

A 2016 Presidential Primer on Criminal Justice Reform

By Don E. Siegelman

1976 Nobel Peace Prize winning economist, Milton Friedman, said: "How can we keep the government we create from becoming a Frankenstein that will destroy the very freedom we establish it to protect?"

The time has come for serious reforms in our criminal justice system. I feel particularly qualified to write a Presidential Primer on Criminal Justice Reform.

My adult life has been dedicated to serving the people of Alabama and enforcing and defending the laws of our country. From capitol policeman while studying law at Georgetown to law clerk at the Criminal Section of the Civil Rights Division of the Department of Justice to serving in the highest office of Alabama, as governor, I've been involved with writing and enforcing laws, and working to change the judicial system so that justice is accessible to all socio-economic levels, all ethnicities, genders, and sexual identities.

I've personally suffered from criminal behavior. My wife was nearly killed by a career criminal that was behind the wheel of a car. I've served my state in every capacity: Secretary of State, Attorney General, Lt. Governor, and Governor. In each position, I worked to bring equal justice to the people of Alabama. I have learned one thing. Our system of justice has been corrupted. I know this first-hand. For the past three and a half years, I've been a federal inmate.

One hundred and thirteen (113) former state attorneys general and many national legal scholars agree that I did not commit a crime—until I was convicted of it. I re-appointed a man to a board he'd served on as an appointee by former governors. Elected officials appoint people to boards, committees, and diplomatic posts. These appointments have always been legal as long as a quid pro quo was not involved. My prosecution is the exception to the rule of law. Many of the issues I address I know from both sides of the street--as a lawyer and elected official tasked with enforcing the laws and protecting the judicial system, but also as a person tried and unjustly convicted and tagged with the label "criminal." Our current system doesn't bring justice. While proving my innocence is important to me, it is more important to fix our broken system of justice, so we may preserve our democracy.

In this primer I intend to impress upon you, the reader, and the 2016 presidential candidates the need for change in our criminal justice system. America is in crisis, with more citizens behind bars costing taxpayers more and more. Many of these citizens, first offenders and those not charged with violent crimes, could be living productive lives, contributing to their communities and tax base. Those who are in prison need training and education, so that when they are released they can become contributing members of society.

I use musical selections to highlight some of my points and to hopefully bring empathy to the reader for those suffering the loss of living because of our draconian criminal justice policies.



Take On Criminal Justice Reform

Music selection: "Homeward Bound" by Simon and Garfunkel: <http://ow.ly/PDYxG>

I wish to acknowledge the President's bold initiative in raising the national dialogue for criminal justice reform. His speech to the NAACP and his visit to the federal prison in El Reno have raised the hopes of millions of Americans who have been hurt by the cruelty of our justice system.

Now Congress has an opportunity to act. Let's work to make sure that they do.

Please contact your Member of Congress and ask that they join President Obama and House Speak Boehner in passing the Bipartisan SAFE Justice Act, which will help balance the scales of justice, but it does not kill the Frankenstein Mass Incarceration Monster we have created.

For goodness sakes, even Charles Koch, the poster man for conservatism, sees the problems with our criminal justice system (See his article in *Politico*, January 7th, 2015: (<http://ow.ly/PE1Yu>) and is calling on Congress and the President to lighten up. Where are the "liberal" Democrats? Where are Hillary and Bernie and O'Malley? Where are the socially "enlightened" Democrats in Congress? Even Rand Paul has spoken intelligently about the need for reform.

The United States ought to be hounded by the United Nations for our human rights abuses. The fact is we talk out of both sides of our mouth. We like to accuse China or Russia of human rights violations, but it is here, in the United States of America, before the U.S. Supreme Court, where President Obama's lawyer argued that:

"U.S. Citizens do not have a constitutional right NOT to be framed." (Emphasis added, Reported by the Los Angeles times, Legal Correspondent, David Savage, January 5th, 2010)

We must fight with every fiber of our soul and body until our President and the United States Congress renounce that policy. I have some ideas that I have passed along to Members of Congress on how justice can be restored and our democracy preserved. I present them to you in this "A 2016 Presidential Primer on Criminal Justice Reform".



