

# Federal District Court Judge: Stephen Bough On Sentence Mitigation

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Federal District Court Judge Stephen Bough spent time with our team at Prison Professors. We asked him questions about mitigation strategies. Any justice-impacted person can learn from the guidance he offers.

Our team always reminds people that it's never too early and never too late to sow seeds for a better life.

## **What information does Judge Bough consider before sentencing?**

» Video time stamp: 0:34-2:00

Judge Bough tells us that he mandates the legal teams representing the person to address the Title 18 USC Section 3553 factors before the sentencing hearing. He also requires both the prosecutor and the defense to file sentencing memorandums. During sentencing, Judge Bough wants to make the best possible decision. To make the best decision, he expects to have ample information and perspectives.

Judge Bough told us that he sometimes presides over eight sentencing hearings in a day. Time constrains him. For this reason, he requests information from lawyers before the date scheduled for sentencing.

He would also like to receive information from the person being sentenced before the sentencing date. The judge wants to consider a person's narrative in-depth, accessing the nuances of the person's life and the story presented. Judge Bough said he wouldn't have time to understand the person if he didn't have this information before the sentencing day.

With a goal of learning as much as possible, the Judge said that would consider all mediums of allocution, including video narratives, PowerPoints, and letters.

### **Takeaway:**

» Each person should work hard to build a story that will help a judge get to know more about his life.



- » What efforts can you make today to influence how the judge thinks about you?

## **We asked the judge to spend more time discussing the Title 18 USC 3553 factors**

- » Video time stamp: 2:00-3:22

The judge spoke about two authorities that govern sentencing decisions in federal court. They include:

1. The sentencing guidelines
2. Title 18 USC Section 3553 factors

The US Federal Sentencing Guidelines provide a basic grid that every judge must consider. The grid includes static information, such as the type of crime, the guideline range that the Sentencing Commission assigned for each crime, and the individual's criminal history. The grid doesn't allow for much personal information. It is a formulaic way to sentence.

But each person is a human being, with many characteristics that may influence an appropriate range of sentencing. In Title 18 USC Section 3553, we have a series of other factors that judges should consider. They help a judge tailor a sentence that is appropriate to the individual. Section 3553 factors address issues such as character development, good deeds, and everything else that could mitigate or exacerbate a sentence length.

A person can speak during the "allocution" phase of the sentencing hearing. And the person can prepare supporting documentation before the sentencing hearing. Those preparations will help a judge apply 3553 factors that may influence the sentence length. These factors pertain to what caused the person to commit a crime, and they may offer insight into the person's character. They help a judge see the person as an individual, which may help a judge decide the appropriate sentence. What would be most helpful to both address the crime, but also lead the person to emerge as a successful citizen of the United States?

## **What steps can people to influence Judge Bough's sentencing decision?**

- » Video time stamp: 3:23-5:48

No one can change the past. That said, a person has an opportunity to engineer a mitigation strategy. The strategy should work toward the best outcome, given past decisions and current circumstances.

Primarily, Judge Bough wants to know whether the person has shown remorse for the criminal actions. For whichever category an offender's crime falls into, crime harms society. People who have done wrong should work to make amends to society.

A first step toward making amends would include expressing remorse. Besides saying a person is sorry, the person should also show some action. What is he doing to show the sincerity of his feelings?

A person that genuinely feels remorse wouldn't need a restorative justice policy to reach out to the victims and take steps toward repaying debts to society. Initiatives at reconciliation have led Judge Bough to impose a lighter sentence.

He also has his own reentry and relapse prevention program for those about to leave prison. Occasionally, people fill out the relapse prevention program *before* sentencing. When a person shows that he is trying to make amends before sentencing, it goes a long way toward showing they understand the process. It can show that a person is sincere in developing a plan to improve.

Such actions demonstrate initiative. Judge Bough considers action as proof that a person is showing commitment to improve his life, and the community. Regardless of the sentence he issues, he wants to see a commitment to personal growth. He tends to grant lighter sentences to people that start their rehabilitation process independently.

Judges do not have complete discretion over the entire sentencing. They can decide which 3553 factors apply. Judge Bough can grant a lighter sentence if a person tries to amend wrongs with the victim and self-evaluate. If a person wants to work toward a better future, a person may influence the sentencing hearing.

If a person wants to mitigate a sentence, the person should work hard to build a credible story.

### **How much weight does Judge Bough give to a statement from a defense attorney to articulate the offender's remorse?**

» Video time stamp: 5:49-7:53

The judge told us that he gave close to zero consideration to what a defense attorney said. A defense attorney might say something about a person's remorse. Yet those statements lack the power to persuade him of anything.

He expects the attorney to advocate as best as they can for their client. He doesn't punish the client for anything the attorney does or does not say. Yet the defendant should speak for himself. For effective sentence mitigation, the defendant should say something to the court. The person should help the judge understand what they did, and the results that followed from their actions. Then, the person should express steps he is taking to make amends. They should do more than offer the generic speech that a defense attorney crafted.

