

United States District Court
Middle District of Florida
80 North Hughey Avenue
Orlando, Florida 32801

Gregory A. Presnell
United States District Judge

407/835-4301

March 31, 2005

Paul I. Perez
Office of the United States Attorney
300 North Hogan Street, Suite 700
Jacksonville, FL 32202

Re: Booker forms

Dear Paul:

Thanks for taking the time to meet with me last week to discuss some of my concerns.

Among other things, we discussed my request for a copy of any Booker Sentencing Report forms that have been submitted to the Department of Justice pertaining to my cases. You stated that it was the department's policy to maintain these forms in confidence, and you therefore refused my request. You did indicate, however, that you would check with your supervisors in Washington to see if my request could be accommodated.

According to the memo of January 28, 2005 from Deputy AG James Comey, these forms are intended to assist the department to assess the impact of *United States v. Booker*, 543 U.S. ____, 125 S.Ct. 738 (2005), "based on accurate, real-time information in sentencing, in order to play an appropriate and effective role in the public debate." Since this information is the product of a public sentencing proceeding, and because most of this information is already compiled by the Sentencing Commission and available to the public, I do not understand the department's rationale of secrecy. It seems to me that if this information is to be used in formulating public policy, it should be transparent and available for public inspection, especially by those in a position to verify its accuracy (the judiciary).

The form itself is subject to differing interpretations. For example, it instructs U.S. attorneys to use the form if the court imposes a sentence outside the


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“appropriate” sentencing guideline range (unless the departure was requested by the government). But, who determines the “appropriate” guideline range? What if the AUSA disagrees with the court’s calculation of the range? Why are government-requested departures not included? Isn’t that a significant issue for inclusion in the “public debate”? Question No. 11 asks whether a statutory mandatory minimum required a higher sentence than the guideline range. But what about the safety valve, which specifically authorizes a lower sentence? Also, the form requires a narrative explanation of “the court’s rationale for sentencing outside the range. . .” What if the AUSA misinterprets or misstates the court’s rationale? Without transparency, the integrity of this information will be subject to question and the department’s role in formulating public policy will be diminished.

The Judicial Conference Committee on Criminal Law is presently working with the U.S. Sentencing Commission to revise the Statement of Reasons form which is attached to the judgment in every criminal case. The revised form will provide more post-*Booker* detail, so that the data collected, analyzed and reported by the Commission will be complete. See Memorandum from Hon. Sim Lake, attached.

In sum, there appears to be no legitimate reason for the Department of Justice to collect its own data. But, if it chooses to do so, the information collected should bear public scrutiny. Otherwise, one could reasonably infer that the department is pursuing an agenda which is not necessarily consistent with the public interest. I trust, therefore, that you will reconsider my request and send to me (and any other judge who so requests) a copy of these forms.

Sincerely,



Gregory A. Presnell

GAP/tkw

cc: Hon. Sim Lake
Hon. Ricardo H. Hinojosa
James B. Comey