The U.S. Has Created A 'Frankenstein Mass Incarceration Monster' Reversing The Mandate

President Obama recently acknowledged that our system of justice needs to be changed. He supports The SAFE Justice Act, which certainly will take us a step forward. However, the U.S. is guilty of condoning and promoting a "Frankenstein system of injustice," shackling, chaining, handcuffing, forcing guilty pleas, giving draconian sentences that steal the lives of men and women, separating them from their families, and camouflaging from the eyes of the world the horrors of a system that has created the world's most egregious human rights abuses.

We must reverse this mass incarceration mandate.

My Musical Selection: Bob Dylan's "Song to Woody" <https://youtu.be/4Ubl9Q4oiMw>

As most of you might agree, a key cause leading to "mass incarceration" is the mandate created by the "War on Crime" which gave rise to "over-criminalization." Deliberate acts of Congress and state legislatures have directed severe punishment. *New sentencing laws discarded rehabilitation for increased prison time.* Prosecutors were commanded to seek the harshest charges, and federal prosecutors happily took to this task with uncommon zeal, converting state crimes to federal offenses. To end "mass incarceration" and "over-criminalization" we must change the mandate.

While it's politically popular to declare "War" as a policy statement, it takes thought to employ the right personnel and policies to fight the right enemy. The War on Crime, like the War on Drugs and the War on Terrorism, requires an army of ideas.

A majority of prisoners are nonviolent, many first offenders, and most crimes are committed by recidivists. To win the battle against recidivism, it must be fought when an inmate enters prison, not when they leave.

If we declared a "War" on recidivism:

There would be pretrial diversion and drug treatment programs for first time, youthful, and nonviolent offenders. Probation offices would have personnel qualified to help those seeking to re-enter society. In prison, there would be more job skills, more math, reading, writing, and language skills being encouraged, and Human Resource officers linking inmates, before release, to specific jobs in their home communities.

While prison is not the ideal place to address the problems that lead a person to prison, the reality is that prison is the last resort for society to change the pattern, to change the outcomes. Attitudinal barriers created by The War On Crime, a "lock 'em up and throw away the key," "tough on crime" mentality, must give way to new mandates.

The harsh realities are that prosecutors and investigators may have a political bias, may believe or want to believe that a citizen is guilty and make the facts fit their theory. You may remember the abuse of Senator Ted Stevens ... or ask me or Governor Rick Perry.

Prosecutors can investigate a person, not a crime. They have unchecked power to seek indictments with the knowledge that they are immune from civil liability even if they get a conviction using false evidence. Prosecutors have the power to covertly threaten, pressure, cajole, intimidate or bribe a target with a recommendation of "no time in prison" if the target will be a witness for the government. Arrests and convictions are sometimes made on the basis of stings, and on the testimony of paid informants, who, like bounty hunters, do it for the pay.

For that reason, prosecutors and investigators should be required to take notes or record interviews of targets or witnesses. The FBI is required to do so, but do not. Why? Because prosecutors instruct agents not to record or take notes so there will not be a record of the pressure or promises used to get the testimony they need to convict.

U.S. Attorneys, who are political appointees, get financial rewards, bonuses, and promotions for their success in securing convictions. At both the state and federal level, seizures and forfeitures of private property are plowed back into law enforcement to make more arrests and seizures, assuring another federal drug grant for the next year.

Elected district attorneys, state attorneys general and elected state judges advance their careers by being "tough on crime." In states that elect judges, like Alabama, trial judges can impose the death penalty, overriding a jury verdict of "life in prison." A recent study by the Equal Justice Initiative⁷ found that in 2008, an election year for Alabama judges, "judicial overrides" to impose death⁷ rose to 30%, whereas in the previous non-election year, overrides accounted for only 7% of death sentences.

Judges add years to defendants' sentences if a defendant goes to trial and testifies. Their justification being that if the jury convicts, the defendant must have committed perjury or was obstructing justice.

They even add years to a defendant's sentence for "acquitted" conduct, for which a jury found the defendant "innocent." Years of additional prison time are added for "relevant" conduct that was not a part of the trial, the evidence, or the indictment. In drug cases, judges determine the amount of "ghost" drugs for which a defendant may be sentenced through the testimony of felons seeking a reduction in their own sentence. The amount of drugs charged to a defendant may have nothing to do with the actual amount of drugs ever in the defendant's possession.

