

DOJ Charging and Sentencing Policies: From Civiletti to Sessions



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I. Introduction

For nearly 40 years, a succession of United States Attorneys General have made their mark on federal criminal justice policy by issuing guidelines to prosecutors on what charges to bring and what sentences to seek. The current Attorney General is no exception. In May, Jeff Sessions issued a succinct one-and-a-half pager on these subjects. Although sparse in both content and guidance, it does resemble, in substance, the policies of prior Republican Administrations and reflects a notable break from the more lenient policies of a recent predecessor, Eric H. Holder, Jr. Of course, Mr. Sessions' directive to pursue more serious charges and higher penalties is not a surprise, given his recent statements about the need to aggressively pursue drug and violent offenders as well as the dozen years he served as the U.S. Attorney in a conservative state (Alabama).

Whether the latest iteration of DOJ charging and sentencing policy is a step in the right direction has been hotly debated, with constituents on both sides of the debate weighing in. A reliable answer may have to await information on how prosecutors actually carry out Mr. Sessions' high-level pronouncement in practice.

II. Charging Policies

"Pursue the most serious readily provable offense" is an apt summary of DOJ charging policy since at least 1980, when it was first formally promulgated. At that time, Attorney General Benjamin Civiletti issued a 56-page document entitled "Principles of Federal Prosecution," which became part of the U.S. Attorneys' Manual (Title 9, Chapter 27).² The document provided detailed guidance on charging, plea, and sentencing policies, along with explanatory commentary on these subjects. Indeed, the discussion of these subjects is abundant, providing a rich source of principles and policies that many of his successors have drawn upon in formulating their own.

The document provided that prosecutors "should" charge the "most serious offense" that is "likely to result in a sustainable conviction." Simple enough. But it also provided a laundry list of factors that would justify resolving a case based on a lesser charge: a defendant's cooperation and criminal history; the nature and seriousness of the offense; the defendant's remorse, contrition, and a willingness to accept responsibility; the government's desire for

a prompt and certain disposition; the likelihood of conviction at trial; the probable effect of a trial on witnesses; the probable sentence or other consequences of conviction; the public interest in a trial as opposed to a guilty plea; the expense of a trial and appeal; and the need to avoid a delay in the disposition of other pending cases.

Mr. Civiletti's policy on pursuing charges with mandatory minimum prison terms was premised on the now-antiquated notion that such cases were "rare." After all, this was 1980, four years before the enactment of the mandatory minimum drug crimes that have since consumed so much of the federal criminal docket and surrounding criminal justice policy debate. The policy provided that, although in many cases such charges were not "inappropriate," unusual mitigating circumstances might make such a charge so out of proportion to the seriousness of the offense that it might influence either the jury (in determining guilt) or the judge (in determining the admissibility of evidence), and thus justify considering whether non-mandatory minimum charges would be more appropriate.

Nine years later, Attorney General Richard Thornburgh issued his own written policy on these subjects. Entitled "Plea Bargaining Under the Sentencing Reform Act,"³ it set forth DOJ charging and sentencing policy in the wake of the U.S. Supreme Court's decision in *Mistretta v. United States*⁴ upholding the constitutionality of the U.S. Sentencing Commission, which, five years earlier, promulgated the original version of the U.S. Sentencing Guidelines.

Tweaking Mr. Civiletti's formulation, Mr. Thornburgh's policy stated that prosecutors "should initially charge the most serious, readily provable offense." However, the policy provided several examples of circumstances justifying a different outcome. In particular, the policy permitted prosecutors to resolve a case for something other than the most serious readily provable charge if, due to a change in the evidence or the need to protect a witness' identity, a charge was no longer "readily provable" or the "indictment exaggerate[d] the seriousness of an offense." A similar result was permitted if the Guideline range would be unaffected. And the policy included a catch-all grant of authority not to pursue the most serious readily provable charge if a supervisor approved it, based on reasons documented in the case file. Although a seemingly broad exception to the policy, the examples all revolved around

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government resources. Thus, readily provable charges could be abandoned if the U.S. Attorney's Office was overburdened, or if the case would be time-consuming to try, or if trying the case would significantly reduce the number of cases disposed of by the office.

