

2006 District Conference - Eastern District of Washington

You Be "The Judge"

Balancing the Equities in Sentencing

Although not a requirement, it is requested that you review these materials prior to the program during the District Conference. Thank you!

Federal judges sentence hundreds of people to prison each year. Sentencing is one of the most difficult and emotionally demanding tasks that judges perform. The sentence is imposed by a single judge and is the judge's sole responsibility. Most discussions about sentencing are abstract, i.e. sentences for certain categories of crimes are too short or too long. Judges do not deal with the abstract in sentencing. There is an actual person being sentenced and at times identifiable victims in every case.

The sentencing program presented today asks you to assume the role of a judge and impose sentence in the cases before you today. Judges have a presentence report prepared by the probation office that summarizes the offence and background of the defendant and any victims. After reviewing the presentence report, the judge conducts a sentencing hearing at which the defendant, the prosecutor, defense lawyer, and victims can be heard. At the end of the hearing, the judge pronounces the sentence.

Congress has stated the purposes of sentencing in a statute. Attachment (A) summarizes the statute. The statute requires the judge to consider the Guidelines set by the United States Sentencing Commission for the offense. The sentencing guideline grid is Attachment (B). Thereafter are the presentence reports for the cases to be decided. Finally, behind each presentence report is a sentencing sheet on which you are to write your sentence. The sentencing sheets will be collected, tabulated, and analyzed. The analysis will appear on the conference website at a later date.

What you are supposed to do:

Before reviewing the presentence report, write down the typical sentence that you believe should be given where you know only the crime committed and the defendant's prior criminal convictions. After writing down this number, you will review the presentence report and then listen to the sentencing hearing as if you were the judge deciding the sentence. You will then write down your sentence.

A comparison of the typical sentence found by you, without knowing the facts, versus the sentence that you impose after considering an actual case, may reflect the tension between sentencing in the abstract and in the real world of a judge.

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Scenario # 1

United States v. MacKay

Distribution and Receipt of Child Pornography

Statutory Provision: 18 U.S.C. § 2252(a) makes it a crime to knowingly possess materials which contain visual depictions of a minor engaged in sexually explicit conduct. The elements of the crime are: (1) the defendant knowingly possessed materials which the defendant knew contained a visual depiction of a minor engaged in sexually explicit conduct; (2) the defendant knew the visual depiction showed a minor engaged in sexually explicit conduct; (3) the defendant knew that the production of the visual depiction involved the use of a minor in sexually explicit conduct; and (4) the visual depiction had been transported in interstate commerce

Statutory Penalty: minimum 5 years; maximum 20 years

Criminal History: The Defendant does not have any criminal history

1 *Without looking at the written materials and or knowing the details of the case, other than what is provided below, what should be the typical sentence for the crime of Distribution and Receipt of Child Pornography:*

Incarceration: _____

Supervised Release: _____

2. *At a typical sentencing hearing, the court is presented with a presentence report that is prepared by US. Probation, and hears oral argument from counsel for the Defendant and for the Government. The Court considers certain factors in determining a reasonable sentence, see accompanying Sentencing Factors. Please read the following materials and view the video and determine what a reasonable sentence would be for this Defendant:*

Incarceration: _____

Supervised Release: _____

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Scenario # 2

United States v. Stanley

Sexual Abuse of a Minor

Statutory Provision: 18 U.S.C. § 2243(a) makes it a crime to knowingly engage in a sexual act with a minor, on an Federal Indian Reservation. The elements of the crime are 1) the defendant knowingly engaged in a sexual act with the victim; (2) the victim had reached the age of twelve years but had not yet reached the age of sixteen years; (3) the victim was at least four years younger than the defendant; and (4) the offense was committed on an Federal Indian reservation.

