating facts justifying an exceptional sentence. Although the prosecutor recommended a sentence in the standard range, the judge found that the defendant had acted with "'deliberate cruelty'" and sentenced him to 90 months. *Id.,* at ___ (slip op., at 3).

For reasons explained in *Jones*, *Apprendi*, and *Ring*, the requirements of the Sixth Amendment were clear. The application of Washington's sentencing scheme violated the defendant's right to have the jury find the existence of "'any particular fact'" that the law makes essential to his punishment. 542 U. S., at ___ (slip op., at 5). That right is implicated whenever a judge seeks to impose a sentence that is not solely based on "facts reflected in the jury verdict or admitted by the defendant." *Id.,* at ___ (slip op., at 7) (emphasis deleted). We rejected the State's argument that the jury verdict was sufficient to authorize a sentence within the general 10-year sentence for Class B felonies, noting that under Washington law, the judge was

required to find additional facts in order to impose the greater 90-month sentence. Our precedents, we explained, make clear "that the 'statutory maximum' for *Apprendi* purposes is the maximum sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant*." *Ibid.* (slip op., at 7) (emphasis in original). The determination that the defendant acted with deliberate cruelty, like the determination in *Apprendi* that the defendant acted with racial malice, increased the sentence that the defendant could have otherwise received. Since this fact was found by a judge using a preponderance of the evidence standard, the sentence violated Blakely's Sixth Amendment rights.

As the dissenting opinions in *Blakely* recognized, there is no distinction of constitutional significance between the Federal Sentencing Guidelines and the Washington procedures at issue in that case. See, *e.g.,* 542 U. S., at ___ (opinion of O'CONNOR, J.) (slip op., at 12) ("The structure of the Federal Guidelines likewise does not, as the Government half-heartedly suggests, provide any grounds for distinction. . . . If anything, the structural differences that do exist make the Federal Guidelines more vulnerable to attack"). This conclusion rests on the premise, common to both systems, that the relevant sentencing rules are mandatory and impose binding requirements on all sentencing judges.

If the Guidelines as currently written could be read as merely advisory provisions that recommended, rather than required, the selection of particular sentences in response to differing sets of facts, their use would not implicate the Sixth Amendment. We have never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range. See *Apprendi,* 530 U. S., at 481; *Williams* v. *New York,* 337 U. S. 241, 246 (1949). Indeed, everyone agrees that the constitutional issues presented by these cases would have been

avoided entirely if Congress had omitted from the SRA the provisions that make the Guidelines binding on district judges; it is that circumstance that makes the Court's answer to the second question presented possible. For when a trial judge exercises his discretion to select a specific sentence within a defined range, the defendant has no right to a jury determination of the facts that the judge deems relevant.

The Guidelines as written, however, are not advisory; they are mandatory and binding on all judges.[2] While subsection (a) of §3553 of the sentencing statute[3] lists the Sentencing Guidelines as one factor to be considered in imposing a sentence, subsection (b) directs that the court "*shall* impose a sentence of the kind, and within the range" established by the Guidelines, subject to departures in specific, limited cases. Because they are binding on judges, we have consistently held that the Guidelines have the force and effect of laws. See, *e.g., Mistretta* v. *United States,* 488 U. S. 361, 391 (1989); *Stinson* v. *United States,* 508 U. S. 36, 42 (1993).

The availability of a departure in specified circumstances does not avoid the constitutional issue, just as it did not in *Blakely* itself. The Guidelines permit departures from the prescribed sentencing range in cases in which the judge "finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described." 18 U. S. C. A. §3553(b)(1) (Supp. 2004). At first glance, one

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[2] In *Mistretta* v. *United States,* 488 U. S. 361 (1989), we pointed out that Congress chose explicitly to adopt a "mandatory-guideline system" rather than a system that would have been "only advisory," and that the statute "makes the Sentencing Commission's guidelines binding on the courts." *Id.,* at 367.