Attorney General Janet Reno's 1993 charging policy, like those of her predecessors, provided that prosecutors "should initially charge the most serious, readily provable offense."⁵ But the policy's articulation of exceptions suggests a more flexible approach. Like the Thornburgh memo, it permitted prosecutors to drop the most serious charge based on resource considerations, as well as when it was determined that an indictment exaggerated the seriousness of the offense. But the policy went further, stating that prosecutors should undertake an "individualized assessment of the extent to which particular charges fit the specific circumstances of the case, are consistent with the purposes of the Federal criminal code, and maximize the impact of Federal resources on crime." So too with crimes carrying a mandatory minimum prison term: in such cases, the policy authorized prosecutors to consider whether pursuit of such charges was "proportional to the seriousness of the defendant's conduct, and whether the charge achieves [the] purposes of the criminal law." Both of these principles seem logical, if not obvious—and thus their explicit inclusion suggests a desire to empower prosecutors to exercise their sound discretion to avoid unjust outcomes.

Ten years later, DOJ's charging policy took a notable turn toward a stricter, harsher approach. Attorney General John Ashcroft's 2003 memo, "Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing," provided that prosecutors "must" (not "should") charge and pursue "the most serious, readily provable offense."⁶ The exceptions to that directive were more specific than in prior policies, and limited both in number and scope. A prosecutor was authorized to decline to follow the policy if the sentence would be unaffected; if the case was part of a so-called "fast-track" program, used by certain districts flooded with a high volume of particular cases (most notably, immigration cases in southwest border districts); in "rare circumstances" when necessary to secure a defendant's cooperation in an important case; and in other "rare" and "exceptional" cases with written supervisory approval (including, as examples, the same resource-driven factors cited by Mr. Ashcroft's predecessors). Significantly, gone from Mr. Ashcroft's policy was the discussion of "individualized assessment" of a case, or an indictment "that exaggerates the seriousness of the offense," or a balancing of factors for mandatory minimum charges.

Nor did the Supreme Court's 2005 decision in *United States v. Booker*,⁷ which salvaged the constitutionality of the Sentencing Guidelines by rendering them advisory, alter the DOJ's charging policy. Indeed, 16 days after *Booker*, Deputy Attorney General James Comey issued a memo of his own, making clear that, notwithstanding *Booker*,

prosecutors "must continue to charge and pursue the most serious readily provable offenses."⁸

There matters stood until 2010, when Attorney General Eric H. Holder, Jr., reverted back toward the policy of Ms. Reno. Mr. Holder's policy, "Department Policy on Charging and Sentencing,"⁹ stated that prosecutors "should ordinarily" (not "must") charge the "most serious offense that is likely to result in a sustainable conviction" and resurrected the "individualized assessment" principle, stating that prosecutors should carry out an assessment of the facts of a case, community needs, and federal resources and priorities. Notably, the policy expressly superseded those of Messrs. Ashcroft and Comey.

Three years later, Mr. Holder brought similar principles to bear with respect to mandatory minimum crimes. His 2013 memo, "Department Policy on Charging Mandatory Minimum Sentences and Recidivist Enhancements in Certain Drug Cases,"¹⁰ authorized prosecutors to not pursue mandatory minimum charges against low-level drug offenders if the offense did not involve violence, weapons, death, serious bodily injury, or minors, and if the defendant had no significant criminal history (meaning, in general, fewer than three criminal history points under the Guidelines). To be sure, Mr. Holder acted against the backdrop of starkly increased numbers of mandatory minimum offenders: from 40,104 in 1995, to 111,545 just 15 years later. His policy was plainly designed to stanch, if not reverse, that trend. And it appears to have had its desired effect: the percentage of federal drug offenders sentenced without a mandatory minimum rose from 40 percent (in 2012) to 54 percent (in 2015); likewise, the percentage of drug offenders with two criminal history points sentenced without a mandatory minimum increased from 44 percent (in 2012) to 64 percent (in 2015).