Judge Bough can only determine a person's remorse by listening to what he has to say, or reading what he presented. He offered the following suggestions:

- » Acknowledge an understanding of the consequences of actions
- » Show steps to fix the damage
- » Express honest and sincere emotions

For the most part, the person being sentenced should express these characteristics. The lawyer can't show such emotions or honesty. And a judge may not consider what a lawyer says as being genuine.

### **How often did you see a person express remorse effectively?**

- » Video time stamp: 7:54-9:19

Judge Bough said that he didn't see enough preparation before sentencing. After three years of being a judge, he could only count on one hand the number of people that genuinely moved him at sentencing. To move him, he said, a person would have to prepare in advance.

Remorse is extremely valuable in sentencing mitigation. In Judge Bough's view, remorse shows a better prospect for successful rehabilitation. Most humans can forgive and move on. The person being sentenced has the onus to initiate the healing process.

Judge Bough views all rehabilitation and progress as predicated upon remorse. Whether he sees genuine remorse plays the most crucial part in determining which 3553 factors he applies to the case.

## **What guidance does Judge Bough have for a person whose attorney discourages him from talking at sentencing?**

» Video time stamp: 9:20-11:00

Sometimes attorneys do not want the person to talk during the sentencing hearing. Judge Bough believes that the person should ask for the lawyer's reason. If the person is not remorseful and still acts as if he's the victim, then it would make sense to stay quiet. If he expressed such sentiments at sentencing, he could hurt the case.

But if the person can make a credible case for remorse, the person should take the following steps:

- » Express the desire to plead their case and explain themselves in court
- » Show the reasons why an allocution would prove effective
- » Practice to show how he could convey genuine remorse

## **Will a person's allocution be as effective if the person read the speech?**

Video time stamp: 11:01-13:20

Many people fear talking in court. Standing in front of a federal judge who is about to give out a sentence should be a nerve-racking experience.

Judge Bough looks at each case individually. Some cases might require a written speech or a different medium of allocution, such as a video. Other cases do not. For the most part, the genuineness of the allocution makes it effective, not how the person conveys the message.

He had one case where a woman broke down crying while starting to read her speech. She could not finish reading. Judge Bough offered to read it aloud. She agreed. He did not think the speech was any less genuine because she couldn't finish reading it. The judge could discern the remorse in her written words.

Some judges don't tolerate a tear in the courtroom. Judge Bough told us that he understood the emotional volatility of the sentencing process. For the most part, he believed that other judges do as well. Emotions are okay if they are genuine.

He recommends that people do not try to fake tears. It's easy to detect fake emotions. They can severely hurt credibility.

He had another case in which a person could never talk in public. Her allocation was just a narration over a bunch of photos that described her history. That PowerPoint allowed her to talk much more than she could have without the visual. It shed light on the causal factors that led her to commit a crime.

No matter the form of an allocution, it needs to be communicated heartily and genuinely. No person needs to memorize it. The person should simply speak his truth as well as he can. He should provide as much detail on the influences that led him to commit a crime. He should build a credible story to show how he will repay debts to victims and society.

### **Can a video be an appropriate method to deliver the allocution statement?**

» Video time stamp: 13:21-14:48

As he previously mentioned, Judge Bough thinks that every case should be individualized.

A case should have a video allocation if that communicates the context for a crime most effectively and impactfully.

### **Which instances did Judge Bough end up sentencing—either more or less—time than he initially thought he would before an allocution?**

» Video time stamp: 14:49-18:30

Judge Bough said that he routinely changes his decision during the sentencing hearing. The 3553 factors allow for these variations. A judge has discretion to reduce a sentence or extend a sentence, based upon what he learns during the sentencing hearing.

Recently, he walked into a sentencing hearing with an intention to impose a specific sentence. After listening to the person's presentation, he added an additional 40 months to what he intended to impose. The person hurt himself by being disrespectful to the Court, and lacking empathy for the victim.

Making a successful allocution can lead to a better outcome at sentencing. The sentence guidelines create a range for the judge to consider. Yet a person may approach the sentencing hearing with a plan that can influence the spectrum their punishment.

Judge Bough normally assigns people less time when they use allocation to:

- » demonstrate that they identified what causes led them to commit their crime
- » create specific plans to build a life of meaning and rehabilitation

The failure to enact both strategies could hurt a person's case. Building a great personal story that is genuine can help.

Each judge sentences differently, but each judge takes sentencing seriously. It's wise to research the judge. Learn how the judge conducts the courtroom. Act appropriately.

### **What impact would it have to make restitution payments before sentencing?**

- » Video time stamp: 18:31-20:10

If a person made efforts to repay victims before sentencing, the person would make a favorable impression on Judge Bough. It shows that the person wants to make amends, and repay the damage caused by the crime.

If a person starts making payments toward restitution before the judge orders, Judge Bough said he would have a better gauge of recognizing genuine remorse. It would show the person truly making efforts to amend the wrongs. Even if the person couldn't pay a substantial amount, paying whatever they could afford could be extremely helpful building a case for mitigation.

### **Does Judge Bough believe that someone could make amends and reconcile even he proceeded through trial?**

- » Video time stamp: 20:11-23:10

A person may proceed through trial, but he could still work to make amends and express remorse. It's never too late to begin working toward a better outcome.

