

NOTES ON THE PHILOSOPHY OF SENTENCING

(By JUDGE LAURIE SMITH CAMP)

The following notes are offered so that lawyers representing defendants in criminal cases assigned to me will be aware of my general sentencing practices, regardless of how often the lawyers have appeared before me in sentencing hearings.

I. The application of the law should be reasonably predictable.

A. If the application of the law is reasonably predictable,

1. people affected by the law can make reasoned decisions about how to conduct their affairs,
2. lawyers and clients can negotiate settlements with confidence, and
3. litigants, including criminal defendants, are assured of reasonably equal treatment under the law.

B. If the application of the law is not reasonably predictable,

1. people affected by the law cannot make reasoned decisions about how to conduct their affairs,
2. trials, motions, and appeals proliferate, even when facts are not in dispute, because the outcome is always uncertain, and
3. litigants, including criminal defendants, have no assurance of reasonably equal treatment under the law.

II. The federal sentencing guidelines provide a structure for the reasonably predictable application of the law and, along with all other factors listed in 18 U.S.C. § 3553(a), help inform my sentencing decisions.

A. The following circumstances carry little weight when a defendant

or a lawyer argues for a sentence more lenient than that suggested by the guidelines:

1. The defendant has children. (People who don't have children should not be sentenced more severely than people who have children.)
2. The defendant is religious. (People who are not religious should not be sentenced more severely than those who are religious.)
3. The defendant comes from a good family. (People who come from dysfunctional families should not be punished more severely than those who come from upstanding families).
4. The defendant is homosexual, heterosexual, bisexual, transsexual, inter-sexual, feminine, small, slight-of-build, overweight, a law enforcement officer, a lawyer, a member of the clergy, a child molester, or HIV-positive. (The Bureau of Prisons can and does provide for such offenders.)
5. The defendant is a pillar of the community, a large donor to charity, or a generous provider for his or her family (especially when the defendant's crime was one of theft).
6. It will cost taxpayers money to incarcerate the defendant. (Yes, the average annual per capita cost of incarceration generally exceeds \$25,000. *Failure* to incarcerate a defendant who poses a threat to society may cost taxpayers and victims far more. A defendant's liberty should not rest on judicial concern for the public purse.)
7. The defendant "paid the debt to society" when sentences for earlier crimes were served. (This archaic term harks back to the era when inmates were considered slaves of the state, and

served their time at hard labor on public works projects. The defendant's criminal history is relevant and will be considered).

B. The following circumstances *are* given favorable consideration when a defendant or a lawyer argues for a sentence more lenient than that suggested by the guidelines:

1. The defendant has complied with all conditions of any pre-trial release order, including successful completion of any treatment program to address addictions, and has maintained steady employment or regular attendance in an educational program to help prepare for employment. (While the inspiration for post-indictment rehabilitation may come from the realization that sentencing is imminent, such progress is part of the "history and characteristics" of the defendant at the time of sentencing, and may shed light on the defendant's future need for correctional treatment.)
2. The defendant has made an effort to earn and set aside funds for restitution, if the crime involved financial loss to a third party.
3. The defendant has no prior pattern of criminal conduct.
4. The defendant's behavior and all other circumstances demonstrate that the defendant has accepted responsibility for his or her crime, regrets his or her actions, and intends comply with the law.

III. Judges should not base their sentencing decisions on the testimony of select character witnesses.

A. At the time of sentencing, I do not permit testimony from character witnesses, nor do I view video presentations from the defendant or his family and friends.

B. If I were to permit character testimony or video presentations on behalf of a defendant, I would feel compelled to allow such testimony and presentations from those who advocate for a harsher sentence. I allow such testimony only as mandated by law, *i.e.*, from certain victims.

C. A defendant and the defendant's family, friends, employers, spiritual leaders, and counselors are welcome to send letters to my chambers, making any statements they wish to offer.

IV. Although the concept of punishment facilitates predictability in the application of the law, and under-girds the structure of the sentencing guidelines, the *objective* of punishment itself is of questionable value.

A. I consider the objective of punishment to be less important than the other objectives of the criminal justice system (specific deterrence, general deterrence, incapacitation and rehabilitation).

B. When penitentiaries replaced corporal punishment in the 18th Century, the criminal justice system changed its focus from punishment to incapacitation and rehabilitation. Modern correctional institutions and community corrections programs are not designed to *inflict* punishment.

C. When considering the factors listed in 18 U.S.C. §3553(a), I view "just punishment" under (a)(2)(A) as a corollary to "the need to avoid unwarranted sentencing disparities" under (a)(6).

D. I recognize that punishment helps to satisfy a desire for catharsis, closure, or even vengeance on the part of the public and/or victims and their families and friends, and may help deter vigilantism. The concept of punishment is also used to justify different sentences for identical actions and intentions, when the resulting harm is different. I do respect the need for victims and their loved ones to be assured

that the perpetrator of a great harm has received “just deserts.”

E. As a judge, I do not consider my role to be that of an instrument of public vengeance. In the words of Clint Eastwood in “Unforgiven,” – “We all have it coming.” In the words of Dustin Hoffman in “Papillon” – “Blame is for God and small children.”