Moreover, a judge can set aside a citizen's Second Amendment Rights and add time to a nonviolent, first offender for a handgun found at the defendant's home in a nightstand. This occurs even though the weapon was legally purchased, licensed, not used in the commission of a crime, was not charged in the indictment, or raised through testimony at trial.

If prisons are full, everyone involved in criminal "justice" keeps their job. Our criminal justice system has an insatiable appetite for new inmates because it's incentivized to get indictments and convictions, seemingly at any cost, and by any means necessary.

In this 'Presidential Primer', I propose solutions to these broken parts of our criminal justice system:

- The Grand Jury: Prosecutors can get what they want
- Prosecutorial Abuse: Ways to curb government misconduct
- How Plea Bargains are coerced, are not a "bargain" and how to fix it
- How and Why to stop draconian sentences
- Prisons as Human Warehouses: How to end recidivism and help the economy
- Why we must end the "Frankenstein Federalization of Crime" and How

There are reasons the United States has the largest prison population in the entire "civilized" world...our system is based on the wrong mandate.



Killing the "Frankenstein Mass Incarceration Monster"

FDR said: "Governments can err, Presidents do make mistakes, but the immortal Dante tells us that divine justice weighs the sins of the cold-blooded and the sins of the warm-hearted in different scales. Better the occasional faults of a Government that lives in a spirit of charity than the consistent omissions of a Government frozen in the ice of its own indifference."

A world record number of prisoners, wrongful convictions, use of excessive force, murders at the hands of police, draconian sentencing, prisons overflowing, and an increasing financial burden on taxpayers have created a national dialogue for the need for change.

I acknowledge that there are psychopaths who need to be locked up for life to keep us safe. There is no other way. They are lost.

However, our system is broken, and the public is losing faith. Witness Ferguson, Cleveland and Baltimore. When the public loses faith in our system of justice, anarchy breaks loose. We have seen some of it already.

As the Innocence Project and the Equal Justice Initiative force the release of innocent death row inmates after decades of "torture" because of prosecutorial abuse, reasonable people begin to ask why? How? What can be done to fix our system? I have some suggestions, which dovetail with ideas discussed by those in both political parties who see our prison problem.

First, why am I qualified to speak to these issues?

1. Well, for those who don't know me, while studying law at Georgetown I served as a Capitol Hill policeman and a law clerk at the Criminal Section of the Civil Rights Division of the Department of Justice. I wanted to be a part of stopping the use of excessive force by police against antiwar protesters and I wanted to avenge the murders of four Kent State students by Ohio National Guardsmen in 1970.

Musical selection: "Ohio" by Crosby, Stills, Nash and Young, "So Far" album: <http://tinyurl.com/q46axmq>

2. While I was serving as Alabama's Secretary of State, my wife was nearly killed, and my family almost taken from me by a career criminal. I ran for Attorney General to protect victims and toughen laws on drug dealers and drunk drivers. As Lt. Governor, I also served as legal counsel to the Alabama Sheriffs Association, and as Governor I maintained a tough-on-crime stance.

3. For the past three and a half years, I have been a federal inmate for what 113 former state attorneys general and national legal scholars agree was not a crime—until I was convicted of it. Elected officials appoint people to boards, committees, diplomatic posts. These appointments have always been legal as long as a quid pro quo was not involved. I am the exception to the rule of law. While proving my innocence is important to me, it is more important to fix our broken system of justice, so we may preserve our democracy.

To learn more about my case see:

KILLING 'ATTICUS FINCH' – The Political Assassination of Don Siegelman
<http://www.gofundme.com/DonSiegelmanFilm>

CBS 60 Minutes, February 24, 2008: 'The Prosecution of Governor Siegelman'
<http://www.cbsnews.com/videos/the-prosecution-of-siegelman/>

Wall Street Journal: My opinion piece, May 29, 2015: 'You Don't Need A Quid Pro Quo to Wind Up in Prison'
<http://www.wsj.com/articles/you-dont-need-a-quid-pro-quo-to-wind-up-in-prison-1432845790>

The New York Times: Adam Cohen, September 10, 2007: 'The Strange Case of an Imprisoned Alabama Governor' <http://ow.ly/PQw3e>

Washington Post: Carrie Johnson, May 23, 2008: 'House Panel Subpoenas Rove Over Role in Justice Dept. Actions' <http://ow.ly/PQxhU>

Washington Post: George Will, February 10, 2012: 'Is it Bribery or Just Politics' <http://ow.ly/PQyFP>

New Jersey Star Ledger: Dean John Farmer, February 22, 2014: 'Political Corruption Cases Can Do An Injustice to the System: Opinion' <http://ow.ly/PWKnX>

Now that you know my credentials, here are the problems we must address and correct.

