

Dime-Store Justice

**How the Federal System of Justice Uses Uncharged, Untried
Crimes and Other Uncharged Criminal Conduct, as Well as
Acquitted Crimes, to Imprison People**

Joshua Bevill



Northern District of Texas
Dallas Division
Case Nos.
3:10-cr-326 (earlier case)
3:11-cr-082 (present case)

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About the Author

Joshua Bevill was given 90 years. He must serve 30 years in federal prison, a punishment so harsh that it illegally exceeds the statutory maximum for his crimes. Joshua Bevill made misrepresentations to three high-net-worth investors, causing a total loss of \$106,000.

To inflate Joshua's U.S. Sentencing Guideline range to life in prison without the possibility of parole, the judge piled on entirely separate crimes that Joshua was never charged with, tried for, or convicted of—uncharged crimes that allegedly occurred some seven years before the conduct in his present case even began and which weren't even remotely related to his present case.

Aside from fighting to call attention to his case in hopes of a clemency grant, Joshua writes about the abusive practices that flourish in the federal system of justice, underhanded practices that produce an incredibly cheap brand of "justice." Joshua's blogs are featured on The Justice Project Texas website: <https://www.thejusticeprojecttexas.com/>

**“The worst form of
injustice is pretended
justice.”**

Plato

There is a dirty little secret in the American justice system, which is unique to the federal system of justice. There is a legal loophole that allows judges to sentence people to prison for many years, decades, or even life for crimes they were never charged with, tried for, or convicted of—and, perhaps worse still, for crimes for which they were tried, but acquitted. This is not an aberrant or extreme practice—it's an integral part of the federal sentencing paradigm, an inherent injustice woven into its fabric. And en masse, it produces a knock-off brand of justice that may look like the real thing. But make no mistake, it is a dirt-cheap brand of "justice."

That doesn't sound right, does it? It's called "uncharged relevant conduct," and it's the cornerstone of the U.S. Sentencing Guidelines. This loophole renders the promises in the Bill of Rights worthless for all practical purposes. It allows the federal government to imprison people without so much as an indictment or jury trial. The abuse is buried under pseudo-process and procedure. It is a subtle and insidious brand of injustice that has cheapened the American justice system.

I'm not talking about the extreme example of Guantanamo Bay, where people suspected of terrorism are housed indefinitely without a charge or trial. This is occurring five days a week in every federal courthouse across the country.

We all know the basics. In the American system of justice, there are vital constitutional safeguards that protect the criminally accused. The greatest bulwark that stands in the way of the mighty U.S. Government and the citizen is the right to be tried by 12 jurors. That's a critical safeguard. The government must prove its case to all 12 jurors beyond a reasonable doubt, a high constitutional bar. Even before the trial, the government must get an indictment by a grand jury, providing the accused with sufficient notice of the crimes the government seeks to prove. Let's also not forget the right to face one's accuser, which lies at the heart of the Due Process Guarantee. This allows the defense the opportunity to vigorously test the accuser/government witnesses' story through the intense scrutiny of cross-examination. Finally, there is the right to have only admissible evidence used against the accused.

Taken together, before the federal government can just rip you from your family and toss *you* in a cage for many years or decades, it must charge you and use real evidence and live witness testimony to prove to 12 jurors *beyond a reasonable doubt* every element of every crime. You will get an opportunity to test your accuser's stories and credibility via vigorous cross-examination. If the government can overcome that high burden, then can it imprison you.

However, that is emphatically *not* how the federal brand of justice works—it's a facade.

Our founding fathers designed these constitutional firewalls to insulate the criminally accused against factual error when one's liberty is at stake.

The truth is those constitutional firewalls are pesky to the federal government. As a result, the federal government has found a way to skirt them. When one strips the system of critical constitutional safeguards that protect citizens from injustice, one strips its integrity.

The federal government has created a shadow system of justice, in which defendants are robbed of fundamental procedural fairness, and the constitutional procedural protections

afforded to the criminally accused are meaningless. The U.S. Constitution is reduced to a mere prop.

First, to imprison people, the federal government can use *uncharged crimes*. Worse still, the uncharged crimes are supported not by real evidence or live witness testimony but rather by unsworn, uncorroborated *out-of-court* hearsay accusations that cannot be tested—that is, the accuser/government witness does not have to step foot into the courtroom to stand up to cross-examination.

