

Federal Judge Mark Bennett on Sentencing:

By: Michael Santos

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Judge Mark Bennett served as a Senior Judge of the United States District Court for the Northern District of Iowa. He also presided as a judge on the United States Court of Appeals for the Eighth and Ninth Circuit. Judge Bennett graciously agreed to talk with us to discuss how a person charged with a crime could work toward the best possible outcome before a sentencing hearing.

- » Page URL: <https://prisonprofessors.com/judge-mark-bennett/>
- » Video URL: <https://youtu.be/8HckgtufUIk>

What have you learned from sentencing thousands of people?

- » Time Stamp on video: 1:14-2:55

Presiding as federal sentencing for more than 20 years, Judge Bennett offers some primary takeaways from which we can learn.

He tells us that the war on drugs has been a failed policy. He told us that the law required him to sentence many good people who made bad decisions. The majority of those people suffered from addictions. Their addictions led them to make decisions that brought them into the criminal justice system.

Congress initiated laws that required harsh sentences, requiring judges to impose sanctions that put people in prison for too long. Judge Bennett told us that prisons should offer more programs to help people emerge as law-abiding citizens.

Prisons should serve a societal purpose. His research and experience have led him to conclude that we incarcerate people for far too long, which does not serve the best interest of an evolving society.

How can a person influence a better PSR?

» Time Stamp on video: 2:55-5:40

Probation officers prepare a pre-sentence report after a person is convicted of a crime. The report provides context for the judge to consider as he deliberates over an appropriate sentence.

Defense attorneys mainly focus on the government's version of criminal conduct. They do not spend a sufficient amount of time framing a story that helps a judge understand the influences that led to the criminal misconduct.

Judge Bennett believes that many defense attorneys would serve their clients well by elaborating on the defendant's backstory. They may focus on the client's account of events to provide a differing perspective to the government's conduct statement. Many times the offender's perspective provides a more nuanced view of the matter and can mitigate sentence length.

Thus, pre-sentencing reports are paramount to success in a sentencing trial. Judge Bennett recommends that people review the report many times, ensure it is accurate, read the offense conduct statement, and confirm their attorney takes all of this into account.

The judge has found that more often than not when a person contends something from the conduct statement, he finds that the person provides a more accurate and detailed account of events than the government's version.

He then encourages people to challenge anything in the offense statement that is not entirely accurate. Cross-examining the conduct statement will lead to a more nuanced view of the person facing sentencing. It ensures that the court doesn't miss something the person wants to discuss. False or misconstrued information could hurt the person's case. The person should make certain to provide factual information.

How do judges view allocution?

» Time Stamp on video: 5:40-9:30

In an effort to get a better understanding of judicial bias, Judge Bennett launched a research project. He reached out to 900 federal judges and asked them about the importance of the offender's version of events and the factors that led them to commit a crime in sentence lengths.

The vast majority of judges responded to Judge Bennett's questions by saying that they listened intently to the person's statement. It weighed heavily on the sentence imposed. For this reason, Judge Bennett tells us that a person's allocution can be a significant factor in moderating or even reducing the sentence that the judge might otherwise impose.

On numerous occasions, when Judge Bennett asked the person about to be sentenced if they had anything to say, he watched the person turn to counsel. The person seemed skeptical to talk and unsure of what he should say. The judge believed the lawyer should have discussed the person's statement long before the trial to facilitate the best possible outcome. Lawyers fail their clients when they do not prepare the person for sentencing.

When a person makes an inaccurate statement or fails to recognize the seriousness of the offense, the judge may impose a more harsh term. He gave an example from a recent case. The person complained about the process, saying how the ruling upset his family. He did not show empathy for the victims, or remorse for the crime. In that case, the person would have been better off to remain silent, he said.

Good allocution would show that a person accepts responsibility for the crime. The person should show that he understands the way a crime influences victims and the community. The person should also show that he has developed a plan to rehabilitate and make amends. If a person can describe what he intends to do to make things right, and how he intends to reform his life, that person may make a more favorable impression at sentencing.

If the person made such efforts before sentencing, the person could potentially influence the sentence imposed.