I. THE GRAND JURY: The grand jury's failure to indict in the Michael Brown case raised questions of fairness. The indictment of Senator Ted Stevens raised questions of political motivation. Evidence of prosecutorial manipulation to execute Cameron Todd Willingham has raised revulsion (<http://camerontoddwillingham.com/>).

We all remember the "ham sandwich" analogy--that prosecutors can literally indict a ham sandwich for a crime if they allege enough wrongdoing. In 2010, the last year from which statistics are available, the U.S. sought a little over 162,000 indictments; only eleven (11) were "no billed," (rejected/did not return an indictment). 99% of cases brought before the grand jury resulted in charges and trials.

The grand jury is where innocent citizens can suffer irreparable harm and where the guilty can be set free, because prosecutors can present evidence secretly to meet the will of the people, or to support their own desired outcome.

II. PROSECUTORIAL ABUSE: The U.S. Solicitor General proclaimed: "U.S. Citizens *do not* have a constitutional right *not to be framed.*"

This argument was made to the U.S. Supreme Court on January 4th, 2010 in a case brought by two men who had spent twenty-five years in prison for a crime they didn't commit. They sued Pottawattamie County, Iowa law enforcement for civil damages for willfully and intentionally "framing" them. False testimony had been secured by "bribing" a felon with a promise of a short sentence if the felon would "cooperate" and testify falsely to convict the two innocent men. (See, Los Angeles Times, 1/5/10 by David Savage, Legal Correspondent: <http://tinyurl.com/ohfyttb>)

A pronouncement by the lawyer for the President of the United States that "U.S. Citizens do not have a right not to be framed" serves as an umbrella of protection for prosecutorial abuse.

1. Prosecutors have dangerous powers which go unchecked in secret grand jury proceedings, and
2. Prosecutors can withhold exculpatory evidence and present false evidence or testimony with impunity.

Ways to Curb Prosecutorial Misconduct:

First, to help ensure "justice," grand juries should be open to victims and targets or their representatives. Ask Senator Ted Stevens' lawyer if Senator Stevens would have been indicted if he had been able to present the Senator's side of the story, to object to evidence, and to present his own. Evidentiary questions could be handled as in a legal deposition, having a magistrate rule on objections. Victims and targets should be allowed to present evidence to refute the government's charges. This protection, to ensure fairness, will save time, money, and more importantly, it will prevent ruined lives. If the matter concerns national security, the mafia, or cartels, the prosecutor may get a court order to keep the grand jury closed.

Second, to stop prosecutors from "bribing" felons to give false testimony in exchange for a light sentence, interviews with witnesses or targets should be recorded and those recordings made available to the defense. This process was actually advocated by President Obama when he was a Senator and was recently proclaimed by the U.S. Attorney General. However, it needs to be law for both state and federal agents and prosecutors.

Third, to help ensure that prosecutors and government agents do not withhold exculpatory evidence, or willfully present false evidence or induce false testimony by "bribing" a felon with a shorter sentence, or through threats, coercion, cajoling or pressure, civil immunity, granted under the Federal Tort Claims Act, should be repealed.

Stopping prosecutorial abuse in the grand jury and in stopping prosecutors from presenting false evidence will take us a long way toward balancing the scales of justice to a system that produces a more fair result.

Will we change it? Will our next President pick up President Obama's challenge and seek more meaningful reform?

"The Answer Is Blowing in the Wind", Bob Dylan, Album version: <http://tinyurl.com/ohso8eb>



How to Kill The Mass Incarceration Monster Make the Plea "Agreement" Binding

A "Plea Bargain Agreement" is no bargain and it's not an agreement.