Thus, someone can merely say that you committed a crime or other criminal activity. Without any evidence or a third-party witness to corroborate it, you can be tossed in prison for *decades*—no charge, no trial, no jury. *You cannot even question your accuser/government witness*. And the accuser is usually a criminal who is highly incentivized to lie, as they trade vague information that does not have to be corroborated about the accused for their freedom.

Such a system doesn't facilitate justice; it obscures the truth and makes justice difficult to find. And it *perverts* the American system of justice.

Here's how the hustle works. The sentencing phase comes after one is convicted of a crime—through a guilty plea or after a trial. At sentencing, the judge can consider additional uncharged crimes or criminal conduct, even if they were not presented at trial or made part of the guilty plea. The only requirement: the uncharged crimes or criminal conduct must be related to the crime of conviction. This allows the courts to consider *all* the circumstances surrounding the crime of conviction, thereby allowing the court to tailor a sentence to the factual nuances of the crime.

Let's say someone is convicted of robbing a bank. At sentencing, the judge could find that he used a gun and threatened to kill the bank teller, even if the additional criminal conduct was not proved or even mentioned at trial or as part of the guilty plea. What's the judge supposed to do—ignore that the bank robber used a gun and threatened to kill the bank teller? Of course not. The uncharged criminal conduct (the gun and the threat) are characteristics of the crime of conviction (the bank robbery)—they speak to the degree of harm and severity of the crime of conviction (the bank robbery), and therefore justify a stiffer sentence. But allowing the federal government to imprison people for crimes (and other criminal conduct) they were never even charged with, and which weren't even introduced at trial is a slippery slope. It can be and is abused.

Crucially, in finding at sentencing that the offender committed additional uncharged crimes or other uncharged criminal conduct not presented at trial or made part of the guilty plea, the rules are different. Unlike at a criminal trial, there is no jury, no beyond-a-reasonable-doubt standard, no right to face one's accuser. Nor do the Federal Rules of Evidence apply, which govern admissible evidence and keeps out inherently unreliable out-of-court hearsay or irrelevant evidence. None of these constitutional firewalls are in place at the sentencing phase. This spells opportunity for prosecutors.

Prosecutors are aware that if they can convict the offender of something—no matter how petty, insignificant, or superficially simple—they can pile on the crux of their case at the relaxed

sentencing phase. What they cannot bring through the front door, they sneak in through the back. Under this model of justice, the conviction is an empty vessel. What drives the length of the prison sentence is the *uncharged* crimes, and other *uncharged* criminal conduct conveniently slipped through the back door at sentencing, when the accused is stripped of the vital constitutional procedural protections afforded to him.

With that in mind, this is the template for injustice. First, prosecutors find something relatively minor that they can easily convict the defendant of beyond a reasonable doubt, something that might merit probation or a few years in prison. This is critical for their case.

They hold back their real case theory, the serious stuff, until the relaxed sentencing phase. By disguising the essence of its case as mere sentencing factors, the government side-steps the constitutional firewalls—critical safeguards that protect the accused. That is, by sneaking in at sentencing what is really the *core of criminality* it seeks to punish, the government circumvents the pesky constitutional firewalls and results in a disproportionate effect on the prison sentence.

It's a brilliant strategy!

To reiterate, at sentencing, one person can simply say that you sold them 5 pounds of cocaine a month for five years. Without any actual drugs, a single piece of corroborative physical evidence, or any third-party witness, the total *300 pounds of cocaine* will be added at sentencing. Someone can merely state that you used a firearm in the crime, that you murdered your wife, or that you stole *\$100 million*—one person in an out-of-court interview can tell law enforcement that you did all of those things, and you will be imprisoned: no charge, no jury, no beyond-a-reasonable-doubt standard. *You are not allowed to question the person accusing you. Your accuser does not have to step foot into the courtroom.* Often, the accuser is almost always a criminal trading vague information in exchange for his freedom and is therefore highly incentivized to lie. The out-of-court accusation can be unsworn and uncorroborated. *One person* can say anything they want, and it is assumed to be true, and the penalties will be piled on. Think about that. One is *convicted* of a relatively minor offense; however, one is *sentenced* for much more serious, uncharged crimes and other uncharged criminal conduct not even mentioned in the indictment or at trial (or as part of the guilty plea). Instead, the defendant is surprised at sentencing, when the sneaky government unveils what it really wants to punish but could not prove at trial. Clever.