Attorney General Sessions' May 2017 policy¹¹ takes the DOJ back in the direction of the Ashcroft memo, though not all the way back. It provides simply that prosecutors "should charge and pursue the most serious, readily provable offense," including offenses with mandatory minimums and that carry the highest Guideline range. Rather than provide specifics on when deviations are warranted, the policy merely states that "[t]here will be circumstances in which good judgment would lead a prosecutor to conclude that a strict application of the above charging policy is not warranted." It then states that a prosecutor may decline to follow the policy based on "unusual facts"—a phrase that is neither defined nor illustrated by examples—and if the decision is approved by a supervisor and documented. But by explicitly rescinding Mr. Holder's mandatory minimum charging policy, Mr. Sessions' policy plainly signals an intent to return to an era when mandatory minimum charges were the order of the day. And until any clarifying pronouncement is issued (the policy authorizes the Deputy Attorney General to issue one, but he hasn't yet), prosecutors will be left to navigate their way through the seemingly limited guidance provided by the policy.

III. Sentencing Policies

The to-and-fro of the DOJ's charging policies over the years is, in general, replicated in its sentencing policies.

Mr. Civiletti's policy bespeaks the pre-Guidelines era, when judges dominated the sentencing decision-making process with virtually unlimited discretion. The policy emphasized that sentencing was primarily the judge's responsibility and that the prosecutor's job was to make sure that all relevant facts were provided to the court. The policy authorized prosecutors to make a sentencing recommendation only if it was required by a plea agreement (a so-called 11(c)(1)(B) plea) or in an unusual case in which the public interest warranted it—and even then, only after taking into account the desirability of “maintaining a clear separation of judicial and prosecutorial responsibilities.”¹² Indeed, the policy explicitly directed prosecutors to avoid routinely taking positions on sentencing.

Mr. Thornburgh's Guidelines-era sentencing policy was, not surprisingly, Guidelines-centric, but sparse. The policy provided that supervisory approval was required for a prosecutor to seek any departure not set forth in Chapter 5, Part K, of the Guidelines. Limited guidance indeed, albeit for a sentencing regime that, at the time, had been in effect for little over a year.

Ms. Reno's policy carried forward elements of the policies of her predecessors. Like Mr. Civiletti's policy, Ms. Reno's policy provided for prosecutors to make sentencing recommendations when required by a plea agreement or when the public interest warranted it. As to the latter, the policy noted that, even under the Guidelines, a prosecutor “still has a significant role to play in making appropriate recommendations”¹³ with respect to both sentences within the Guideline range as well as departures. Little guidance was provided on when departures were appropriate, other than a reminder of the Guidelines' purpose—to avoid unwarranted sentencing disparity—and an instruction that prosecutors “should resist” a departure based on a reason not allowed by the Guidelines.

Mr. Ashcroft's policy allowed less room for prosecutorial discretion. Downward departures from the Guidelines were authorized only for cooperators, fast-track program defendants, and in other, undefined “rare” cases, and only with supervisory approval. Moreover, the policy followed on the heels of a separate memo, “Department Policies and Procedures Concerning Sentencing Recommendations and Sentencing Appeals,”¹⁴ which introduced a detailed reporting regime in which prosecutors were required to notify Main Justice in Washington, D.C., of a wide variety of adverse sentencing decisions—primarily, those involving downward departures granted over the government's objection. Read together, these policies were designed to significantly limit non-government-sponsored downward departures and to closely monitor—and, where appropriate, challenge—the courts that granted them.

This approach persisted after *Booker* rendered the Guidelines advisory. Deputy Attorney General Comey's memo directed that prosecutors “must actively seek”

a Guideline sentence “in all but extraordinary cases” and that supervisory approval was required to agree to a sentence outside the Guideline range.

