

POLICY STATEMENT OF
FORMER FEDERAL PROSECUTORS
AND OTHER GOVERNMENT OFFICIALS

July 15, 2013

The Need for Meaningful Federal Criminal Justice Reform

We are a diverse group of former federal prosecutors, judges, Department of Justice and other government officials who deeply believe in notions of fairness in the administration of justice. Our backgrounds, experiences, ethnicities and political preferences vary greatly. However, we all have one thing in common: at one time or another we served as United States Attorneys, Assistant United States Attorneys, Department of Justice attorneys, or other government officials including judges and members of Congress. Many of us pursued successful prosecutions and argued for appropriate and substantial punishments in federal courts.

Now, as former federal prosecutors, judges and other government officials, we are united with a common concern: our experiences with the criminal justice system have too often revealed the need for meaningful, thoughtful criminal justice reforms. While employed by the federal government, we were team players – rarely called upon to weigh-in on congressional inquiries regarding criminal statutes or sentencing issues. Appropriately, the Department of Justice, as an institution, advised Congress on its positions. Now, however, we lend our collective voices based upon our individual experiences to the meaningful debates and efforts to accomplish appropriate criminal justice reforms.

While our experiences vary, we can agree that a shift in investigative and prosecutorial direction has occurred in the federal criminal justice system over the past 10-15 years. Rather than focusing valuable resources on the highest levels of criminal conduct, the reality is that today's federal system is often consumed with the pursuit of low level offenders who many recognize can and should be prosecuted by the states. Further, many of these low level offenders are being given extremely long sentences in federal prisons – sentences that too often do not match the gravity of the crimes committed.

The result, ironically, is a burgeoning prison population that, with its rising costs, is becoming a real and immediate threat to public safety. Department heads and congressional leaders have become painfully aware that the growing prison budget is consuming an ever-increasing percentage of the Department of Justice's budget. According to the Statement of the Department's Inspector General before Congress on March 14, 2013, concerning oversight of the Department of Justice:

...it is clear that something must be done... the Department cannot solve this challenge by spending more money to operate more federal prisons unless it is prepared to make drastic cuts to other important areas of the Department's operations.¹

Further, according to the Department's official viewpoint as of July 11, 2013:

Now with the sequester, the challenges for federal criminal justice have increased dramatically and the choices we all face – Congress, the Judiciary, the Executive Branch – are that much clearer and more stark: control federal prison spending or see significant reductions in the resources available for all non-prison criminal justice areas. If the current spending trajectory continues and we do not reduce the prison population and prison spending, there will continue to be fewer and fewer prosecutors to bring charges, fewer agents to investigate federal crimes, less support to state and local criminal justice partners, less support to treatment, prevention and intervention programs, and cuts along a range of other criminal justice priorities.

...taken together, reductions in public safety spending that have already occurred and that are likely to continue in the coming years mean that the remarkable public safety achievements of the last 20 years are threatened unless reforms are instituted to make our public safety expenditures smarter and more productive.²

We have no doubt current federal prosecutors and law enforcement officers are doing their best to make a difference and protect the public, just as many of us did when we served. But the system is at risk of becoming enslaved to policies and practices which create imbalance in the scales of justice.

We do not say this lightly. We say this as former prosecutors and government officials who very much valued our service within the federal government and count our years there among some of the best of our careers. It is our devotion to the law and the pursuit of justice that causes us to speak out and acknowledge the fact that a growing number of federal prisoners have been and continue to be negatively impacted by an ill-prepared justice system.

One can hardly expect current prosecutors to correct the problem from within. We know the position they are in as many of us have been there ourselves. Every day, these hard-working men and women zealously prosecute the cases that come across their desks. They are hardly in a place to observe the system objectively, let alone thoughtfully consider and voice opinions on how it should be changed. Current laws give federal prosecutors virtually complete control over the entire process. Federal prosecutors decide what to charge, who to charge, how many counts to charge, the terms of the plea agreement and all too often what the range of sentence will be.

It is our intention to highlight areas of concern and to engage at all levels necessary to assist in achieving meaningful criminal justice reform.

¹ <http://www.justice.gov/oig/testimony/t1303.pdf>. "Drastic cuts" in DOJ budgets may directly impact the investigative and prosecutorial resources in areas such as counterterrorism, cybercrimes, financial fraud, crimes against children, drug trafficking and other vital areas of current DOJ focus.

² <http://www.justice.gov/criminal/foia/docs/2013annual-letter-final-071113.pdf>

The federal criminal justice system needs to be reformed in two meaningful ways: first, on the front end, through a thoughtful editing and redrafting of current federal criminal laws and sentencing policies; second, on the back end, through a thoughtful implementing of corrections policy reforms designed to enhance public safety by improving the effectiveness and efficiency of the federal prison system in order to control corrections spending, manage the prison population, and reduce recidivism.

Because of immediate budget concerns, Congress should start by taking quick and decisive action to address the growing cost of the federal prison system and ensure that the Department of Justice can continue to run our prisons safely and securely without compromising the scope or quality of the Department's many other critical law enforcement missions.

In this direction, Congress should move swiftly to debate, markup and pass H.R. 2656, The Public Safety Enhancement Act, into law. This legislation will implement evidence-based prison reform strategies that are finding success in states like Texas, Ohio, Arkansas, Kentucky, Pennsylvania and North and South Carolina. Such strategies include the establishment of dynamic offender risk and needs assessment as the cornerstone of a more effective and efficient system; expansion of proven recidivism reduction programs in the prisons; incentivizing prisoners to participate in the programs they need; and rewarding those who actually complete these programs and reduce their individual risk of recidivism by providing them with the ability to earn time credits toward transfers into alternative, less-costly custody arrangements – such as halfway houses or home confinement – during the latter portion of their prison terms. We urge the Department of Justice to work with Congress to ensure this legislation will have the intended effect and begin to control the cost of the federal prison system.

At the same time, for the longer term, we also urge Congress, the Judiciary, and the Executive Branch to work together to perform fact-finding, identify and study the effects of the front-end policies that have created imbalance, and then develop thoughtful reforms that will allow us to achieve a more appropriate balance in the federal criminal justice system.

We hope to serve as resources in this process, so we can all – current and former servants of the law – do our part to ensure that justice shall be done.

Respectfully,

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