Can you begin to imagine being accused of something that will require you to spend many years or *decades* in a cage, but you're not even allowed to face your accuser? That is *radical*. Again, it's tantamount to guilt by accusation.

In short, the government labels the heart of its case as "sentencing factors" and makes its case on the cheap. Judge Judy is a TV program. Judge Judy presides over petty financial disputes regarding \$500 and perhaps a little more. The accuser must be in her courtroom so she can ask questions to test his story and credibility. Then the Judge issues her conclusions. Can you imagine if in civil court someone could just accuse you of something and you had to pay up?

But when someone's *life* is at stake in a federal sentencing hearing, the accused cannot question his accuser. Yet the accused must serve many years or decades in a cage because of

the self-serving, uncorroborated, unsworn, *untested* out-of-court hearsay accusations that were passed off as "evidence" to support *uncharged crimes*. It's guilt by accusation. This should blow your mind. A civil small claims court has more integrity to the process than a federal sentencing hearing.

Hitler didn't just ship people off to concentration camps. He had simplified proceedings designed to expedite findings of guilt so he could justify shipping people off to death camps. Although his proceedings had a phony gloss of respectability and bore a slight resemblance to due process, the result was a one-sided process that was inherently unfair and expressly designed to facilitate injustice under the guise of justice. The speciousness of due process notwithstanding, the proceedings were sham proceedings.

The federal sentencing scheme has the same characteristics. This simplified, stripped-down proceeding obscures the injustice with pseudo-due process and procedure. Superficially, it's all above board. But once one rips off the flimsy coat of legitimacy, the injustice is glaring. When the legal loophole is abused, the sentencing hearing is reduced to a sham proceeding.

Do you think I'm overstating things with my Hitler reference (and yes, I'm familiar with Godwin's Law)? Tell that to David Kent Fitch, a man serving 25 years in federal prison for the murder of his wife—a crime that he was never charged with, tried, or convicted of. Tell that to Gregory Bell, who served 15 years in prison primarily for the very crimes he was acquitted of. Tell that to the countless defendants who were given bone-crushing federal sentences spanning decades for uncharged crimes that were never introduced at trial.

Well, most of those people are black or brown and don't live in the suburbs or affluent enclaves, so who cares, right? *Wrong*. Of course, it matters.

Am I saying that every federal sentencing hearing is like this? Absolutely not. But the legal loophole is ripe for abuse, so in many cases it is, indeed, abused.

Sure, the defendant got a fair trial. Still, the *uncharged* crimes and other uncharged criminal conduct not mentioned, much less proved, at trial or made part of the guilty plea drives the prison sentence—*not the conduct proved at trial or made part of the guilty plea*.

This practice has sparked outrage the legal community. Late U.S. Supreme Court Justice Scalia said, ***"If the protections extended to the criminal defendants by the Bill of Rights can be so easily circumvented, most of them would be...vain and idle enactments, which accomplish nothing."***

Two recently appointed U.S. Supreme Court Justices—Gorsuch and Kavanaugh—spoke out against the practice when they were U.S. Appeals Court judges.

Alan Ellis, a national expert on federal sentencing law, and Mark Allenbaugh, a former sentencing commission lawyer, explained in an interview with *The News*, that the uncharged relevant conduct loophole is "an end-run around the Constitution," emphasizing, "The government should charge the defendant with a crime and let the jury decide, rather than slip it in during sentencing."

Chief federal Judge William G. Young explained that the "U.S. Sentencing Guidelines and uncharged relevant conduct are not tools meant to enable judges to use reliable and accurate information to impose appropriate prison sentences; they have been weaponized by federal prosecutors who have refined methods to manipulate and weaponized them."

One U.S. Appeals Court judges make a powerful statement: ***"If the former Soviet Union or a third world country had permitted [sentencing based on uncharged offenses], human rights observers would condemn those countries."***

An Ohio State Law Professor—and expert on federal sentencing law—in an interview with The Marshall Project, said that when he told his law students about this loophole, they thought he was playing a prank on them. Most people cannot grasp that the federal government can use uncharged crimes or acquitted crimes to imprison people.