People sometimes make bad decisions. After their arrest, they proceed through trial. If they're remorseful, they can start to express it any time they choose.

Judge Bough believes that there is a spectrum of best approaches to express remorse.

He once presided over a trial where the person acknowledged guilt for one crime, but not another. The person built credibility by expressing remorse for the crime that he genuine-

ly committed, but he declared innocence of the other charge.

Judge Bough believes that at any point and for any crime, a person can choose to own up to their mistakes. It's always better to take a turn in the right direction. There are normally 90 days between a conviction and sentencing. That's plenty of time to acknowledge mistakes and apologize.

He believes that people can change. If the transformation comes from a genuine place, the person will advance possibilities for leniency. The best day for an offender to start their rehabilitation process is today.

### **How does the pre-sentence investigation report influence sentencing?**

» Video time stamp: 23:11-25:04:

The presentencing investigation report influences the judge at sentencing, because it provides a more fulsome picture of the person. The judge rarely knows anything about the person, other than the crime. The PSR helps to shed light into an otherwise unknown area. But a person can work to influence the PSR.

On this point, Judge Bough provides incredible insight:

» If a person works hard to express truth in a pre-sentencing report, the person creates a new body of evidence that the judge can consider. That evidence may counterbalance the allegations against him.

Lawyers on both sides can cite and talk about a pre-sentence report to argue their cases. The PSR frames the conversation around the person, and not just the crime.

Good advocacy during a pre-sentencing report helps the defense attorney put the person's crime in context. It shows humanity. If a person prepares well, the judge will be in a better position to apply 3553 factors that can work in a person's favor at sentencing.

### **How do you feel about people that outsource the expression of remorse to the attorney?**

» Video time stamp: 25:05-27:09

I don't want to hear about remorse from the attorney. That's not helpful to the sentencing hearing. Lawyers can be extremely valuable in a variety of manners. They can put crimes in context. Their knowledge of sentencing guidelines and 3553 factors can help to create a game plan. He respects the criminal defense attorneys that work in his courtroom.



However, he also believes that each person would serve his interests best by telling the story of remorse himself. He can determine which 3553 factors to apply when he hears from the person standing before him. In that regard, defense attorneys should help the defendant prepare for the sentencing hearing. They should allow the person to speak about his remorse.

## **In what ways do character references influence Judge Bough's decision?**

» Video time stamp: 27:10-29:10

Character reference letters influence a judge's decision because they show how other people consider the person standing for sentencing. Those people know the defendant best. They can help a judge assess the way a person lives, and the kinds of decisions he makes in his community.

Character references are external letters or testimonies in which people outside the court express something on the defendant's behalf. They can provide context for the judge to consider.

Judge Bough has presided over cases with many character references. Sometimes it's too many. In one instance, he had 67 references. That was way too much. He couldn't allot enough time to each reference. He skimmed the letters but didn't read them all.

As a mentor for many people who want to become state and federal judges, he tells lawyers to be strategic. They should figure out which letters to present.

The same approach applies in his courtroom. Burying a judge in 50 letters only hurts the important information. The strategy amplifies redundancy. Character references should be from those that can discuss in detail how the person contributes to society.

For instance, he presided over sentencing of a person who developed a relationship with a psychologist. The psychologist offered an external and informed perspective, attesting that the person owned up to his crime. Further, the testimony showed how the person planned to move forward. That one reference proved far more influential than having multiple letters that said the same thing.

Judge Bough stands by the statement that character references should focus on quality over quantity. Character references only help when they can provide insight that either validates something the person said, or helps the judge understand the person better.

## **What role does expert testimony play in sentencing?**

Video time stamp: 29:11-31:14

Judge Bough has found mitigation specialists helpful in some cases. If the sentencing guidelines provide a huge range, he can rely upon expert testimony to get a better understanding causation. Also, the person's narrative might offer guidance on prospects for rehabilitation.

Most cases on a judge's docket involve drugs and guns. They don't require expert testimony. He appreciates when they provide needed insight. Still, he urges people and their counsel to be wise. Don't waste time on unnecessary expert testimony. It may not help sentence mitigation as much as a person's story.

## **How would behavior in prison influences a decision if there were a resentencing?**

» Video time stamp: 31:15- End

Resentencing is very common. Judge Bough spends a lot of time resentencing. For this reason, people going into the prison system should work to build an "extraordinary and compelling" record. Even if a person serves a lengthy sentence, the person should remember that laws change. If an opportunity opens for resentencing, the judge will take the prison adjustment into consideration.

The fairy tale version of the criminal justice system is that prisons are the punishment and supervised release serves as the rehabilitation. Judge Bough wants to make sure that offenders are going to succeed with the freedom provided within the rehabilitation process. He doesn't want people to recidivate. A variety of factors help him determine the best path forwards during resentencing.

He is always impressed when a person in federal prison comes before him with a clean disciplinary record. If the person made progress toward preparing for life upon release in that turbulent environment, the person stands a better chance at a more lenient sentence. There have been a few cases where inmates awaiting trial had become friends with the guards during their sentence. These guards then could attest to the personality and work ethic of the inmate, assisting their case for an earlier release.

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