Would value do judges place on a first-person introspective narrative?

» Time Stamp on video: 9:31-11:35

Judge Bennett said that he would place enormous value on an individual's first-person narrative. For sentencing, the lawyer's opinion on what their client has learned and how they will make changes is a fine introduction.

The nuts and bolts of allocution need to come from the person being sentenced. The judge will assess the genuineness and realistic nature of the approach. The judge could lessen the sentence if the person presents an articulate story, showing that he understands the crime, the victims, and his responsibility to make amends.

How would you feel about a narrative before the pre-sentence investigation?

» Time Stamp on video: 11:36-13:34

Judge Bennett told us that he reads pre-sentence reports thoroughly before sentencing. If he were able to get a person's story early, it would help him understand whether the person saw the relevant issues. That person could make a favorable impression before he stood for sentencing.

Judge Bennett has never seen an offender take the initiative to write his story before the pre-sentence investigation report. It could be an outstanding way for the person to influence the judge in a favorable way. He told us that he would be extremely impressed if a person came up with the narrative before the probation officer prepared the pre-sentencing report.

The pre-sentencing report helps shape Judge Bennett's frame of reference. If the person's narrative showed up in the report, the judge could make a more informed opinion on an appropriate sentence. He could assess whether the person was being candid. Better preparation could lead a lower sentence.

» Time Stamp on video: 13:35-16:10

Judge Bennett emphasized the influence of crafting a narrative before the pre-sentence report.

Many people are reluctant to write their personal stories. They worry that the story may contradict the work of the defense attorney. People who write with sincerity and honesty can create a sense of common humanity in the court. The goal would be to help the judge see the person being sentenced as an individual, and not simply as a person charged with a crime. We're all human beings. We all make bad decisions. We should show that we're willing to accept responsibility and grow from those decisions. We should show empathy for the victims, and for society.

If a person can express remorse and responsibility effectively, the person can advance prospects for the best possible outcome.

Judge Bennett notes that most people he sentenced did not have good parental guidance. Many grappled with addiction. Whether their turbulent childhood led them to take drugs at a young age or their parents provided the drugs, these backgrounds help put the criminal behavior into context.

The lack of parental guidance almost always justifies the downward variance for the judge. He doesn't generalize, so it is paramount to contextualize the person's life. It

doesn't justify the behavior, but it does explain the backstory. In some cases, it can mitigate the judge's perception. It can lead to leniency at sentencing.

Do assessments from mental-health professionals help a person at sentencing?

» Time Stamp on video: 16:10-19:52

Many people that face challenges with the criminal justice system suffer from mental instability and other neurological issues. Psychologists can offer reports or even testify in a trial as expert witnesses.

Judge Bennett believes that the analysis from a psychologist is always beneficial, but the scope of the benefit varies. These psychological evaluations are crucial for judges when they have more discretion in sentence length and need to know whether the offender made a mistake they can learn from quickly.

Psychiatric evaluations don't always point to a mental disability, as proving the offender's stability can suggest a quicker rehabilitation process.

Even though Judge Bennett appreciates all expert reports, a live witness allows cross-examination and questions from the judge, resulting in the judge to give more weight to their credibility and assertions.

How much influence do character references have on sentencing?

» Time Stamp on video: 19:53-22:46

Character references can come from a variety of people. They should shine a light on the person's character, outside the singular perspective of the crime.

Judge Bennett roughly estimates that he has read around 35,000 character references as a judge. Most people will submit between eight to nine references. That is sufficient. It's not helpful to overkill.

Here is some important insight into how references affect his decisions:

- » He gives more weight to letters if the references have known the person for a long time and provide a nuanced perspective.
- » He gives less weight when a letter comes from someone who barely knows the person, even if the writer is powerful person (such as a senator) wrote it.

- » He gets offended when references tell him what the sentence should be and what he should do. Those kinds of recommendations overstep the purpose of references and come across as condescending.

What impact do payments toward restitution have on sentencing?

- » Time Stamp on video: 22:47-24:30

Many crimes cause financial damage. They hurt individual victims, the community, or financial institutions. People who cause damage can take initiative to provide financial compensation. Making voluntary institutions can have a huge influence on society.

