

“Open Letter – Black Law Students Association”

Dear Sisters and Brothers of the National Bar Association(NBA) and National Conference of Black Lawyers (NCBL),

On behalf of all of us that inherently benefit from the sacrifices and efforts of your courageous work, I thank you and implore you all to continue to defend the rights of all of us that are entitled to the protections of The United States Constitution. In this open letter, it is my intention to shine an investigative light on an egregious injustice that affects a multitude of federal prisoners, and has the potential to affect an untold number of citizens of the U.S. In fact, this injustice of sentencing defendants in federal courtrooms for conduct that is either “uncharged,” “dismissed,” or “acquitted,” is not a new practice in federal courtrooms, it dates back 40 years. Has not the time come for this practice to stop?

In the words of D.C. Circuit Judge Patricia Millett, "Allowing the government to lock people up for a discrete and identifiable term of imprisonment for criminal charges rejected by a jury is a dagger pointed at the heart of the jury system and limited government." Her words give hope to what the jury system could one day be, but at this time, unfortunately, many U.S. citizens that are marched into federal courtrooms across the country never get the justice The Constitution intended to give them.

In the American justice system judges are mandated to be the shields and swords of the U.S. democracy. The authority of an American Judge is to represent “We The People,” but since America's declaration of the "War on Drugs" in the 1980s, Federal Judges have abetted in a corruption of justice that consequently contributed to a systematic massive incarceration of people of color. Federal Sentencing Guidelines have been used to not only circumvent Constitutional protections, but also give the government a second chance at incarceration even after a jury has rejected charges against a defendant. In essence, for the government to use acquitted conduct to hand out severe punishment—above the sentencing guideline range—renders the whole U.S. jury system a “sideshow,” as Judge Millett wrote in one of her opinions about the above matter.

Judges are the most powerful public officials in America. They have the power to review legislative acts and declare such acts unconstitutional. They also inform the Presidents on what he can and cannot do according to mandated law. Everything about the quality of justice depends upon the edicts and rulings of judges based upon the bylaws of principles and rules written in the U.S Constitution.

Under the U.S. Constitution's 5th Amendment, it states that "no person shall be held to ANSWER for a capital, or otherwise infamous crime, unless on a presentment or

indictment of a Grand Jury...Nor be DEPRIVED of life, liberty, or property, without due process of law" that, subsequently, results in either a plea of guilty by the defendant, or be determined guilty by a jury of its peers. No courts should have jurisprudence to impose a sentence for a crime, especially when it abridge an individual's inalienable human rights of life, liberty, and the pursuit of happiness.

However, federal law inexplicably allows judges to impute uncharged, dismissed, and acquitted crimes to enhance sentences above the gravity of the guideline range of the actual conviction. Clearly, this unconstitutional practice nullifies the bulwark of the 5th Amendment's guarantee as well as infringes on the 6th Amendment right to a "trial by jury." A trial by jury is meant to serve as a safeguard against any attempt to employ the courts as an instrument of persecution. The general application is that an unconstitutional statute, though having the form and name of law, confers no civil rights, duties, and affords no protection. When a judge denies criminal defendants of their equal protection and rights, embodied in the U.S. Constitution, it manufactures registry of prejudice and a corruption of justice. If what the jury says after trial has no weight in the sentencing process how can we say, with any truth, that the jury system is even in effect in federal courtrooms today. Referring back to Judge Millett opinion, she said, "... In a constitutional system that relies upon the jury as the great bulwark of our civil and political liberties, allowing courts at sentencing to materially increase the length of imprisonment based on conduct for which the jury acquitted the defendant guts the role of the jury in preserving individual liberty and preventing oppression by government."

In a long line of precedents, starting with *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and extending to *Alleyne v. United States*, 570 U.S. 99, 114-16 (2013), and *Burrage v. United States*, 571 U.S. 204, 210 (2014), the Supreme Courts has confirmed that the Constitution requires that "statutory penalties" be determined only by elements of an offense, which must be charged by a grand jury, submitted to a jury, and proven (or admitted) beyond a reasonable doubt. This begets the question as to how is it that even still Federal Judges undermine the "High Court."

Obviously, there is a disconnect between "Federal Judges" and their oath to uphold, defend, and enforce the U.S. Constitution. The idea of objectivity and impartiality seem to be loss virtues among Federal Judges. It is written into the U.S. constitution that a Federal Judge is appointed for life, therefore they can suffer no serious reprisals for a constitutional error. The establishment of a Federal Judges' nomination for life goes unchallenged because it is grounded in the bedrock of our established Constitution; it was written, thus it is law. There is not a multiple choice option for which laws American citizens can choose to abide and follow. However, why is it that Judges do not abide by these same written laws established by the Founding Fathers? Judges have opposed being proponents of justice, abandoning their responsibilities by acting as instruments of persecution. We the People have put our trust in Federal Judges to support and uphold our rights; any unconstitutional wrong is a misuse of trust. If there's to be a change in the justice system, it must be born from the Judges we trust and have appointed for life. When the government can manipulate the courts, and control both the law and evidence, the issue of fact becomes virtually irrelevant. As a result, TRUE JUSTICE

would be denied, leaving criminal defendants with a trial by the government, and not a trial by jury.

The bedrock principle of the "Criminal Justice System" is that defendants are "innocent until proven guilty beyond a reasonable doubt." However, the corruptive practice of using uncharged, dismissed, and acquitted conduct to heighten the punishment is paradoxical, suggesting that "defendants are guilty until proven innocent."

This "Corruption of Justice" being used as a matter of law has prevailed for almost 40 years, and has legitimized the worst form of race discrimination and mass incarceration in America's history. These practices have gone unchecked for far too long. Even some judges and politicians, those that represent the integrity of the U.S. Constitution, have agreed that such practices are, at least, constitutionally troubling. The rights of The People are being trampled in the dark. Who will be our voice, the voice of the minority families, communities, and average U.S. citizens?

Unjustly Sentenced,
Antone White

P.S. "Incarceration without conviction is a Constitutional anathema..." Bell, 808 F.3d at 932 (Millett, J.)