[3] 18 U. S. C. A. §3553(a) (main ed. and Supp. 2004).

might believe that the ability of a district judge to depart from the Guidelines means that she is bound only by the statutory maximum. Were this the case, there would be no *Apprendi* problem. Importantly, however, departures are not available in every case, and in fact are unavailable in most. In most cases, as a matter of law, the Commission will have adequately taken all relevant factors into account, and no departure will be legally permissible. In those instances, the judge is bound to impose a sentence within the Guidelines range. It was for this reason that we rejected a similar argument in *Blakely*, holding that although the Washington statute allowed the judge to impose a sentence outside the sentencing range for "'substantial and compelling reasons,'" that exception was not available for Blakely himself. 542 U. S., at ___ (slip op., at 3). The sentencing judge would have been reversed had he invoked the departure section to justify the sentence.

Booker's case illustrates the mandatory nature of the Guidelines. The jury convicted him of possessing at least 50 grams of crack in violation of 21 U. S. C. §841(b)(1)(A)(iii) based on evidence that he had 92.5 grams of crack in his duffel bag. Under these facts, the Guidelines specified an offense level of 32, which, given the defendant's criminal history category, authorized a sentence of 210-to-262 months. See USSG §2D1.1(c)(4). Booker's is a run-of-the-mill drug case, and does not present any factors that were inadequately considered by the Commission. The sentencing judge would therefore have been reversed had he not imposed a sentence within the level 32 Guidelines range.

Booker's actual sentence, however, was 360 months, almost 10 years longer than the Guidelines range supported by the jury verdict alone. To reach this sentence, the judge found facts beyond those found by the jury: namely, that Booker possessed 566 grams of crack in addition to the 92.5 grams in his duffel bag. The jury

never heard any evidence of the additional drug quantity, and the judge found it true by a preponderance of the evidence. Thus, just as in *Blakely*, "the jury's verdict alone does not authorize the sentence. The judge acquires that authority only upon finding some additional fact." 542 U. S., at ___ (slip op., at 9). There is no relevant distinction between the sentence imposed pursuant to the Washington statutes in *Blakely* and the sentences imposed pursuant to the Federal Sentencing Guidelines in these cases.

In his dissent, *post*, at 2–4, JUSTICE BREYER argues on historical grounds that the Guidelines scheme is constitutional across the board. He points to traditional judicial authority to increase sentences to take account of any unusual blameworthiness in the manner employed in committing a crime, an authority that the Guidelines require to be exercised consistently throughout the system. This tradition, however, does not provide a sound guide to enforcement of the Sixth Amendment's guarantee of a jury trial in today's world.

It is quite true that once determinate sentencing had fallen from favor, American judges commonly determined facts justifying a choice of a heavier sentence on account of the manner in which particular defendants acted. *Apprendi*, 530 U. S., at 481. In 1986, however, our own cases first recognized a new trend in the legislative regulation of sentencing when we considered the significance of facts selected by legislatures that not only authorized, or even mandated, heavier sentences than would otherwise have been imposed, but increased the range of sentences possible for the underlying crime. See *McMillan* v. *Pennsylvania,* 477 U. S. 79, 87–88 (1986). Provisions for such enhancements of the permissible sentencing range reflected growing and wholly justified legislative concern about the proliferation and variety of drug crimes and their frequent identification with firearms offences.

The effect of the increasing emphasis on facts that enhanced sentencing ranges, however, was to increase the judge's power and diminish that of the jury. It became the judge, not the jury, that determined the upper limits of sentencing, and the facts determined were not required to be raised before trial or proved by more than a preponderance.

As the enhancements became greater, the jury's finding of the underlying crime became less significant. And the enhancements became very serious indeed. See, *e.g., Jones*, 526 U. S., at 330 (judge's finding increased the maximum sentence from 15 to 25 years); respondent Booker (from 262 months to a life sentence); respondent Fanfan (from 78 to 235 months); *United States* v. *Rodriguez*, 73 F. 3d 161, 162–163 (CA7 1996) (Posner, C. J., dissenting from denial of rehearing en banc) (from approximately 54 months to a life sentence); *United States* v. *Hammoud*, 381 F. 3d 316, 361–362 (CA4 2004) (en banc) (Motz, J., dissenting) (actual sentence increased from 57 months to 155 years).