But with five years of an advisory Guideline regime, the lexicon of federal sentencing—and DOJ policy—shifted again. The so-called § 3553(a) factors (set forth in 18 U.S.C. § 3553(a)) became paramount, with the Guidelines providing only an initial, non-binding starting point for determining what the sentence should be. That said, the DOJ, even under Mr. Holder's 2010 policy, made clear that, in seeking sentences consistent with § 3553, the Guideline range would still reflect the appropriate sentence in “the typical case” and that prosecutors “should generally continue to advocate for a sentence within that range.”¹⁵

Having said that, Mr. Holder's policy also recognized that, given the advisory nature of the Guidelines, sentencing advocacy (like charging decisions under his and Ms. Reno's policies) must be based on “an individualized assessment of the facts and circumstances of each particular case.” Beyond that, the policy's guidance was limited to requiring that a prosecutor's request for a departure or (in post-*Booker* parlance) variance be based on “specific and articulable factors” and approved by a supervisor. In short, it left prosecutors with ample room to maneuver through Guideline sentences they viewed as unduly harsh.

Mr. Holder's 2013 memo also addressed sentencing in mandatory minimum cases. The policy provided that, even where a prosecutor pursued a mandatory minimum charge, if the Guideline range was greater than the mandatory minimum sentence, the prosecutor should consider whether a below-Guidelines sentence was sufficient. In other words, the policy authorized prosecutors to treat a mandatory minimum prison term not only as a floor but also, in certain cases, potentially as a ceiling.

Mr. Sessions' recent policy did away with Mr. Holder's mandatory minimum policy. And although it did not explicitly rescind Mr. Holder's 2010 charging and sentencing policy, it does not contain any reference to engaging in an “individualized assessment” of sentencing factors, or authorizing departures or variances based on “specific and articulable facts.” That said, the policy—consistent with Mr. Holder's—provides that a Guideline sentence will be the appropriate sentence in “most” cases and allows for exceptions in “unusual cases” with supervisory approval and documentation of the reasons. Semantics aside, the two policies are not all that different, except when it comes to mandatory minimums: Mr. Holder's policy encouraged not pursuing them in a broad category of cases, while Mr. Sessions' policy essentially does the opposite.

IV. The Sessions Memo: Pros and Cons

Promulgation of the latest DOJ charging and sentencing policy has prompted vigorous reactions from both supporters and detractors. Its detractors have focused in particular on drug cases. This comes as no surprise. Drug cases account for 32 percent of the federal criminal docket and two-thirds of all mandatory minimum cases. They have

become the focal point of those who have decried the ever-longer prison terms meted out to low-level drug offenders and the resulting overpopulation of our prisons. Representatives of every major stakeholder in the criminal justice process—and from both sides of the political and ideological aisle—have advocated for reform. Mr. Holder’s description of the issue sums it up well: when announcing his 2013 policy on mandatory minimums, he stated that in our country “[t]oo many Americans go to too many prisons for far too long, and for no truly good law enforcement reason.”¹⁶

The Sessions policy, for them, is the DOJ regressing. As the National Association of Defense Lawyers put it, prosecutors “are now required in every case mindlessly to seek the maximum possible penalty.”¹⁷ To them, the policy “resurrects the failed one size fits all approach to criminal justice of prior Administrations.” Somewhat more temperately, Judge John Koeltl of the Southern District of New York, in a recent column, pointed out the unfair nature of mandatory minimum sentences (he did call the system that produces them “deplorable on so many levels”) and advocated an approach that focuses instead (as § 3553 does) on having sentences “not greater than necessary to accomplish the legitimate purposes of sentencing.”¹⁸ Perhaps not surprisingly, some of the harshest criticism came from Mr. Holder: describing the policy as “dumb on crime,” he opined that this “absurd reversal” in DOJ policy was “driven by voices who have not only been discredited but until now have been relegated to the fringes of this debate.”¹⁹

