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Will prison sentences rise with Trump?

During his presidential campaign, Donald Trump relied on vague “tough on crime” rhetoric over policy specifics. Trump’s post-election selection of Jeff Sessions as attorney general, though, lends credence to his campaign trail exhortations. As the United States attorney for the Southern District of Alabama in the 1980s, Sessions prosecuted hundreds of federal cases during the apex of the mass incarceration era.

Later, as a United States senator, he opposed legislation introducing modest reductions in prison time for drug offenders. In light of Sessions’ track record, an uptick in federal prosecutions from recent years appears inevitable.

The views on crime and punishment espoused by Trump and Sessions are out of step with reform-minded initiatives popular on both sides of the political aisle. Progressive proponents of criminal justice reform have long cited the disproportionate focus and deleterious effects of skyrocketing prison rates on low-income communities.

In recent years, a growing chorus of Republicans has joined the movement away from mass incarceration. Among conservatives, the de facto leaders for systemic justice system reforms are federalist and libertarian organizations whose motivations include budgetary concerns, interests in personal liberty and consideration of the “moral and spiritual dimensions” of imprisonment.

Chief among them is the Federalist Society, a highly influential national network of 60,000 lawyers, legal scholars and law students whose mission statement

BY HUGH MUNDY

Hugh Mundy is an associate professor of law at The John Marshall Law School. He's on the web at works.bepress.com/hugh_mundy.

centers on “advancing the principles of freedom.”

If a Sessions-led Justice Department ramps up prosecutions, the likelihood of a mass incarceration reprise rests with the judiciary. A 2005 Supreme Court ruling expanded judicial sentencing discretion by rejecting the constitutionality of mandatory sentencing guidelines.

Today, in addition to the now-advisory sentencing guidelines, judges must consider the unique history and characteristics of each defendant and circumstances of the offense in crafting a just sentence.

Moreover, the law requires judges to place the rehabilitative needs of the defendant on an equal plane with the retributive goals more commonly associated with sentencing. In effect, rather than a mechanical application of a prescribed imprisonment range, courts must narrowly tailor sentences to the specifics of each case.

Increasingly, federal judges are exercising their widened discretion to impose lower sentences than those handed down during the mass incarceration era. For instance, in the Northern District of Illinois in 2015, almost half of criminal defendants received sentences that fell below their advisory sentencing guideline range.

That figure nearly tripled the number of similar reductions awarded in 2008. Even federal judges in Republican strongholds

have shown sentencing leniency. In Mississippi, federal courts imposed below-guidelines sentences in nearly 20 percent of cases in 2015. In contrast, only 3 percent of Mississippi criminal defendants received reduced sentences in 2008.

Due primarily to obstruction of Obama administration nominees, Trump has 124 federal judgeships to fill — the largest number of any president in 40 years. According to a recent New York Times article, the Federalist Society aims to play a leading role in the judicial selection process.

Indeed, the organization’s imprimatur was central to Trump’s first Supreme Court nominee, Neil Gorsuch. As an appellate judge, Gorsuch demonstrated a sensitivity to the complexity and magnitude of criminal sentencing. In a 2014 opinion, he opined that sentencing a defendant “has to be one of a district judge’s hardest tasks.”

“How much punishment,” Gorsuch wrote, “is enough to reflect the gravity of the offense” without “cold revenge or retribution?” He concluded that, in the absence of “a single right answer,” the justice system “depends, as it must, on the discretion of thoughtful judges.”

While a “single right answer” for a criminal sentence may leave room for debate, the antithetical stance between mass incarceration and the bedrock ideals of federalism — liberty, freedom, and democratic self-governance — is abundantly clear.

To do justice to its mission and its laudable efforts toward sensible criminal justice reforms, the Federalist Society must ensure that Trump and his judicial nominees understand the distinction.