I haven't even scratched the surface. But the legal community has roundly criticized this slippery practice.

Hypothetical Example

Most people are familiar with the state system of justice.

I want to present another example to demonstrate the inherent injustice of the federal system of justice. Now, I know that a DWI is not a federal crime, but just about everyone knows someone who has gotten a DWI in their lifetime. This example will help you understand the injustice that pervades the federal justice system. Most people are unfamiliar with the nuances of the federal justice system. They are, however, familiar with the nuances of the state system of justice.

Suppose you had one too many drinks during a night out. The kids were at home with a babysitter, but you're pulled over and arrested for Drinking While Driving (DWI). It's your first one, so although the maximum penalty under the law is, say, 20 years, you are likely looking at probation, a fine, and some community service. It sucks, but you will live. You promptly plead guilty. You can't afford an attorney, so the court appoints you an attorney. But come sentencing day, you're in for a surprise. The prosecutors argue that about three years before your current DWI, you drove home from the bar legally intoxicated every Friday and Saturday night, over six months, for a total of 48 instances. Now, you are not charged with these 48 DWIs. And they supposedly occurred two or three or four years before your current DWI. But this changes *everything*. Now, the judge factors the 48 uncharged DWIs into your sentencing range, which guides the court in fashioning an "appropriate sentence." There will be no more probation and community service. Oh, no. After the 48 uncharged DWIs are factored in, your sentencing range jumps from probation to *20 years in prison*. After all, you drank and drove (legally drunk) *48 times*, so you must be punished accordingly. It represents a *pattern* of criminal behavior.

You are stunned, speechless.

You look up at your lawyer with tears in your eyes and panic in your voice. The room starts spinning, and simply incredulous, you think: *"Twenty years in prison? I have kids! And a career!*

How?!" You demand a right to defend yourself. You request to see the evidence. Your lawyer pats your hand and reminds you that you were not actually charged with the 48 DWIs, so there is no trial, no jury, no proof needed—not even an indictment or notice. He reminds you that *you* pled guilty, and you said that you understood that the maximum penalty under the law is 20 years. Your public defender—your lawyer, your advocate looks annoyed at your barrage of questions but decides to explain things.

The attorney explains that the rules are different at the sentencing phase. Sure, you were *convicted* of a single DWI, which carries a sentencing range of probation to 20 years in prison. And at sentencing, the judge is allowed to consider crimes that you were never charged with, tried for, nor convicted of—yes, even uncharged crimes that allegedly occurred many years before the crime of conviction. The similar uncharged crimes represent a pattern of criminal conduct or speak to the seriousness of the single DWI you were convicted of. Because of the 48 uncharged DWIs, your prison sentence for the single DWI you were convicted of must be much, much stiffer.

Still confused, you persist, "But what about evidence? Proof?" you ask. The lawyer explains that there is no actual evidence and there doesn't have to be. Again, frustrated, your attorney tells you that you were not charged with the 48 DWIs. This is the *sentencing phase*, he tells you, not a trial. He is clearly getting annoyed. He explains that out-of-court hearsay is admissible at the sentencing phase. He explains that someone had been arrested for a serious crime and, to avoid a harsh prison sentence, that individual told law enforcement that he was with you at the bar and with you as you drove home intoxicated every weekend during those six months. There is no evidence to corroborate his vague, out-of-court accusations. Nor is there a third-party witness to corroborate any accusation. But, again, at the sentencing phase, there doesn't have to be.

In the end, you are hauled off to spend the next 20 years in prison. The current law says that you were only punished for the single DWI because you didn't receive more than the 20 years allowed for *that* crime, your crime of conviction—never mind that it was the 48 uncharged DWIs that sent your sentencing range to the moon, and never mind that it was the sentencing range that produced the outcome. See, the 48 uncharged DWIs were mere *sentencing factors* related to the single DWI of which you were convicted, and those sentencing factors merited enhanced punishment for the single DWI you were convicted. Thus, you were not punished for the 48 uncharged crimes, the Feds say. You drove legally intoxicated 48 times—you need to go away for 20 years. This is the federal brand of justice.

Real Federal Cases

Here are some examples of how this dangerous legal loophole has been skillfully exploited, in the name of ratcheting up the number of years a human must spend in a cage.