Supporters of the policy, on the other hand, have hailed it as a return to much-needed aggressiveness in combating crime—particularly drug offenses and violent crime. Indeed, Mr. Sessions himself paved the way for this policy with a memo he issued two months before, in which he directed prosecutors to focus aggressively on prosecuting violent crime and the drug trafficking that often accompanies it.²⁰ That, in turn, was consistent with criticism of proposed legislation that, like Mr. Holder’s policy, sought to limit the impact of mandatory minimums. In letters to Congress, numerous former high-ranking DOJ prosecutors argued that such measures would endanger public safety and make it harder for prosecutors to get drug offenders to cooperate and help them build cases against the leaders of drug organizations and gangs.²¹ Other federal law enforcement organizations echoed these concerns, also arguing that the proposed legislation was based on the “myth and misunderstanding” that the federal prison population was exploding and ignored the recent rise in drug epidemics and violent crime.²² Similar concerns were even expressed in writing by members of Congress—including then-Senator Sessions—to their own colleagues.²³

The National Association of Assistant United States Attorneys, the union representing just over a quarter of federal prosecutors, also had Mr. Sessions’ back. In applauding his new policy, the union stated that mandatory minimums helped reduce the crime rate in the 1980s and

1990s, and that it was not a coincidence that crime rates recently increased at the same time that prison populations started to decline.²⁴ And in response to a *Washington Post* editorial critical of the new policy, the author of the “Crime and Consequences” criminal law blog made the separation-of-powers point that mandatory minimums are a creature of Congress, and that prior policies that allowed for more selective pursuit of such charges was “less compassion than usurpation.”²⁵

Interestingly, in a recent decision upholding a life sentence for a web-based drug dealer, the Second Circuit (in upholding that sentence) noted that “[n]o federal judge needs to be reminded of the tragic consequences of the traffic in dangerous substances on the lives of users and addicts, or of the risks of overdose and other ramifications of the most dangerous of illegal drugs.” The court further stated that such consequences “constitute a principal justification advanced for the extremely lengthy sentences provided by federal statutes and sentencing guidelines for trafficking in illegal substances.”²⁶ Although not an endorsement of the Sessions memo, it certainly acknowledges, if not legitimizes, some of the considerations that animate it.

What impact the new policy will have on charging and sentencing practices remains to be seen. To begin with, the policy gives little specific guidance on when it may be overridden. But examples abound. One could easily justify continuing fast-track programs in districts with high volumes of immigration or even drug cases, for the same reasons they were expressly authorized even under the stricter policies of Mr. Ashcroft. Offenders could be prosecuted, meaningful (even if not maximum) punishment imposed, and resources would be freed up to pursue more serious forms of modern-era federal crime, such as terrorism and cybercrime. Similarly, certain considerations have long justified departure from “standard” DOJ charging policies: weaknesses in the evidence; protecting sensitive witnesses or informants or preserving them for more significant cases; global plea agreements in complex, time-consuming, multi-defendant cases; and factors that satisfy one or more of the many stated grounds for departure under the Guidelines, to name a few.

In drug cases, Congress itself has provided a remedy for many defendants for whom a mandatory minimum sentence would be unduly harsh: the safety valve, codified at 18 U.S.C. § 3553(f). Enacted in 1994, it provides a way for a low-level, non-violent, first-time drug offender to receive a sentence below the mandatory minimum. Indeed, in 2012, the year before Mr. Holder’s mandatory minimum policy took effect, 24 percent of all drug offenders convicted of mandatory minimum offenses received non-mandatory minimum sentences because of the safety valve. Indeed, these defendants bear a striking resemblance to those intended to be benefitted by Mr. Holder’s mandatory minimum policy.

Together with drug offenders who cooperate, nearly 40 percent of defendants convicted of mandatory minimum charges do not receive a mandatory minimum sentence.

Mr. Sessions' new policy does not change that, and with good reason: with cooperating defendants, DOJ presumably has little incentive to change that; with safety valve defendants, DOJ is not in a position to override Congress.