As we discussed earlier, regarding "Grand Jury and Prosecutorial Abuse," prosecutors at the federal level get 99% of all the indictments they seek. They can indict just about anybody, anytime because it's a secret proceeding, there are no checks or balances, and the prosecutors can present false evidence to get an indictment without fear of being held civilly liable. They are immune from civil liability.

As I mentioned, even President Obama's lawyer, the U.S. Solicitor General, argued to the U.S. Supreme Court that:

"U.S. Citizens do not have a constitutional right not to be framed."

So, from the very top of our government down to the lowest prosecutorial levels, our government encourages arrests and convictions at any cost and by any means necessary, even condoning the "framing" of citizens.

Once the prosecution has the indictment the prosecutors then are free to pressure and cajole a witness, usually a felon, to say what needs to be said to get a conviction. The false testimony is given in exchange for a light sentence.

For example, the witness against me was a "crook," a felon, who was bargaining for "no time in prison" in exchange for testifying against me. (See Scott Pelley, CBS 60 Minutes, 2/24/08 <http://www.cbsnews.com/videos/the-prosecution-of-siegelman/>). He was interviewed over 70 times; he was made to write his proposed testimony over and over until he got his testimony "straight," meaning in the words the prosecution wanted him to say.

Prosecutors are usually able to get the defendant under such pressure by threatening them or one of their family members, so that the defendant will "take a plea" to end the pressure and threats. The defendant thinks the plea "deal" or "agreement" is a contract, that it's binding, but it isn't.

THE PLEA AGREEMENT: Plea agreements should be a binding contract and targets should have attorneys:

97% of all convictions come from Plea Agreements. It is estimated that 60% of targets succumb to pressure of investigators before the defendant has an attorney. Plea agreements are not binding, unless first approved by a judge. A sentencing judge may add years for "relevant conduct" without regard to the Plea Bargain "agreement" that lead to the guilty plea.

Several possible solutions are on the table:

1. With attorneys present, require that a judge mediate a binding agreement.
2. A citizen should not be subject to enhanced prison time beyond the terms of a plea agreement.
3. Require the appointment of an attorney to negotiate a binding plea agreement.
4. If a judge rejects a plea agreement, the defendant should be allowed to renegotiate, with counsel present.

So we can make some simple changes in procedure to reduce the power of prosecutors to force a plea agreement. We can require that each defendant have an attorney before a plea is entered and having that proposed binding "agreement" mediated by a judge. This small change will bring needed protections, helping to ensure fairness, into our system of criminal justice.



The Mass Incarceration Mandate Created Draconian Sentences Here's How We Can Fix It

As a first step, we need to press our Members of Congress to urge Speaker Boehner to bring the SAFE Justice Act up for a vote this summer. The SAFE Justice act will make modest but important changes in some Mandatory Minimum sentences and will shorten the sentences of others through additional "good time" credit.

Musical Selection: "Whipping Post", The Allman Brothers Band: <http://ow.ly/PEjXU>

Mass Incarceration was caused by our "War" on drugs and crime, which led to a "lock 'em up and throw away the key" mentality. We now have a system that feeds on arrests and convictions. There is no longer a search for truth or justice. People up and down the line in our criminal justice system keep their jobs and get promotions based on convictions, not justice or something as altruistic as the "truth".

We fix it by reversing the mandate, focusing on the real problem of recidivists, those who commit one crime and then another.

Mass Incarceration was created out of our fear of crime. People were sick of living in homes with iron bars on the windows, afraid to walk at night, concerned about the possibility of being mugged. Stories of children dying from drug overdoses drove the public and Congress to declare a war on crime and drugs that lead to draconian prison sentences.

Now our prison population dwarfs all other civilized countries, yet we continue to hammer first offenders and nonviolent offenders as if they are the real problem.

SENTENCING: We need to end the unreasonably harsh sentences that punish beyond what is necessary and destroy family relationships.