As it thus became clear that sentencing was no longer taking place in the tradition that JUSTICE BREYER invokes, the Court was faced with the issue of preserving an ancient guarantee under a new set of circumstances. The new sentencing practice forced the Court to address the question how the right of jury trial could be preserved, in a meaningful way guaranteeing that the jury would still stand between the individual and the power of the government under the new sentencing regime. And it is the new circumstances, not a tradition or practice that the new circumstances have superseded, that have led us to the answer first considered in *Jones* and developed in *Apprendi* and subsequent cases culminating with this one. It is an answer not motivated by Sixth Amendment formalism, but by the need to preserve Sixth Amendment substance.

III

The Government advances three arguments in support of its submission that we should not apply our reasoning in *Blakely* to the Federal Sentencing Guidelines. It contends that *Blakely* is distinguishable because the Guidelines were promulgated by a commission rather than the Legislature; that principles of *stare decisis* require us to follow four earlier decisions that are arguably inconsistent with *Blakely;* and that the application of *Blakely* to the Guidelines would conflict with separation of powers principles reflected in *Mistretta* v. *United States*, 488 U. S. 361 (1989). These arguments are unpersuasive.

Commission vs. Legislature:

In our judgment the fact that the Guidelines were promulgated by the Sentencing Commission, rather than Congress, lacks constitutional significance. In order to impose the defendants' sentences under the Guidelines, the judges in these cases were required to find an additional fact, such as drug quantity, just as the judge found the additional fact of serious bodily injury to the victim in *Jones*. As far as the defendants are concerned, they face significantly higher sentences—in Booker's case almost 10 years higher—because a judge found true by a preponderance of the evidence a fact that was never submitted to the jury. Regardless of whether Congress or a Sentencing Commission concluded that a particular fact must be proved in order to sentence a defendant within a particular range, "[t]he Framers would not have thought it too much to demand that, before depriving a man of [ten] more years of his liberty, the State should suffer the modest inconvenience of submitting its accusation to 'the unanimous suffrage of twelve of his equals and neighbours,' rather than a lone employee of the State." *Blakely*, 542 U. S., at ___ (slip op., at 18) (citations omitted).

The Government correctly notes that in *Apprendi* we referred to "'any fact that increases the penalty for a crime *beyond the prescribed statutory maximum* . . . .'" Brief for United States 15 (quoting *Apprendi*, 530 U. S., at 490 (emphasis in Brief for United States)). The simple answer, of course, is that we were only considering a statute in that case; we expressly declined to consider the Guidelines. See *Apprendi*, 530 U. S., at 497, n. 21. It was therefore appropriate to state the rule in that case in terms of a "statutory maximum" rather than answering a question not properly before us.

More important than the language used in our holding in *Apprendi* are the principles we sought to vindicate. Those principles are unquestionably applicable to the Guidelines. They are not the product of recent innovations in our jurisprudence, but rather have their genesis in the ideals our constitutional tradition assimilated from the common law. See *Jones*, 526 U. S., at 244–248. The Framers of the Constitution understood the threat of "judicial despotism" that could arise from "arbitrary punishments upon arbitrary convictions" without the benefit of a jury in criminal cases. The Federalist No. 83, p. 499 (C. Rossiter ed. 1961) (A. Hamilton). The Founders presumably carried this concern from England, in which the right to a jury trial had been enshrined since the Magna Carta. As we noted in *Apprendi:*

> "[T]he historical foundation for our recognition of these principles extends down centuries into the common law. '[T]o guard against a spirit of oppression and tyranny on the part of rulers,' and 'as the great bulwark of [our] civil and political liberties,' trial by jury has been understood to require that '*the truth of every accusation*, whether preferred in the shape of indictment, information, or appeal, should afterwards be confirmed by the unanimous suffrage of

twelve of [the defendant's] equals and neighbors . . . .'" 530 U. S., at 477 (citations omitted).

Regardless of whether the legal basis of the accusation is in a statute or in guidelines promulgated by an independent commission, the principles behind the jury trial right are equally applicable.

