

STATEMENT OF
LAWRENCE G. BROWN
ACTING UNITED STATES ATTORNEY
EASTERN DISTRICT OF CALIFORNIA
DEPARTMENT OF JUSTICE
BEFORE THE
UNITED STATES SENTENCING COMMISSION
REGIONAL HEARING ON
THE STATE OF FEDERAL SENTENCING
STANFORD LAW SCHOOL
PALO ALTO, CALIFORNIA

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Introduction

Mr. Chairman, thank you for the opportunity to appear before you today and provide input from my district on the impact of *Booker* and its progeny.

First, a few words about our district: the Eastern District of California runs from the California/Oregon border to the north to Bakersfield to the south, encompassing California's great Central Valley and the Sierra foothills. There are approximately 7.5 million residents, making us the 8th largest district by population in the nation. We encompass 34 of California's 58 counties, spanning 87,000 square miles.

The main federal courthouse is in Sacramento, with a branch courthouse in Fresno and magistrate courts in Yosemite, Bakersfield, and Redding. We have 12 district court judges and 10 magistrate judges.

The district has within it large urban communities, such as the locations I just mentioned (save Yosemite), as well as Vallejo, Stockton, and Modesto. We also have vast rural regions. As a result our local law enforcement and prosecutorial counterparts run from very large agencies to very, very small outposts. We have an outstanding relationship with these agencies and have become an important ally for them in targeting some of their worst offenders.

Our crime problems run the full spectrum. The region has large numbers of organized, violent criminal street gangs. While perhaps not as notorious as some of the gangs found in Los Angeles, they are just as ruthless. Places like Fresno, Vallejo, and Stockton are overrun with ethnic gangs. The level of violence and disregard for human life associated with many of these gangs are chilling.

There also is large scale drug trafficking within the district, with Interstate 5 running north and south throughout the entire length of the district, and Interstate 80 running east and west. Methamphetamine abuse and trafficking is particularly acute. As a result, our federal law enforcement agencies actively participate in numerous gang and gun task forces, including those under our Safe Streets and Project Safe Neighborhoods initiatives, as well as high intensity drug trafficking task forces.

We have been an important ally in these task forces because street criminals genuinely fear “going fed.” They know the sentences in the federal criminal justice system are generally lengthy and that they won’t serve their time reunited with their fellow gang members in a California state prison. I have been told firsthand of targets of gang sweeps laughing and joking

around as they are being transported en masse; that is until they realized that the bus in which they are riding had passed the exit for county jail and they figured out they were heading for federal court. The federal justice system has been a high impact system, with the mass volume of cases is handled locally. It has had such an impact, because there is certainty in the sentences imposed in federal court. With the sentencing guidelines now advisory, that certainty is very much in question.

Our district's enforcement challenges are by no means limited to controlled substances and violent crime. Our district has served as "ground zero" for mortgage fraud. Last year, our district returned 49 mortgage fraud indictments, more than any other district in the nation. The reasons are many, but suffice it to say that over half of the top 10 areas for home foreclosures nationwide are located in our district. For the past 18 months, our Sacramento office has headed up a mortgage fraud task force of federal, state, and local agencies and in the past six months we have established a similar task force in Fresno.

We are also home to the seat of state government, thus making public corruption and fraud against state agencies a major priority. Given the number of state prisons located in the district, we prosecute a large number of criminal alien cases, and have an approved "fast track" program for sentencing dispositions for certain immigration cases.

Finally, another significant area of criminal activity in our district involves the exploitation of children. For the past several years, our district has led the nation in the number

of indictments for such crimes as child pornography and the trafficking of children. There are significant task force efforts throughout the district, including two internet crimes against children task forces, or “ICACS.”

Now, as to the issue at hand: I think it is fair to state that the prosecutors in my office were not enthralled when the high court handed down the *Booker/Fanfan* decisions. Most of our office grew up under the guidelines system, and we valued the overall consistency promoted by them. We feared that with advisory guidelines, consistent and tough sentences would be lost.

With four years under our belts, in the parlance of our profession, it is fair to say the jury is still out. Certainly, consistency in sentencing has not entirely collapsed; the sky has not fallen in the Eastern District. The handling of cases has continued much the same way it had in the past. We have become more conversant in the § 3553(a) factors, and attorneys from my office have had to engage in greater sentencing advocacy. Sentences have remained substantially similar to what they would have been pre-*Booker*, though there is general consensus in the office that sentences have trended downward somewhat. That we haven’t seen wildly lower sentence is perhaps due to the relatively conservative composition of our judiciary and to the presence of statutory mandatory minimum sentences in narcotic trafficking cases and receipt, distribution and manufacture of child pornography. We would even concede that at times the flexibility afforded the courts has provided a welcome vehicle for helping to resolve a particularly nettlesome case.

There have been notable exceptions to these general patterns, however, particularly as it relates to possession of child pornography offenses. While guideline calculations may propel the offender to a sentencing range which at the low end calls for a sentence of 78 months, without the presence of minimum mandatory statutes, many judges have routinely imposed much lower sentences. As this practice began repeating itself, our office began more routinely charging receipt and distribution offenses, when such charges were available. These offenses generally carry a 60 month statutory minimum sentence.

Another area where deviations have arisen is in the corruption and white collar arenas. Last year, I co-tried *United States v. Julie Lee*, a corruption case involving a fund raiser who diverted \$125,000 of state grant funds to a statewide political campaign and then attempted to tamper witnesses when her scheme came to light. At the time of sentencing, she was age 62, a grandmother, and a community leader and activist. Given her role in the offense, the amount of loss, and obstruction, the low end of the applicable guideline range was 46 months. The probation department recommended the 46 month sentence. The defense argued for straight probation. This left my trial partner, who is chief of the criminal division, and me in a difficult spot. Given the judge we were before, and his more commonly lenient posture when it comes to sentencing, we knew that to argue the low end of the guideline range would largely absent us from his decision-making in the case. Hence, we made a tactical decision to advocate for 46 months, but in no event a sentence of less than 21 months. The court imposed a sentence of one year and a day. The sentence was largely derided as overly-lenient by observers.

I certainly recognize that the balancing of competing societal interests brought to bear in a sentencing framework is complicated. I applaud the commission for its ongoing efforts in this challenging and most important endeavor. Thank you again for the opportunity to address you.