Here are some points to consider:

1. It is in everyone's interest to reduce mandatory minimums and make such reduction retroactive for nonviolent offenders with clear conduct, and who do not present any public safety issues.
2. First time, nonviolent offenders, who have the education and skills to make a contribution by earning a living, paying taxes, restitution, and supporting their families, should be considered for pretrial diversion, including community service.
3. Financial victims should have a greater voice in sentencing. Some defendants, through pretrial diversion, could continue to work and make restitution without being a financial burden on taxpayers.
5. "Ghost drugs" are drugs established by the testimony (not evidence or proven facts), usually, of felons seeking a reduction in their own sentence. This "bribed" testimony often results in large amounts of drugs being attributed to someone the government wants to hammer. In drug cases, juries should determine the amount of drugs with which each defendant should be charged based on evidence, not hearsay.
6. All offenders leave prison with the same "Scarlet Letter." Each is labeled a "Felon," which impacts housing, employment, can destroy families, and perpetuate a cycle of government dependency. For some it is a roadmap back to prison. For first time, non-violent offenders, remove this label, after a sentence has been served.
7. After the sentence and probation has been completed, restore all civil rights to first time, nonviolent offenders.
8. The Sixth Amendment should preclude state judges from imposing the death sentence over a jury verdict of "life in prison."
9. The Sixth Amendment should prohibit judges from adding time for "Acquitted Conduct" or for "Relevant Conduct" if it's based on a prior act for which the defendant has already served time.
10. Forbid a judge from adding a gun charge to first time, non-violent offenders where a gun was not used in the commission of a crime, was not charged in the indictment and not found by a jury. There is no "compelling state interest" in taking the Second Amendment Rights of a first time, nonviolent offender.
11. Finally, to bring some relief quickly, Congress must pass The SAFE Justice Act and consider reactivating the parole system.



**Our Frankenstein Mass Incarceration Monster
Stores Its Food In Human Warehouses: America's Prisons
America's Prisons Are Human Warehouses**

Musical Selection: Mozart's Lacrimosa https://www.youtube.com/watch?v=k1-TrAvp_xs

First time, nonviolent offenders are not the problem. A majority of crime is committed by repeat offenders. So if we declare war on recidivism we would use pretrial diversion and drug treatment programs more for first time, nonviolent offenders. We would have a system of skilled probation officers with time to work their cases. Prisons are not the best place to tackle the issues that got a person behind bars but it's a chance for society to try to turn these offenders around—before they become repeat offenders. The SAFE Justice Act will result in shorter sentences for some. Please ask your Members of Congress to urge Speaker Boehner to bring this bill up for a vote this summer.

That means giving offenders hope that they can reenter society and stay out of trouble by actually teaching them job skills, math, reading, writing, and language skills. In Alabama we ran a study and found that some 70% plus of those who got a GED in state prison did not return.

The problems I have seen over the last three and a half years clearly include the severe lack of education and jobs skills training. There are self help videos, but that's it. *One* welding class. There are *no* online educational opportunities for self advancement and no one available to help a person learn to read and write.

We cannot expect someone who comes in with zero job skills and leaves with zero job skills to get a job.

If we want to reduce crime and help our economy, we have to reverse our mandate of just locking prisoners up and warehousing them until it's time for their release.

Our current system produces a worse product. Inmates are separated from their families. Inmates lose touch with their spouses and children. It is heartbreaking to see an inmate who loves his small son reduced to one or two annual visits with his child because they are so far apart and have such long sentences.

Mr. Charles Koch in his article on criminal justice reform in *Politico*, January 7th, 2015, said: "Fixing our criminal justice system could reduce the overall poverty rate as much as 30%, dramatically improving the quality of life throughout society especially for the disadvantaged."

Our mandated unnecessarily long sentences destroy hope and families while doing nothing to prepare an inmate to get and hold a job. We must reverse the mandate from convictions and long sentences to reducing recidivism.

PRISONS AS HUMAN WAREHOUSES: The Federal Bureau of Prisons (FBOP) has a mandate to keep inmates in prison, not to prepare them for jobs.

1. The FBOP only awards 47 days of "Good Time" credit while currently authorized to give 54 days. By not giving the full 54 days, they keep prisons full and cost taxpayers approximately \$120,000,000 each year.
2. The FBOP does not give the six (6) month maximum time allowed for "home confinement." The FBOP released nearly 55,000 inmates in 2012. By just allowing three (3) months of "home confinement" for only 20,000 inmates, taxpayers would see a savings of roughly \$150,000,000 per year.
3. Prisons are expensive, are not designed to rehabilitate, train, or prepare one to reenter society. There is very little in the way of education, job training, and no online educational opportunities in some facilities.
4. The FBOP does not have a mandate to help inmates find employment. There are no Human Resource officers charged with the responsibility of helping inmates locate specific job opportunities for which they are qualified, *before* release.