United States v. Fitch

Fitch was convicted of a relatively minor nonviolent offense; he, however, was sentenced to more than two decades behind bars for an uncharged murder.

Remember, if the government can somehow tie the uncharged crimes to the crime of conviction, it can use it to increase a defendant's prison sentence.

In *United States v. Fitch*, the government wanted to imprison Fitch for murdering his wife. Unfortunately, the government would have to use real evidence and compelling live witness testimony to prove its case to 12 jurors beyond a reasonable doubt. And its witnesses' accusations and credibility would have to be tested via vigorous cross-examination.

There was no body. Fitch's wife disappeared. Nor was there any real evidence.

In the American justice system, the lack of evidence would make it difficult (or impossible) for the government to convict Fitch, right?

So the government easily convicted Fitch not of the murder of his wife but of a nonviolent white-collar offense, illegally withdrawing money from a bank account. As a result, at sentencing, Fitch was looking at a U.S. Sentencing Guideline range of about 3 – 4 1/2 years in prison. At sentencing for the relatively minor nonviolent offense, however, prosecutors successfully argued that Fitch had murdered his wife to accomplish the illegal money withdrawal, the crime for which he was convicted.

The uncharged murder increased the sentencing range for the illegal money withdrawal from about three years to nearly 25 years in prison. As a result, Fitch was crushed with about 25 years in federal prison. <https://harvardlawreview.org/2012/05/ninth-circuit-affirms-262-month-sentence-based-on-uncharged-murder-ae-united-states-v-fitch-659-f-3d-788-9th-cir-2011/>

See, he was *convicted* of a relatively minor nonviolent offense that merited a few years in prison, but at sentencing, the judge essentially said, "Oh, by the way, I think you also murdered your wife, so I'm imposing a 25-year sentence."

Can you imagine walking into the courtroom for sentencing concerning a relatively minor, nonviolent offense, only to be dragged off to serve decades in prison for *murder*—with no charge, no trial? There is no parole in the federal system, so a 25-year sentence is serious business.

By disguising the uncharged murder as a mere sentencing factor related to the illegal money withdrawal, the government circumvented the right to indictment by a grand jury and the right to a trial by jury.

The government knew that it couldn't convict Fitch of the murder of his wife—there wasn't even a body. So, it used a relatively minor nonviolent offense to accomplish indirectly what it could not accomplish directly.

To state the obvious, such shortcuts cheapen the justice system and no doubt produce a high margin of error.

United States v. Joshua Bevill

My case is in the Northern District of Texas, Dallas Division. In my case, the government shattered the logical and legal limits of so-called uncharged relevant conduct.

I was convicted of making misrepresentations to three high-net-worth investors over six months (from August 2010 to January 2011), causing a combined loss of \$106,000. That is undoubtedly illegal and merits punishment. But it's a relatively minor nonviolent offense. It's hardly a headline-grabbing fraud that causes tens or hundreds of millions or billions in losses from thousands of investor/victims.

So, this is what the judge did. About *seven years* before the conduct that gives rise to my present case, I worked for three months for an unrelated company called The Pointer Group (2003). I was about 21 years old. I was sleeping on a friend's couch and taking the bus to work. I worked as a low-level salesman who made cold calls for three months. I made very little in sales commissions. I didn't have any managerial duties or control any bank accounts. I was a grunt.

Over the life of the company, the Pointer Group raised nearly \$3 million from 60 investors/victims—most of which was raised either before I worked at the company or after I left. My take as a low-level salesman was less than one percent—*less than one percent of the \$3 million raised*. This was never disputed.

I was never charged with a crime regarding alleged The Pointer Group crimes, nor were the owners.

Now fast-forward about seven years to my present case (August 2010 - January 2011).

After I pleaded guilty in my present case to making misrepresentations to three high-net-worth investors (from August 2010 - January 2011), causing a combined loss of \$106,000, I went to sentencing. At sentencing, the judge took the \$3 million in losses garnered from 60 investor/victims tied to the uncharged, untried, *unrelated* Pointer Group crimes (2003 - 2004) and hitched them to my present case. Adding the \$3 million in losses and 60 investor/victims tied to the uncharged Pointer Group crimes to the \$106,000 in losses garnered from three investor/victims in my present case ballooned the perceived severity of my present case. Instead of a relatively minor offense, I was sentenced for big-time money—*millions*. <https://www.thejusticeprojecttexas.com/cases/joshua-bevill>

The judge piled on separate, remote, uncharged, and untried crimes that had no connection to my present case and—*abracadabra*—my sentencing range skyrocketed from about five years in prison to life in prison; hence I received the harshest punishment allowed under the law: 90 years, 30 years to be served.