Judge Bennett meets many people who say that they hope to make restitution payments once they get out. That provides no reassurance. In most cases, such promises fail to mitigate the sentence. On the flip side, if a person makes voluntary payments, even if small, shows real initiative and can go a long way toward improving the person's character in front of the judge.

The judge has never heard a person saying that he looks forward to working in the prison industry to make restitution payments behind bars. He would be extremely impressed if he thought it was sincere, which could lower the sentence length. A person goes a long way when he builds a credible story that shows he understands the severity of offense, and that he wants to reconcile with society.

Do witnesses help at sentencing?

- » Time Stamp on video: 24:31-27:45

Judge Bennett believes that, on a subconscious level, showing community support generally increases the likelihood of successful rehabilitation.

On the other hand, when no one comes on behalf of the person, he tries to not let that influence him. The person might feel embarrassed and not want to put their family through any pain.

Judge Bennett has seen support backfire in some white-collar cases. For instance, Judge Bennett grows irritated when over one hundred people show up to support the person being sentenced. They may write that what he or she did was not that bad, or compare the offense to others. If they say the person is truly good, they may miss the purpose of writing a character reference. They should not try to determine guilt or innocence. At the sentencing stage, a judge wants to hear more about the nature of the person to determine the prospects for rehabilitation, and the necessity of punishment.

Essentially it is a case-by-case basis. Judge Bennett told me of a favorable impression he had from an employer. The business owner testified that he knew the person would serve many years in prison. Nevertheless, the person showed up to court. The person said that he thought so highly of the person that he would offer the person a job when he got out of prison. That statement said a great deal about the person's character.

In any situation, people should work with counsel to plan how many people should support them and in what capacity.

Lessons from visiting people he sentenced:

» Time Stamp on video: 27:46-29:59

Judge Bennett has led a research project to publish what he learned from visiting people he sentenced, both in and out of prison.

His work reinforces the notion that most of these people are good humans who have made bad decisions. They may have made bad choices while under the influence of drugs and alcohol. Sometimes, he left those visits with mixed emotions.

He deeply regrets that he had to give people such long sentences because of mandatory minimums. However, he remains optimistic. Many people made the most of their time and learned skills to build a better life when they concluded the sentence.

These prisoners inspire him, for they have transformed their lives after their sentence—they looked at their lives and realized that it was not the life they wanted, so they took steps to improve themselves.

How does prison adjustment influence a judge?

» Time Stamp on video: 30:00-33:50

As laws change, some people may have the opportunity to get reevaluated by a judge. Furthermore, people can have their sentence commuted or pardoned by the president.

These possibilities provide a reason for people to maintain hope. They should work to improve themselves. Even in the face of a life sentence, the possibility exists for an earlier release.

One of Judge Bennett's cases went to the Supreme Court (*US v. Pepper*). Judge Bennett released Pepper from prison earlier during his resentencing because of all the good things

he did in prison. The 8th circuit court said that the Judge's actions were unconstitutional, but the Supreme Court ruled it was within Judge Bennett's power to do what he did.

Pepper had this opportunity because he had made incredible decisions in prison to create a life of meaning as soon as possible.

Furthermore, the Judge has spent a lot of time writing commutation and pardon letters on the behalf of people he sentenced. The most important element for the success of these appeals are:

- » What courses/classes they have taken
- » If they are helping their inmates
- » How they spend their time
- » Whether they have any infractions

When a prisoner has a print record and list of accomplishments to provide documentation of their success behind bars, they are more likely to receive a pardon or commutation. That shows that there is always hope, as even with a life sentence, there is always a possibility of an early release.

Moving forward:

- » Time Stamp on video: 35:51-35:17:

Judge Bennet explains that there are many ways in which a person's sentence—whether in prison, supervised release, or parole—could be terminated early with the correct documentation. There needs to be evidence of how an individual took the time to reconcile with themselves and society.

Regardless of what is going on in the world, who is in congress or the White House, a person can always take steps to become better. These actions will only help. Each person should craft a plan that will lead to the best possible outcome.

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