Stare Decisis:

The Government next argues that four recent cases preclude our application of *Blakely* to the Sentencing Guidelines. We disagree. In *United States* v. *Dunnigan,* 507 U. S. 87 (1993), we held that the provisions of the Guidelines that require a sentence enhancement if the judge determines that the defendant committed perjury do not violate the privilege of the accused to testify on her own behalf. There was no contention that the enhancement was invalid because it resulted in a more severe sentence than the jury verdict had authorized. Accordingly, we found this case indistinguishable from *United States* v. *Grayson,* 438 U. S. 41 (1978), a pre-Guidelines case in which we upheld a similar sentence increase. Applying *Blakely* to the Guidelines would invalidate a sentence that relied on such an enhancement if the resulting sentence was outside the range authorized by the jury verdict. Nevertheless, there are many situations in which the district judge might find that the enhancement is warranted, yet still sentence the defendant within the range authorized by the jury. See *post,* at 6–9. (STEVENS, J., dissenting in part). Thus, while the reach of *Dunnigan* may be limited, we need not overrule it.

In *Witte* v. *United States*, 515 U. S. 389 (1995), we held that the Double Jeopardy Clause did not bar a prosecution for conduct that had provided the basis for an enhancement of the defendant's sentence in a prior case. "We concluded that 'consideration of information about the

defendant's character and conduct at sentencing does not result in "punishment" for any offense other than the one of which the defendant was convicted.' Rather, the defendant is 'punished only for the fact that the present offense was carried out in a manner that warrants increased punishment . . . .'" *United States* v. *Watts,* 519 U. S. 148, 155 (1997) *(per curiam)* (emphasis omitted) (quoting *Witte*, 515 U. S., at 415, 401, 403). In *Watts*, relying on *Witte*, we held that the Double Jeopardy Clause permitted a court to consider acquitted conduct in sentencing a defendant under the Guidelines. In neither *Witte* nor *Watts* was there any contention that the sentencing enhancement had exceeded the sentence authorized by the jury verdict in violation of the Sixth Amendment. The issue we confront today simply was not presented.[4]

Finally, in *Edwards* v. *United States,* 523 U. S. 511 (1998), the Court held that a jury's general verdict finding the defendants guilty of a conspiracy involving either cocaine or crack supported a sentence based on their involvement with both drugs. Even though the indictment had charged that their conspiracy embraced both, they argued on appeal that the verdict limited the judge's sentencing authority. We recognized that the defendants' statutory and constitutional claims might have had merit if it had been possible to argue that their crack-related activities were not part of the same conspiracy as their cocaine activities. But they failed to make that argument, and, based on our review of the record which showed "a series of interrelated drug transactions involving both cocaine and crack," we concluded that no such claim could

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[4] *Watts*, in particular, presented a very narrow question regarding the interaction of the Guidelines with the Double Jeopardy Clause, and did not even have the benefit of full briefing or oral argument. It is unsurprising that we failed to consider fully the issues presented to us in these cases. See 519 U. S., at 171 (KENNEDY, J., dissenting).

succeed.[5] *Id.,* at 515.

None of our prior cases is inconsistent with today's decision. *Stare decisis* does not compel us to limit *Blakely*'s holding.

Separation of Powers:

Finally, the Government and, to a lesser extent, JUSTICE BREYER's dissent, argue that any holding that would require Guidelines sentencing factors to be proved to a jury beyond a reasonable doubt would effectively transform them into a code defining elements of criminal offenses. The result, according to the Government, would be an unconstitutional grant to the Sentencing Commission of the inherently legislative power to define criminal elements.

There is no merit to this argument because the Commission's authority to identify the facts relevant to sentencing decisions and to determine the impact of such facts on federal sentences is precisely the same whether one labels such facts "sentencing factors" or "elements" of crimes. Our decision in *Mistretta*, 488 U. S., at 371, upholding the validity of the delegation of that authority, is unaffected by the characterization of such facts, or by the procedures used to find such facts in particular sentencing proceedings. Indeed, we rejected a similar argument in *Jones:*

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[5] We added: "Instead, petitioners argue that the judge *might* have made different factual findings if only the judge had known that the law required him to assume the jury had found a cocaine-only, not a cocaine-and-crack, conspiracy. It is sufficient for present purposes, however, to point out that petitioners did not make this particular argument in the District Court. Indeed, they seem to have raised their entire argument for the first time in the Court of Appeals. Thus, petitioners did not explain to the sentencing judge how their 'jury-found-only-cocaine' assumption could have made a difference to the judge's own findings, nor did they explain how this assumption (given the judge's findings) should lead to greater leniency." *Edwards,* 523 U. S., at 515–516.

