

29.7.2010

Michael Courlander,
Public Affairs Officer
Attn: Public Affairs Priorities Comment
United States Sentencing Commission
One Columbus Circle NE
Suite 2-500, South Lobby
Washington, DC 20002-8002

Re: Public Affairs Priorities Comment

In response to the “Request for Comment” on proposed priorities (BAC2210-40) of the United States Sentencing Commission, the following is submitted. The priorities stated are illustrative of excessive concentration by the judiciary and prosecutors on opinions of legal rules, with an eye chiefly to judicial activism in the form of prosecutorial certainty. It is no mystery that intended consequences of efforts to govern the future often fail. Analogously, it will also come as no surprise to anyone involved, or targeted by the Federal Criminal Justice System, that the system is inherently unfair, bias, neurotic, self perpetuating, (individuals labeled felons are ‘punished’ in perpetuity), with constitutional safeguards relegated to rhetoric buried within the process of conviction/adjudication, in a perfunctory effort to prevent reversal on appeal. The Federal criminal justice system justifies its actions by the assumption of untrue facts to reach desired results that were not enabled under a strict letter of the law. Neither integrity, or fairness takes precedence, however circumventing the law through tactics such as a U.S. Attorney’s right to “proffer” a statement to the Court, or intimidation such as that which occurred after the ruling in *Booker*, at which time U.S. Attorneys Offices were required to forward the names of Judges to the Justice Department who decided on downward departures from the guidelines, are routine within the Federal Criminal Justice System.

With the majority of the Federal Judiciary coming from the U.S. Attorneys Office, or other prosecutorial venues, the Judiciary would have the public believe that once adorned in a black robe that mysticly all their psychological baggage, and biases are somehow swept away. This magical thinking and legal fiction conceal the fact that the rule of law has undergone alteration; its letter remaining unchanged, even though its operation has been modified. So it is with the Sentencing

Commission, made up of judges and prosecutors, who appoint other judges and prosecutors who then select a handful of carefully selected defense attorneys who are relegated to an auxiliary, advisory practice group. If the Sentencing Commission was vetted under the conventional method of legal pedagogy, it would be evident that the Commission itself is doing precisely what the judiciary must avoid, deciding cases with no one to speak for the accused. It is no wonder that a Federal Judge's ego allows him/her to look upon themselves as the guardian of the future.

The 2005 seminal criminal sentencing case of *United States v. Booker*, (543 U.S. 220), was one of a split majority decision. The Supreme Court decided that when it comes to criminal sentencing, that the **Sixth Amendment** required a jury trial to determine what information can be utilized to calculate/enhance a sentence other than a prior conviction, and facts admitted by a defendant or proven beyond a reasonable doubt to a jury. The Court struck down the provision of the federal sentencing statute that required federal district judges to impose a sentence within the Federal Guidelines range, along with the provision that deprived federal appeals courts of the power to review sentences imposed outside the Guidelines range. The Court then instructed federal district judges to impose a sentence with reference to a wider range of sentencing factors set forth in the federal sentencing statute, and directed federal appeals courts to review criminal sentences for "reasonableness." Federal prosecutors as they are want to do, seized the vague and open interpretation of "reasonableness" so stuffing the definition with new meanings that, in practical effect, "reasonableness" covered up the transformation of fairness in the Federal Justice System, concealing the truth of adaptation to new circumstances, all behind a disguise of fixity.

A particularly diabolic "proposed priority" is "*Section 10606(a)(2)(A) of the Patient Protection and Affordable Care Act*, Pub. L. 111-148, regarding health care fraud offenses and any other crime legislation enacted during the 111th Congress warranting a Commission response. The plain meaning of the language of this section effectively eviscerates the **IV, V, VI, VII and IX Constitutional Amendments**. This section of the Act removes the prosecutions burden of proving "knowledge" that an action is/was criminal. If "knowledge" of an action is a foregone conclusion, it follows that "intent" must be the proximate cause of that knowledge. With knowledge and intent predicated, the prosecutor is freed from the burden of proof beyond a reasonable doubt. Judges are presumed to give a voice to the values put forth in the Constitution, in theory they are not to pander to professional grandiosity, agendas and set policy, yet in reality that is precisely what the Sentencing Commission does. Created from a punitive Act, the Sentencing Reform Act, Comprehensive Crime Control Act of 1984 the Sentencing Commission, is an intellectually biased, closed "society" of prosecutorial professionals, immune to correction from the public. The Commission has deteriorated into statistically justifying judicial overreaching, assuring prosecutorial success, with certainty of

punishment and determination of terms of incarceration in contradiction to the meaning of law they purport to be applying.

I suggest that somewhere in the cultural, political and ethical transformation of the federal criminal justice system its purpose became mutated with the Sentencing Commission a “closed” judicial and prosecutorial policy setting cabal as evidence. *Section 10606(a)(2)(A) of the Patient Protection and Affordable Care Act.* impetus is to punish, while devoid of fact-finding, even sacrificing the innocent for some misplaced sense of public good. The value of sentencing guidelines, and proposed uniformity were miscalculated, yet the illusion of purpose still remains. The Sentencing Commissions notion that present problems can be clarified by reference to future ends is an anachronism of the future. The Sentencing Commission through its authority and by its make-up has unjustly given the weight of law to future consequences of judicial rulings, deciding not real but hypothetical cases, making the Department of Justice and the Judiciary the “natural enemies” of the Constitution.

Respectfully Submitted,

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