Other recent legislative measures also have taken at least some of the sting out of drug sentences. For example, the Fair Sentencing Act of 2010 lowered the penalties for crack cocaine offenses. And, without Congressional objection, the U.S. Sentencing Commission has, over the last few years, lowered in various ways the Guideline ranges for drug offenses: for example, providing a lower base offense level for less culpable participants in high-quantity drug cases (2D1.1(a)(5)) and a six-level reduction for minimal participants with specified mitigating factors (2D1.1(b)(16)). Indeed, the Commission not only has incorporated the statutory safety valve criteria into the Guidelines, but also has provided (under 2D1.1(b)(17)) a two-level offense-level reduction for those defendants who qualify.

In short, there is at least some reason to believe that the Sessions policy's detractors may be overstating the case for how much it will alter current charging and sentencing practices, at least for low-level, non-violent drug offenders. But Mr. Sessions' policy does not stop there; it applies to *all* federal crimes. Thus, for example, the memo may have more significant consequences for white collar defendants, who do not generally face mandatory minimums but have endured a steady escalation in recommended Guideline punishment. So too for child pornography defendants, some of whom face mandatory minimums but do not have a safety valve to rescue them from otherwise-harsh sentences. And if the DOJ carries out, through criminal enforcement, the current Administration's pronounced desire to crack down on illegal immigration, the Sessions memo's impact could be significant; 29 percent of all federal criminal cases are based on immigration violations.

For many such defendants, their main place of refuge from current DOJ policy may be the same one they have turned to since the Guidelines took effect, and especially since *Booker*: the judiciary. Absent an immovable mandatory minimum, a judge is now empowered to impose a non-Guideline sentence so long as it is "reasonable"—a standard that has proved quite elastic in practice. And courts have employed this discretion to significant effect, imposing non-Guideline sentences 50 percent of the time (29 percent with government support, 21 percent without it). This is a major difference between the impact of Mr. Ashcroft's pre-*Booker* policies (when the Guidelines reigned supreme) and the potential impact of the Sessions memo.

As with any new policy, time will tell the extent to which the Sessions memo alters the landscape of federal charging and sentencing. This is because that impact will be affected by any yet-to-be-issued additional guidance, the behavior of prosecutors in the trenches, and the reaction of other branches of government—all of which are currently unknown. But there is good reason to expect that the policy's impact may leave both its proponents and detractors less than entirely satisfied—which may be the best one can

hope for in our current, increasingly divisive criminal justice climate.

