

SUMMER 2010

Feel free to pass our newsletter on to colleagues. If this has been forwarded to you and you'd like to subscribe to our quarterly newsletters, click here aelaw3@aol.com and type Subscribe in the subject line. If you wish to be taken off this list, please click here aelaw3@aol.com and type in Unsubscribe in the subject line.

Post *Booker* Sentencing Standards of Proof

Just as the U.S. Supreme Court was split in its 2005 *United States v. Booker* decision, courts continue to be split in their application of the standards of proof ruling. We have addressed the controversy in our most recent ABA *Criminal Justice* column entitled "Standards of Proof at Sentencing." We believe that, despite the fact that the U.S. Sentencing Guidelines are no longer mandatory, *if* the Guidelines are followed by a district court at sentencing, then any facts found that increase the Guideline sentence must be proved by the government "beyond a reasonable doubt." However, many courts continue to assume that a preponderance of evidence is sufficient to impose harsher sentences, which in our view is ill advised and could result in a remand for resentencing. While the courts may view the Sentencing Guidelines as advisory, the Guidelines are still considered important and relevant. But because there remain significant inconsistencies regarding which standards of proof are being applied in a given circumstance, it's incumbent on counsel to apply the standard that best serves the client, which in most cases will be the "beyond a reasonable doubt" standard. To quote Judge Nancy Gertner: "Due Process requires procedural safeguards and a heightened standard of proof, namely, proof beyond a reasonable doubt." Click here to [view the entire article](#).

Plea Agreement Waivers

In our "Stemming the Tide of Postconviction Waivers," we discuss the constraints, ethical and otherwise, that defense counsel should keep in mind when advising clients about federal plea agreements. Specifically, we explore waiving the right to challenge constitutional and other legal errors by which a conviction may be obtained, conditions that are routinely inserted into plea agreements by federal prosecutors but can leave defendants with no meaningful chance at postconviction relief. There are also conflict-of-interest situations where counsel must render advice about the quality of his own performance to date. With the arguments contained in this article, the government may often be receptive to changes in waiver boilerplate language. That said, however, the complexities inherent in postconviction waivers require careful review and counsel that's experienced in plea negotiations. We're happy to assist, if needed. Read the [article on our website](#).



THE LAW OFFICES OF
AlanEllis
SAN FRANCISCO PHILADELPHIA
www.alanellis.com

For over 40 years, the Law Offices of Alan Ellis has worked with federal defendants and inmates and consulted with many of this country's leading criminal defense attorneys to develop strategies that obtain the lowest possible sentence for clients, and if it's one of incarceration, to be served at the best facility possible, with the greatest opportunity for early release, as well as dealing with problems inmates have while incarcerated.

From its regional offices in San Francisco, California and Philadelphia, Pennsylvania, and now international office in Shanghai, China, the Law Offices of Alan Ellis represents federal criminal defendants, inmates and others nationwide in connection with plea negotiations; sentencing; prison designation and placement, transfers, medical and other problems; Rule 35 motions; direct appeals; Habeas Corpus 2255 motions; international prisoner transfer treaty work; representation of Chinese nationals in the United States and business law representation of Americans doing business in China.

CALIFORNIA

495 Miller Avenue
Mill Valley, CA 94941
Phone 415 380 2550
Fax 415 380 2555
AELaw1@aol.com

PENNSYLVANIA

50 Rittenhouse Place
Ardmore, PA 19003
Phone 610 658 2255
Fax 610 649 8362
AELaw1@aol.com

CHINA

Foreign Legal Counsel
Longan Law Firm
9/F, Zhong Rong In't Plaza
560 Zhang Yang Road
Shanghai, 200122, China
Phone 415 380 2550
Fax 415 380 2555
AELaw1@aol.com