I walked into sentencing after being convicted of making misrepresentations to three investors, causing a combined loss of \$106,000. I walked out of sentencing with a 30-year federal prison sentence for *multi-million-dollar* securities fraud—crimes that I was never charged with, tried for, or convicted of. *That is radical*. The bigger the fraud—you guessed it—the longer the sentence. The judge manufactured a U.S. Sentencing Guideline range of life in prison without the possibility of parole. Yep. The U.S. Sentencing Guidelines recommend that I die in federal prison.

The judge herself admitted that the uncharged crimes had nothing to do with my present case. Nevertheless, she still used them to inflate my U.S. Sentencing Guideline range, which is a range that is supposed to be based on "offense characteristic," i.e., on conduct that is essentially part of or connected to the crime of conviction.

If you Google my name, it looks like I stole *millions*. They don't tell you that I was convicted of a securities fraud that involved a little more than \$100,000 in losses and three investor/victims. It's an illusion. Superficially, this is what it looks like. But the illusion unravels like a ball of yarn upon scrutiny. Under the guise of uncharged relevant conduct the court crushed me with entirely separate uncharged, untried crimes that weren't even remotely related to my crime of conviction. Under this model of "justice," as long as the federal government can convict a person of a relatively minor offense, a federal judge can imprison a person for entirely separate uncharged, untried crimes, ***no matter how remote or unrelated***. This is dangerous. And it threatens the integrity of the entire system.

One more thing. The government at my sentencing insisted that the owners of The Pointer Group were the masterminds, that they pocketed millions. Yet, they were *never* charged with a crime. They denied ever committing a crime and did not cooperate with the federal government. They simply weren't charged with a crime, even though the government insists they used fraud to steal millions. But again, the uncharged crimes had nothing to do with my crime of conviction, a point my judge herself admitted. Yet my prison sentence was based largely on the unrelated, uncharged crimes.

There is also a double punishment element to my case that is unprecedented.

United States v. Bookout

Randy's case is in the Northern District of Texas, Fort Worth Division.

Randy Bookout received nearly 20 years in federal prison after pleading guilty to a petty \$250 drug deal. <https://www.thejusticeprojecttexas.com/cases/randy-bookout>

Randy Bookout is approaching his sixties. Until now, he'd never been to prison. He has three children, and he spent his life as a professional photographer. His dad was a prominent physician in Dallas, his mother was a hands-on, stay-at-home mom. His parents (now 83) met as college students at Southern Methodist University (SMU) in Dallas. They have been married for about 60 years. Randy is very close to his family.

Randy was approached by federal agents. He vehemently denied the accusations. Randy was never caught with drugs. There was no physical evidence: no telephone wiretaps, no controlled buys, no surveillance, no search warrants that yielded a single piece of evidence that tied Randy to drug use, much less drug distribution. *Nothing*.

But federal agents had interviewed an inmate/drug dealer who maintained that Randy had sold him and others methamphetamine for years. The federal agents followed up, but rather than confirming the inmate's accusations, they learned from third-party witnesses that the information was demonstrably false; that is, the investigation yielded overwhelming evidence that the inmate lied. Tellingly, the inmate did not know Randy's last name or where he lived or worked, or even where the years of alleged drug deals occurred. That didn't seem to matter.

Still, the determined federal agents pressed on. And Randy continued to adamantly deny the accusations.

Randy was told that if he did not waive federal indictment and plead guilty to buying \$250 worth of methamphetamine with the intent to distribute, the federal government would destroy his life, and he would die in federal prison. The agents even threatened to put pressure on Randy's elderly parents (in their 80s) to "shake Randy up."

Randy broke. He pleaded guilty to a petty \$250 drug deal that yielded a U.S. Sentencing Guideline range of probation to 18 months in prison. And then came sentencing.