Solution: Incentivize reducing recidivism and help inmates prepare for employment.

1. The FBOP should be instructed to give the full 54 days of Good Time credit currently authorized.
2. The FBOP should give at least three (3) months home confinement to all inmates who meet current criteria.
3. FBOP hires and promotions should be changed, from merely "policing" humans, to reducing recidivism.
4. To counter despair, and possible radicalization, prisons should offer hope for a better life through increased emphasis on rehabilitation, with more math, reading, writing, language, and specific job training skills, and should have Human Resource officers linking inmates, before release, to specific jobs near their home communities.
5. Additional "Good Time" credit should be given upon completion of a GED, educational and job training courses.
6. Institutions should allow advanced education through free online courses.
7. Press your Member of Congress to pass the SAFE Justice Act.

Prisons are our last chance to try to change the pattern that brought someone to prison in the first place.

It is up to us to encourage our next President and Congress to continue pressing for true criminal justice reform.

Let's make it happen!



The Mass Incarceration Monster Is Fed By Federalizing Crime It's Time To End The Over-Federalization Of Crime

Musical Selection: "Free Bird", by Lynyrd Skynyrd (Muscle Shoals Version)" (1972): <http://ow.ly/PEqL2>

Mr. Koch₂ in his Five Step Plan for Criminal Justice Reform₂ says: "Criminal laws should not impose liability if the accused did not knowingly and willfully intend to commit the bad act."

Mr. Koch urges reversing the federal government's overreach in criminalizing "activities that ordinary citizens would have no reason to believe would be criminal..."

Supreme Court Justice Antonin Scalia, in his dissent in *SORICH v. UNITED STATES*, put it this way:

"It is simply not fair to prosecute someone for a crime that has not been defined until the judicial decision that sends him to jail."

This is exactly what happened in my case: 113 state Attorneys General and many U.S. Constitutional Law Professors petitioned the U.S. Supreme Court saying that what I did was not a crime until I was convicted of it. It's still not a crime in a majority of U.S. Circuits.

The U.S. Supreme Court's holding in the McCormick Case, 1991, seemed to make it clear, that to establish "bribery" in a campaign contribution setting, because First Amendment freedoms are at stake, before one crosses the line from politics to crime, there must be an "explicit" agreement where the terms are "asserted". My trial judge, however, for the first time in American Jurisprudence, instructed the jury to convict me of "bribery" on an "implied" or "inferred" agreement, the opposite of an "explicit" or an "express" agreement. (See *Washington Post* column by George F. Will. 'Is It Bribery or Just Politics': <http://ow.ly/PEsA6>)

My codefendant, made a contribution to an Alabama education ballot initiative, and I reappointed him to the same nonpaying state board to which he had been appointed by three previous Alabama Governors. There was no testimony of a quid pro quo, much less an "express" one, and there was no allegation of a self-enrichment scheme, or personal benefit.

Making the changes to combat prosecutorial abuse in grand juries, discovery, and in presenting false evidence and testimony will stop most deliberate prosecutorial misconduct. Here are other possible solutions to end federal "Over Criminalization":

1. If a state crime has likely been committed, allow the state to decide if it is to be prosecuted.
2. Stop federal drug grants to state "Drug Task Forces" that ensure more petty drug arrests and convictions.
3. Stop paying felons to be informants and to conduct stings, except in organized crime or when investigating terrorists.
4. Vague charges like "honest services" should be defined so a citizen will know what is legal and what is not. In a campaign contribution setting, where the First Amendment is at play, the law should be clear, that to charge a donor or official with "bribery", there must be a self-enrichment scheme, personal gain or personal benefit and an "explicit" quid pro quo, where the terms of the agreement are asserted, and that an "implied" or "inferred" agreement is not enough.

Changes in attitude and changes in mandates can be made by the President, the U.S. Attorney General, the Federal Bureau of Prisons, Congress, and the U.S. Sentencing Commission.

One thing is certain; change will come with the upcoming Presidential election. Change in our Criminal Justice System will either make it better or worse.

It is up to us to work hard, to encourage others, to vote to elect the best people who will make the changes we want and those that are needed to reset America's moral compass.