Notes

- ¹ Alan Vinegrad, former U.S. Attorney for the Eastern District of New York, is a partner at Covington & Burling LLP.
- ² Benjamin Civiletti, *Principles of Federal Prosecution*, in *Offices of the United States Attorneys*, U.S. Attorneys Manual, Title 9, Ch. 27 (updated Jan. 2017), <https://www.justice.gov/usam/usam-9-27000-principles-federal-prosecution>.
- ³ Memorandum from Attorney General Richard Thornburgh, on Plea Bargaining Under The Sentencing Reform Act, to Federal Prosecutors (Mar. 13, 1989), *reprinted in* 6 Fed. Sent'g Rep. 347 (1994), WL 440704.
- ⁴ *Mistretta*, 488 U.S. 361 (1989).
- ⁵ Memorandum from Attorney General Janet Reno, on Principles of Federal Prosecution, to Holders of U.S. Attorneys' Manual, Title 9 (Oct. 12, 1993), *reprinted in* 6 Fed. Sent'g Rep. 352 (1994), WL 440706.
- ⁶ Memorandum from Attorney General John Ashcroft, on Department Policy Concerning Charging of Criminal Defendants, Disposition of Charges, and Sentencing, to All Federal Prosecutors (Sept. 22, 2003), https://www.justice.gov/archive/opa/pr/2003/September/03_ag_516.htm.
- ⁷ *Booker*, 543 U.S. 220 (2005).
- ⁸ Memorandum from Deputy Attorney General James Comey, on Department Policies and Procedures Concerning Sentencing, to All Federal Prosecutors (Jan. 28, 2005), *cited in* Holder 2010 memo, *infra* note 9.
- ⁹ Memorandum from Attorney General Eric Holder, on Department Policy on Charging and Sentencing, to All Federal Prosecutors (May 19, 2010), https://www.ussc.gov/sites/default/files/pdf/training/annual-national-training-seminar/2014/DOJ_memo.pdf.
- ¹⁰ Memorandum from Attorney General Eric Holder, on Department Policy on Charging Mandatory Minimum Sentences and Recidivist Enhancements in Certain Drug Cases, to the U.S. Attorneys and Assistant Attorney for the Criminal Division (Aug. 12, 2013), <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/ag-memo-department-policy-on-charging-mandatory-minimum-sentences-recidivist-enhancements-in-certain-drugcases.pdf>.
- ¹¹ Memorandum from The Attorney General, on Department Charging and Sentencing Policy, to All Federal Prosecutors (May 10, 2017), <https://www.justice.gov/opa/press-release/file/965896/download>.
- ¹² Civiletti, *supra* note 2.
- ¹³ Reno memo, *supra* note 5.
- ¹⁴ Memorandum from Attorney General John Ashcroft, on Department Policies and Procedures Concerning Sentencing Recommendations and Sentencing Appeals, to All Federal Prosecutors (July 28, 2003), <https://www.justice.gov/sites/default/files/ag/legacy/2009/03/20/ag-072803a.pdf>.
- ¹⁵ Holder 2010 memo, *supra* note 9.
- ¹⁶ Attorney General Eric Holder, Remarks at the Annual Meeting of the American Bar Association's House of Delegates (Aug. 12, 2013).
- ¹⁷ News Release, National Association of Defense Lawyers, U.S. Attorney General Jeff Sessions Issues Retrograde Charging Policy; Seeks Return to 20th Century's So-Called "War on Drugs" and the Age of Mass Incarceration (May 12, 2017).
- ¹⁸ J. Koeltl, *The Perils of Mandatory Minimums*, N.Y. L.J. (July 18, 2017), <http://www.newyorklawjournal.com/id=1202793265349/The-Perils-of-Mandatory-Minimums?slreturn=20170814180334>.
- ¹⁹ Statement by Former Attorney General Eric Holder (May 12, 2017), <https://static1.squarespace.com/static/58cc48e69d>

- e4bb535aec1586/t/5915f21be58c62dc84cec466/1494610486385/Former+AG+Eric+Holder+Response+to+AG+Jeff+Sessions.pdf
- ²⁰ Memorandum from Attorney General Jeff Sessions, on Commitment to Targeting Violent Crime, to All Federal Prosecutors (Mar. 8, 2017), <https://www.justice.gov/opa/press-release/file/946771/download>.
- ²¹ Letter to The Honorable Harry Reid and The Honorable Mitch McConnell, on Federal Criminal Sentencing Reform (May 12, 2014), <https://www.judiciary.senate.gov/imo/media/doc/Hatch%20Record%20Submission.pdf>.
- ²² “Dear Senator” letter from NAAUSA Coalition, on Sentencing Reform and Corrections Act (S. 2123) (April 11, 2016), <https://www.naauusa.org/site/index.php/resources/letters/121-apr-2016-coalition-letter-on-srca-revisions/file>.
- ²³ “Dear Colleague” letter from U.S. Senators Chuck Grassley, John Cornyn, and Jeff Sessions, on Heartland Senators’ Opposition to the Smarter Sentencing Act (May 2014), <http://www.crimeandconsequences.com/crimblog/2014/05/do-heartland-republicans-oppos.html#more>.
- ²⁴ Kristina Davis, *Federal prosecutors union backs Attorney General Sessions’ tough stance*, San Diego Union-Tribune (May 27, 2017), <http://www.sandiegouniontribune.com/news/courts/sd-me-prosecutor-union-20170526-story.html>.
- ²⁵ Bill Otis, *Restoration of Honesty: Jeff Sessions’ Charging Instructions*, Crime and Consequences Blog (May 18, 2017, 7:48 PM), <http://www.crimeandconsequences.com/crimblog/2017/05/>.
- ²⁶ United States v. Ulbricht, No. 15-1815, slip op. at 117 (2d Cir. May 31, 2017).