

November 15, 2004

The Honorable Orrin G. Hatch
Chairman
Senate Judiciary Committee
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Patrick J. Leahy
Ranking Minority Member
Senate Judiciary Committee
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Re: Federal Sentencing Guidelines

Dear Senators Hatch and Leahy:

The undersigned organizations write to express our strong opposition to the enactment of stop-gap sentencing legislation during the few remaining days of the 108th Congress.

On July 13, 2004, your Committee held a hearing at which representatives of the Justice Department, the U.S. Sentencing Commission, the Federal Judges Association and other knowledgeable observers testified about the impact of the Supreme Court's decision last term in *Blakely v. Washington* on the federal sentencing system. There was broad agreement that Congress should refrain from enacting a short-term "fix" in response to *Blakely* and should instead allow judges, prosecutors and defense attorneys to sort out the impact of *Blakely* on federal sentencing while long-term changes are under review. Since then, the federal criminal justice system has addressed the *Blakely* decision with minimal disruption.

As you know, the Supreme Court is currently considering two cases (*U.S. v. Booker* and *U.S. v. Fanfan*) that will determine whether *Blakely* applies to the federal sentencing guidelines. It is certainly premature for Congress to enact sentencing legislation before the Court issues an opinion in *Booker* and *Fanfan*. But even if the Court decides these cases prior to the end of the 108th Congress and if the decision renders the guidelines invalid in whole or in part, a hasty legislative reaction is unwarranted. Any congressional response to such a ruling will have far-reaching consequences and should be the product of a thoughtful, deliberative, and informed process that takes into account the views of the judiciary, the Sentencing Commission, criminal justice practitioners, academic experts and the public.

Those who fear uncertainty following *Booker* should take comfort from the manner in which the lower federal courts have handled post-*Blakely* issues absent any guidance from the Supreme Court. Moreover, if the Supreme Court invalidates the guidelines, it will surely provide federal courts with any needed guidance about how to impose sentences in light of the opinion. There is no reason to doubt that the federal criminal justice system will operate with continuity and stability. In contrast, a hastily constructed interim system would be disruptive and may present difficult ex post facto issues.

We therefore urge that Congress refrain from acting in advance of the Supreme Court's decisions in *Booker* and *Fanfan*, and that following issuance of the decisions you set in motion an open, deliberative process to develop options for consideration by the 109th Congress. If there are to be significant changes to the federal sentencing system, it is more important that Congress get it right than to do it quickly.

Thank you for your consideration of our request. If you have questions or would like more information, please contact Julie Stewart, FAMM President, at (202) 822-6700.

Sincerely,

Julie Stewart
Families Against Mandatory Minimums (FAMM)

Laura Murphy
ACLU

Frederick J. Krebs
Association of Corporate Counsel
(formerly the American Corporate Counsel Association)

Daniel J. Popeo
Business Civil Liberties, Inc.

Wade Henderson
Leadership Conference on Civil Rights

Barry Scheck
National Association of Criminal Defense Lawyers

cc: Full Committee on the Judiciary