

Letter to the Editor: Trump's Meddling Is Wrong, but so Are Overlong Sentences

While we former DOJ people are rightfully concerned about a president who is acting like a dictator and an attorney general who seems poised to do his bidding, we need to focus our efforts on the bigger picture of bringing real reform to our federal criminal justice system.

By Jeffrey Bornstein

I signed **the letter** as a former DOJ person protesting against President Donald Trump's brazen attempt to take over the DOJ. But I don't think that letter went far enough.

What is lost in the justified hysteria over President Trump's decision to interfere in the Roger Stone case and his bald-faced attempt to take over the Department of Justice is the fact that our federal criminal justice system is broken. In my view, the actual sentence given to Roger Stone—40 months—seems fair and reasonable; the original government request of seven to nine years seemed harsh. How the government justified its sentencing recommendation to try to make it comport with the rule of law was fascinating. The new prosecutors in that case urged the judge to take into consideration Stone's age, health, his



(Courtesy photo)

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nonviolent conduct, who the victim was and whether certain enhancements overlap with the offense conduct. All these factors can legitimately be brought to bear as part of a sentencing process, but in my 15 years as a defense attorney, I have rarely seen it done, especially in the current administration.

As a practical matter, there is little room for a line prosecutor to look at these individualized factors in any given case.

Regardless of whether the prosecutors modified their request under direct or indirect pressure from Trump, the lesson for me is that the federal system is in fact much too harsh

and the president is right to complain about it. The basic point is that even if one was to assume that the original sentencing recommendation was accurate based on the federal sentencing guidelines, it demonstrates a fundamental flaw in our criminal justice system: We are locking up too many people for too long. We are doing so in a way that creates a permanent underclass of convicted felons who are never able to fully repay their debt to society and regain their status, absent a presidential pardon. That is the fundamental issue that we as a society need to confront.

The United States incarcerates more people—especially young men of color—and for far longer than any other country in the world. And worse, once convicted, they are permanently branded with the stigma of being convicted felons. Think about that for a minute. No matter what you do in the rest of your life, you can never escape that label, at least in the federal system. You will have trouble getting a job, it is difficult to keep or obtain certain licenses, and you may even have difficulty finding a place to live. Many “felons” cycle back through the justice system while on years of federal supervision following a term of imprisonment, many

for minor offenses, like using marijuana, even in states where it’s legal. But even when a person makes it through years of supervised release or probation and is able to demonstrate compliance with all of the rules and regulations imposed by a court, that person will always remain a second-class citizen, because we provide no opportunity to allow people to earn back their rights or regain their status in our society.

While I am loath to say that Donald Trump is right about anything, he has stumbled onto the Achilles heel of our federal criminal justice system: We are never satisfied that a term of imprisonment or supervised release is enough, at least not enough to let people get on with their lives without the stigma of always being a convicted felon.

When federal prosecutors are required by their supervisors to advocate a within guidelines sentence, no matter what the person’s individualized circumstances, they are doing a disservice to the so-called rule of law that requires individualized sentences. When we as a society enact new reforms such as the First Step Act, that may give certain prisoners the right to earn good time credits through rehabilitation programs, we still make it difficult by limiting who

can benefit, what programs may be available and continuing to not address the elephant in the room: despite whatever efforts you may make to rehabilitate yourself, you never lose the federal label of being a convicted felon and as a result, a second class citizen.

So while we former DOJ people are rightfully concerned about a president who is acting like a dictator and an attorney general who seems poised to do his bidding, we need to focus our efforts on the bigger picture of bringing real reform to our federal criminal justice system. True reform means shortening sentences, helping people rehabilitate themselves and giving people incentives to erase the stigma of past bad acts by re-earning their place in our society. Otherwise, we are simply perpetuating injustice, albeit on a less arbitrary scale.

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