At sentencing, Randy was blindsided. He learned about the government's *real* case theory. At sentencing, the judge held him responsible for more than four years of drug deals, more than 50 in all. The judge also held him responsible for related activities. All the uncharged criminal conduct piled on at sentencing caused his sentencing range to leap by about tenfold, from probation to 18 months in prison to ***nearly 20 years in prison***.

Thus, through skillful exploitation of the uncharged relevant conduct loophole, the government parlayed a guilty plea to a petty \$250 drug deal that merited probation into a gravely serious drug trafficking crime that resulted in *nearly 20 years in federal prison without the possibility of parole*, an extreme sentence just shy of the statutory maximum. Very sneaky.

And since there was no evidence against Randy to support the uncharged criminal conduct conveniently snuck in at sentencing, the judge relied on unsworn, uncorroborated out-of-court hearsay accusations that could not be tested.

Again, by waiting until the *sentencing* phase to cram its entire case through the legal loophole, the government did not have to worry about presenting real evidence or live witness testimony subject to scrutiny to a jury and proving their case beyond a reasonable doubt.

How would you feel if you were accused of something and it was used to imprison you for many years or decades, but you were not allowed to even question your accuser?

The inmate who traded to federal agents vague information about Randy received a massive time cut. The inmate was a high-level drug trafficker. He was released after the federal judge

sentenced him to a significantly reduced prison term and allowed him to self-report to federal prison a month later. He never made it. Instead, he took a firearm and went on a violent crime spree that culminated with an assault on law enforcement and *five new felony charges*. Of course, the new charges were dismissed. He was a government witness, after all. And he went on to serve an incredibly light prison sentence.

Meanwhile, Randy is serving *nearly 20 years in federal prison without parole* after pleading guilty to a single \$250 drug deal.

Noteworthy as well, as the raw investigative reports demonstrate, nearly everything the inmate said about Randy was revealed to be demonstrably false. But anything and everything that undercut the accusations showcased in Randy's PSR (a sentencing report filed with the judge) was omitted, no matter how strong or overwhelming, because it did not comport with the government's one-sided narrative. Because of Randy's attorney's shocking incompetence Randy was not allowed to make a single objection to the accusations in his PSR, depriving Randy of basic procedural fairness and stripping the proceedings of their adversarial nature.

United States v. Gregory Bell

Under this same legal loophole, federal judges can imprison people for the crimes the jury acquitted them of.

For Gregory Bell, after a nine-month trial, the jury acquitted him of 10 serious charges, including trafficking and racketeering conspiracies that would have meant decades in prison.

At sentencing for the relatively minor crimes he was convicted of, the judge ruled that Bell had engaged in the same crack cocaine conspiracies that the jury had rejected. The five grams of crack became 1,500 grams, and the judge sentenced Bell to 16 years, not the expected five. <https://www.themarshallproject.org/2018/07/23/punished-for-crimes-not-proven>

Bell's sentence was increased by a *decade*—from five years to 15—based on the very crimes the jury acquitted him of. Even an acquittal in federal court is meaningless for all practical purposes.

Conclusion

Take away the right to indictment-by-grand-jury. Take away the right to a trial-by-jury. Take away the right to face one's accuser. Take away the right to not have inadmissible evidence used against one. Take away the beyond-a-reasonable-doubt standard.

What's left? A skeleton system. When the criminally accused is stripped of the constitutional procedural protections afforded to him or her, the proceedings are stripped of their integrity. This is what the effective eradication of the criminally accused's constitutional rights looks like.

And what's left is a heavily watered-down brand of "justice," a knock-off brand of "justice" that is dirt cheap, fundamentally unfair, and inherently unreliable.

This is an insidious type of injustice that is subtle but no less unjust.

You do not have to be a suspected terrorist held at Guantanamo Bay to be imprisoned for crimes that you were never charged with, tried for, or convicted of. This is the cornerstone of the mass federal punishment machine.

Can you imagine what our founding fathers would say about a system of justice in which unsworn, uncorroborated, untested *out-of-court* hearsay accusations are used as so-called evidence of *uncharged* crimes, which are then used as the core of criminality punished, ratcheting up the number of years a human being must spend in prison.

This cheap trick perverts the American system of justice and it doles out unconstitutional sentences under the guise of justice.