Statutory Penalty: not more than 15 years

Criminal History: The Defendant does not have any prior criminal offenses

1. *Without looking at the written materials and or knowing the details of the case, other than what is provided below, what should be the typical sentence for the crime of Sexual Abuse of a Minor, with no prior criminal offenses.*

Incarceration: _____
Supervised Release: _____

2. *At a typical sentencing hearing, the court is presented with a presentence report that is prepared by US. Probation, and hears oral argument from counsel for the Defendant and for the Government. The Court considers certain factors in determining a reasonable sentence, see accompanying Sentencing Factors. Please read the following materials and view the video and determine what a reasonable sentence would be for this Defendant:*

Incarceration: _____
Supervised Release: _____

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Scenario # 3a

United States v. Elena Garcia

Alien in the United States Following Deportation

Statutory Provision: 8 U.S.C. § 1326 makes it a crime for an alien, who has been previously deported, to be found in the United States. The elements of the crime are: (1) the defendant is an alien; (2) the defendant was deported from the United States; and (3) the defendant reentered the United States without having obtained the consent of the Attorney General to reapply for admission into the United States.

Statutory Penalty: maximum 20 years

Criminal History: Defendant has a prior controlled substance conviction

1. *Without looking at the written materials and or knowing the details of the case, other than what is provided below, what should be the typical sentence for the crime of Being an Alien in the United States Following Deportation, with prior criminal history for distribution of a controlled substances.*

Incarceration: _____
Supervised Release: _____

2. *At a typical sentencing hearing, the court is presented with a presentence report that is prepared by US. Probation, and hears oral argument from counsel for the Defendant and for the Government. The Court considers certain factors in determining a reasonable sentence, see accompanying Sentencing Factors. Please read the following materials and view the video and determine what a reasonable sentence would be for these Defendants:*

Incarceration: _____
Supervised Release: _____

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Scenario # 3b

United States v. Javier Garcia

Alien in the United States Following Deportation

Statutory Provision: 8 U.S.C. § 1326 makes it a crime for an alien, who has been previously deported, to be found in the United States. The elements of the crime are: (1) the defendant is an alien; (2) the defendant was deported from the United States; and (3) the defendant reentered the United States without having obtained the consent of the Attorney General to reapply for admission into the United States.

Statutory Penalty: maximum 20 years

Criminal History: Defendant has a prior controlled substance conviction

1. *Without looking at the written materials and or knowing the details of the case, other than what is provided below, what should be the typical sentence for the crime of Being an Alien in the United States Following Deportation, with prior criminal history for distribution of a controlled substances.*

Incarceration: _____
Supervised Release: _____

2. *At a typical sentencing hearing, the court is presented with a presentence report that is prepared by US. Probation, and hears oral argument from counsel for the Defendant and for the Government. The Court considers certain factors in determining a reasonable sentence, see accompanying Sentencing Factors. Please read the following materials and view the video and determine what a reasonable sentence would be for these Defendants:*

Incarceration: _____
Supervised Release: _____

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Scenario # 4

United States v. Stephens

Distribution of a Controlled Substance

Statutory Provision: 21 U.S.C. § 841(a) makes it unlawful for any person to knowingly or intentionally distribute cocaine. The elements of the crime are: (1) the defendant knowingly delivered cocaine; and (2) the defendant knew that it was cocaine or some other prohibited drug

Statutory Penalty: Minimum: 5 years ; Maximum: 40 years

Criminal History: The Defendant does not have any prior criminal offenses.

1. *Without looking at the written materials and or knowing the details of the case, other than what is provided below, what should be the typical sentence for the crime of Distribution of a Controlled Substance, with no prior criminal convictions.*

Incarceration: _____
Supervised Release: _____

2. *At a typical sentencing hearing, the court is presented with a presentence report that is prepared by US. Probation, and hears oral argument from counsel for the Defendant and for the Government. The Court considers certain factors in determining a reasonable sentence, see accompanying Sentencing Factors. Please read the following materials and view the video and determine what a reasonable sentence would be for this Defendant:*

Incarceration: _____
Supervised Release: _____

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Scenario # 5

United States v. Smith

Mail Fraud

Statutory Provision: 18 U.S.C. § 1341(a) makes it a crime to use the mail to perpetuate a fraudulent scheme in order to obtain money or property by means of false representations. The elements of the crime are: (1) the defendant made up a scheme or plan for obtaining money or property by making false promises or statements; (2) the defendant knew that the promises or statements were false; (3) the promises or statements were material; (4) the defendant acted with the intent to defraud; and (5) the defendant used the mails to carry out an essential part of the scheme.

Statutory Penalty: not more than 20 years

Criminal History: Defendant has prior criminal history; fraudulently obtaining credit card and unlawful issuance of bank checks.

