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I appear at the invitation of the Commission to discuss the impact of the Supreme Court's decision in United States v. Booker, 125 S. Ct. 738 (2005). I speak only for myself. Hoping that less in this circumstance is more, I will be brief and state in this single page what is most important to me.

First, by way of context, on a per-judge basis, our court has the 6th heaviest criminal caseload in the nation. As of January 2005, I had 220 pending criminal cases. Drug prosecutions comprise about 60% of that caseload, and methamphetamine cases comprise the great majority of those alleged drug crimes.

Second, I have previously explained why the United States Sentencing Guidelines should be given significant weight after Booker. See United States v. Wanning, 2005 WL 273158 (D.Neb. Feb. 3, 2005). To reiterate, the continuing consultation between Congress and the Commission mandated by 28 U.S.C. § 994 requires that a lot of weight be given the now advisory Guidelines because in that process all of the sentencing goals were to be harmonized in a way satisfactory to Congress. Particularly when it comes to predictive judgments, federal courts as a rule give Congress, and the agencies it creates, substantial deference. Under Booker or otherwise, there is no reason to withhold that customary respect from the advisory Guidelines.

More broadly, the Guidelines should be given great weight because: (1) there is no coherent alternative to them, and judges lack the ability to construct an entirely new unified theory that harmonizes in a rational way the sentencing goals articulated by Congress; and (2) while we judges may (as I do) disagree with our legislators over questions of harshness (e.g., "crack"), under Booker, Congress is the only body that has the Constitutional legitimacy to state and then implement (through the Commission it created) sentencing goals.

Regarding this latter point, the need for unelected, but life-tenured judges to define their roles narrowly in our democratic system is of critical and overarching importance. This is not because we fear Congress, but because we trust the Constitution. As the Booker decision reminded us, consistent with the Constitution, Congress may pick the "sentencing system" that it "judges best." Booker, 125 S. Ct. at 768. We must truly treat the Guidelines as advisory, with all of the discretion that the word "advisory" implies, because Booker said that we must. In that same vein, we also must give Congress the deference that Booker said Congress was due. Discretion and deference are not inconsistent.

Third, judges obviously know more about the individuals we sentence than many other people. However, the significance of this truism to the statutory goals of sentencing is often zilch. Indeed, the Commission's study of personal characteristics required by 28 U.S.C. § 994(d) renders knowledge of the offender helpful, but frequently not material to the statutory goals. Moreover, the importance of "knowing the person" is overstated by those who want excuses to do something different than what the Guidelines dictate. Give me most any (but not every) fact situation peculiar to one of the unfortunates that I sentence, and I bet that I can demonstrate to the objective listener that there is no plainly superior, principled reason why the advisory Guidelines should not be given decisive weight. Booker did not turn federal judges into Jesuits.

Finally, Congress and the Commission should go slow and see what happens. If most district judges exercise the restraint that I predict they will, and circuit judges use Guidelines-sensitive standards for the defiant, Booker will turn out to be, in the words of one famous federal prisoner, "a good thing."

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