> "Contrary to the dissent's suggestion, the constitutional proposition that drives our concern in no way 'call[s] into question the principle that the definition of the elements of a criminal offense is entrusted to the legislature.' The constitutional guarantees that give rise to our concern in no way restrict the ability of legislatures to identify the conduct they wish to characterize as criminal or to define the facts whose proof is essential to the establishment of criminal liability. The constitutional safeguards that figure in our analysis concern not the identity of the elements defining criminal liability but only the required procedures for finding the facts that determine the maximum permissible punishment; these are the safeguards going to the formality of notice, the identity of the factfinder, and the burden of proof." 526 U. S., at 243, n. 6.

Our holding today does not call into question any aspect of our decision in *Mistretta*. That decision was premised on an understanding that the Commission, rather than performing adjudicatory functions, instead makes political and substantive decisions. 488 U. S., at 393. We noted that the promulgation of the Guidelines was much like other activities in the Judicial Branch, such as the creation of the Federal Rules of Evidence, all of which are nonadjudicatory activities. *Id.,* at 387. We also noted that "Congress may delegate to the Judicial Branch nonadjudicatory functions that do not trench upon the prerogatives of another Branch and that are appropriate to the central mission of the Judiciary." *Id.,* at 388. While we recognized that the Guidelines were more substantive than the Rules of Evidence or other nonadjudicatory functions delegated to the Judicial Branch, we nonetheless concluded that such a delegation did not exceed Congress' powers.

Further, a recognition that the Commission did not exercise judicial authority, but was more properly thought of as exercising some sort of legislative power, *ibid.*, was essential to our holding. If the Commission in fact performed adjudicatory functions, it would have violated Article III because some of the members were not Article III judges. As we explained:

> "[T]he 'practical consequences' of locating the Commission within the Judicial Branch pose no threat of undermining the integrity of the Judicial Branch or of expanding the powers of the Judiciary beyond constitutional bounds by uniting within the Branch the political or quasi-legislative power of the Commission with the judicial power of the courts. . . . [The Commission's] powers are not united with the powers of the Judiciary in a way that has meaning for separation-of-powers analysis. Whatever constitutional problems might arise if the powers of the Commission were vested in a court, the Commission is not a court, does not exercise judicial power, and is not controlled by or accountable to members of the Judicial Branch." *Id.,* at 393.

We have thus always recognized the fact that the Commission is an independent agency that exercises policymaking authority delegated to it by Congress. Nothing in our holding today is inconsistent with our decision in *Mistretta*.

IV

All of the foregoing support our conclusion that our holding in *Blakely* applies to the Sentencing Guidelines. We recognize, as we did in *Jones, Apprendi*, and *Blakely*, that in some cases jury factfinding may impair the most expedient and efficient sentencing of defendants. But the interest in fairness and reliability protected by the right to a

jury trial—a common-law right that defendants enjoyed for centuries and that is now enshrined in the Sixth Amendment—has always outweighed the interest in concluding trials swiftly. *Blakely*, 542 U. S., at ___ (slip op., at 17). As Blackstone put it:

> "[H]owever *convenient* these [new methods of trial] may appear at first (as doubtless all arbitrary powers, well executed, are the most *convenient*) yet let it be again remembered, that delays, and little inconveniences in the forms of justice, are the price that all free nations must pay for their liberty in more substantial matters; that these inroads upon this sacred bulwark of the nation are fundamentally opposite to the spirit of our constitution; and that, though begun in trifles, the precedent may gradually increase and spread, to the utter disuse of juries in questions of the most momentous concerns." 4 Commentaries on the Laws of England 343–344 (1769).

Accordingly, we reaffirm our holding in *Apprendi:* Any fact (other than a prior conviction) which is necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guilty or a jury verdict must be admitted by the defendant or proved to a jury beyond a reasonable doubt.