1. *Without looking at the written materials and or knowing the details of the case, other than what is provided below, what should be the typical sentence for the crime of Mail Fraud, with prior criminal history of fraudulently obtaining credit card and unlawful issuance of bank checks:*

Incarceration: _____
Supervised Release: _____

2. *At a typical sentencing hearing, the court is presented with a presentence report that is prepared by US. Probation, and hears oral argument from counsel for the Defendant and for the Government. The Court considers certain factors in determining a reasonable sentence, see accompanying Sentencing Factors. Please read the following materials and view the video and determine what a reasonable sentence would be for this Defendant:*

Incarceration: _____
Supervised Release: _____

2006 Ninth Circuit Judicial Conference
Appendix A

"Sentencing Factors"

18 U.S.C. § 3553(a)

Congress has instructed courts to impose a sentence sufficient, but not greater than necessary to meet the following purposes:

- (1) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (2) to afford adequate deterrence to criminal conduct;
- (3) to protect the public from further crimes of the defendant; and
- (4) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

Congress has instructed courts to consider the following factors in imposing a reasonable sentence:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the kinds of sentences available;
- (3) the kinds of sentence and the sentencing range established by the United States Sentencing Guidelines (attached Guideline table);
- (4) any pertinent policy statements issued by the United States Sentencing Commission;
- (5) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (6) the need to provide restitution to any victims of the offense.

SENTENCING TABLE
(in months of imprisonment)

Offense Level	Criminal History Category (Criminal History Points)						
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)	
Zone A	1	0-6	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6,	0-6	0-6	2-8	3-9
	4	0-6	0-6	0-6	2-8	4-10	6-
	5	0-6	0-6	1-7	4-10	6-12	9-15
	6	0-6	1-7	2-8	6-12	9-15	12-18
	7	0-6	2-8	4-10	8-14	12-18	15-21
	8	0-6	4-10	6-12	10-16	15-21	18-24
	9	4-10	6-12	8-14	12-18	18-24	21-27
Zone B	10	6-12	8-14	10-16	15-21	21-27	24-30
	11	8-14	10-16	12-18	18-24	24-30	27-33
Zone C	12	10-16	12-18	15-21	21-27	27-33	30-37
	13	12-18	15-21	18-24	24-30	30-37	33-41
Zone D	14	15-21	18-24	21-27	27-33	33-41	37-46
	15	18-24	21-27	24-30	30-37	37-46	41-51
	16	21-27	24-30	27-33	33-41	41-51	46-57
	17	24-30	27-33	30-37	37-46	46-57	51-63
	18	27-33	30-37	33-41	41-51	51-63	57-71
	19	30-37	33-41	37-46	46-57	57-71	63-78
	20	33-41	37-46	41-51	51-63	63-78	70-87
	21	37-46	41-51	46-57	57-71	70-87	77-96
	22	41-51	46-57	51-63	63-78	77-96	84-105
	23	46-57	51-63	57-71	70-87	84-105	92-115
	24	51-63	57-71	63-78	77-96	92-115	100-125
	25	57-71	63-78	70-87	84-105	100-125	110-137
	26	63-78	70-87	78-97	92-115	110-137	120-150
	27	70-87	78-97	87-108	100-125	120-150	130-162
	28	78-97	87-108	97-121	110-137	130-162	140-175
	29	87-108	97-121	108-135	121-151	140-175	151-188
	30	97-121	108-135	121-151	135-168	151-188	168-210
	31	108-135	121-151	135-168	151-188	168-210	188-235
	32	121-151	135-168	151-188	168-210	188-235	210-262
	33	135-168	151-188	168-210	188-235	210-262	235-293
	34	151-188	168-210	188-235	210-262	235-293	262-327
	35	168-210	188-235	210-262	235-293	262-327	292-365
	36	188-235	210-262	235-293	262-327	292-365	324-405
	37	210-262	235-293	262-327	292-365	324-405	360-life
	38	235-293	262-327	292-365	324-405	360-life	360-life
	39	262-327	292-365	324-405	360-life	360-life	360-life
	40	292-365	324-405	360-life	360-life	360-life	360-life
	41	324-405	360-life	360-life	360-life	360-life	360-life
	42	360-life	360-life	360-life	360-life	360-life	360-life
	43	life	life	life	life	life	life