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July 12, 2013

The Hon Patti B. Saris, Chair
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Re: 2013-2014 Priorities

Dear Judge Saris:

I have an unusual recommendation to convey to the Commission for consideration in the 2013-2014 amendment cycle.

I applaud the Commission for its commitment to transparency in government for its preparation and dissemination of the annual Sourcebook of Federal Sentencing Statistics. I know of no other agency that makes such an effort to provide such a detailed picture of the *impact* of the agency's work. The data revealed in the Sourcebook ultimately reflects the decisions and activities of the federal courts and the criminal enforcement agencies of the U.S. Department of Justice, rather than the Commission's activities. Thus, I find the Sourcebook to be one of the best tools for trying to view how the Justice Department enforces the drug laws.

A cumulative analysis of all the sentences meted out, to whom, and on what grounds should help answer the question, "Is justice being done?" The answer to that question requires much more analysis of who is being prosecuted, what they did, and what sentence they received than is currently being provided. While many tables of the Sourcebook are interesting, such as the race of federal drug defendants (Table 34), or the drug offenders receiving mandatory minimums for each drug type (Table 43), I fear that much of the published data reveals very little that is meaningful to the general public or even for many criminal justice experts.

What is the goal of the Sourcebook and who are its audiences? The Sourcebook should explain to the public and the Congress who is being sentenced and in what way, and how the sentence was determined. I have found some of the data in the *Reports to Congress on Cocaine and Federal Sentencing Policy* to be much more helpful than the Sourcebook in understanding who is being sentenced. Publishing the most serious function of the various drug offenders, such as figure 2-4 (p.19) in the May 2007 Report to Congress, and the geographic scope of drug offenders, such as figure 2-7 (p.22) for all types of drugs, would be profoundly valuable in helping the Congress and the public understand the culpability of the population actually going to federal prison. Similar functional analysis of conduct available in presentence reports for other large classes of offenders would be equally helpful to understand who is sentenced, for what, why and for how long. In addition, publishing trend data would be very helpful.

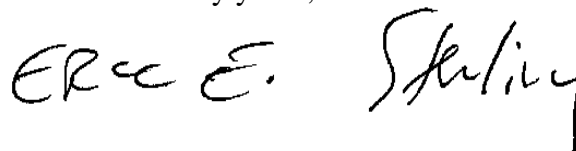
I suggest that every table ought to be accompanied by a paragraph that explains what the table illustrates, and why it is significant. If the data is worth reporting, it is worth interpreting. If the data is not important enough to interpret, perhaps it is not worth compiling or publishing.

Consider the data published in Appendix B of sentencing data on one page for each federal district. How is the current selection and presentation of data helpful to a Member of Congress, to the Judiciary Committee, a journalist, or the general public? Is it helpful to the judges of the district, the U.S. Attorney or the defense bar? Data on gender, race and ethnicity without a comparison to the gender, race and ethnicity of adults in the district reveal almost nothing. Consider the District of Maryland. What should I understand from the fact that 63.0 percent of sentenced defendants are Black? Sentencing information by primary offense reveals nothing really useful because nothing is revealed about the offenders and their conduct. What should I understand from the revelation that 43 of 944 defendants getting a prison sentence are getting a prison/community split?

Other data could be more revealing. When the Commission reports that only 189 of 381 sentenced drug traffickers in Maryland received a sentence of greater than 60 months, I might infer that a majority of the defendants were such minor offenders they did not qualify for the mandatory minimum sentence triggered by the smaller quantities in 21 U.S.C. 841(b)(1)(B). But without tying those sentences to substantial assistance departures or safety valve departures, for example I can't understand what this data really means.

The Commission's effort to thoroughly report to the public the nature of federal sentencing is very important. I urge the Commission to carefully examine how it can better meet the goals of such reporting and to redesign its annual Sourcebook of Federal Sentencing Statistics to better serve the public, Congress, the legal profession, and the relevant agencies.

Sincerely yours,

A handwritten signature in black ink that reads "Eric E. Sterling". The signature is written in a cursive, slightly slanted style.

Eric E. Sterling, J.D.
President