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Sara K. Sorenson

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TREATING DEFENDANTS AS INDIVIDUALS

SARA K. SORENSON*

Chief Judge Rodney S. Webb has been a federal district court judge for over fourteen years. During this time, he has sentenced over one thousand criminal defendants.¹ When compared with the other federal judicial districts around the nation, the District of North Dakota has consistently ranked in the top quarter in criminal case filings per judgeship.² One who is not familiar with Judge Webb's change of plea³ and sentencing hearings might think that a federal district judge who has sentenced over one thousand defendants and who has a relatively heavy criminal caseload would conduct his change of plea and sentencing procedures in a rather perfunctory fashion. After all, a majority of criminal defendants are repeat offenders,⁴ and sadly, a great majority of defendants display one or more of the following underlying problems: mental illness, alcohol addiction, drug addiction, or poverty.⁵

* Law clerk to Chief Judge Rodney S. Webb, 2001 to present. B.S., North Dakota State University, 1998; J.D., University of North Dakota School of Law, 2001.

1. This figure was roughly determined as follows. Statistics compiled for the twelve-month period ending September 31, 2001, reveal that 170 criminal defendants in the district of North Dakota entered a plea of guilty. Administrative Office of the United States Courts, JUDICIAL BUSINESS OF THE UNITED STATES COURTS at 218, tbl.D-6, *available at* <http://www.uscourts.gov/judbus2001/appendices/d06sep01.pdf> (last visited July 18, 2002). Since Judge Webb is one of two judges in the District of North Dakota with an assigned caseload, the author estimates that roughly one-half, 85, of these guilty pleas were taken by him. The criminal caseload in 2001 was somewhat less when compared with previous years. Administrative Office of the United States Courts, 2001 FEDERAL COURT MANAGEMENT STATISTICS 2001, *available at* <http://www.uscourts.gov/cgi-bin/cmsd2001.pl> (displaying a gradual decline in the number of criminal cases filed in the District of North Dakota since 1996, with one exception). Thus, the author estimates that Judge Webb has taken at least 85 guilty pleas per year. Eighty-five multiplied by 14 years of service equals 1,190 guilty pleas taken.

2. *Report of the Civil Justice Reform Act Advisory Group for the District of North Dakota*, 76 N.D. L. REV. 739, 757 (1993) [hereinafter *CJRA Advisory Group Report*].

3. A judge must ensure that a guilty plea is intelligently and voluntarily given in order to meet constitutional standards. *Boykin v. Alabama*, 395 U.S. 238, 242-44 (1969). Rule 11 of the Federal Rules of Criminal Procedure provides the framework for taking an intelligent and voluntary plea. FED. R. CRIM. P. 11. A judge is required to determine, among other things, that there is a factual basis for the plea, that the defendant understands the charges against him, that the defendant understands the possible punishment he could receive by pleading guilty, and that the defendant understands the rights that he is waiving by pleading guilty. *Id.*

4. See Administrative Office of the United States Courts, PRETRIAL SERVICES STATISTICAL PROFILE AS OF 12/31/01, *available at* <http://jnet.ao.dcn/library/stat.html> (indicating that of 86,477 criminal cases activated during 2001, 54.0%, or 46,655 people, had prior arrests).

5. For the year ended December 31, 2001, 5.7% of criminal defendants had received some sort of psychiatric treatment; 8.2% had alcohol addiction problems; 26.4% had drug addiction

With these dismal statistics in mind, it would be rather easy for an experienced judge to only give cursory treatment to change of plea and sentencing hearings. This, however, does not hold true for Judge Webb. He usually devotes at least one hour of court time to each change of plea and sentencing hearing. Prior to the scheduled court proceeding, he painstakingly examines the file of each criminal defendant and notes any concerns that he wishes to address with either the criminal defendant or his⁶ supervising probation officer. Then, immediately prior to the court proceeding, he meets and works together with the defendant's supervising probation officer to determine the best options for the defendant.

A criminal proceeding is, at best, an anxious event for a defendant and his family. During the change of plea hearing, Judge Webb seems to alleviate this anxiety by showing a genuine concern for the defendant and by making an effort to get to know the defendant and, in some cases, the defendant's family. Often, he invites family members to sit with the defendant. He then carefully explains the nature of the proceedings as well as the defendant's rights. When the prosecutor explains the factual basis for the charge, Judge Webb takes copious notes so that he may question the defendant as to the truth of the government's allegations. Then, when it is time for the defendant to formally announce his guilty plea, Judge Webb has successfully managed to build rapport with the defendant, gain information that is helpful for sentencing, and make a nearly irreversible record for appeal.⁷

In the federal system, a judge does not have unfettered discretion in imposing a sentence. Rather, a judge must follow the sentencing guidelines⁸ that are promulgated by the United States Sentencing Commission, an independent agency within the judicial branch.⁹ The sentencing guidelines attempt to place a point value on each type of federal offense. Each type of offense has a base offense level. Points are added to or subtracted from this base offense level depending on specific offense characteristics. For example, burglarizing a residence has a base offense level of 17.¹⁰ If the

problems, 22.8% were illegal aliens, 29.9% had less than a high school education, 34.5% were unemployed, and less than 15.5% owned a home. *Id.*

6. In 2001, 84.2% of criminal defendants were male. *Id.*

7. Search of Westlaw, CTA8 Database (May 12, 2002) (search for cases containing the term Rodney in the same sentence as Webb, and reverse or remand in the synopsis) (yielding eighty-three documents, thirty-six of which were reversals or partial reversals or remands of decisions made by Judge Webb, 20 of which involved criminal cases, none of which were reversals on the grounds that the plea was involuntarily or unintelligently given).

8. UNITED STATES SENTENCING COMMISSION, FEDERAL SENTENCING GUIDELINES MANUAL (2001).

9. *Id.* § 1.

10. *Id.* § 2B2.1.

monetary loss from the burglary exceeded \$2,500, up to 8 points can be added depending on the exact amount of loss, for a net offense level of 25.¹¹

Once the net offense level is calculated, a court must determine the defendant's criminal history category, which may range from a criminal history category I to a criminal history category VI.¹² The sentencing guidelines also set forth a point system to calculate a defendant's criminal history category.¹³ After a court determines a net offense level and a criminal history category, it then may only sentence within the range mandated by the U.S. Sentencing Commission's *Guidelines Manual*.¹⁴ Continuing with the above example, if a defendant has a net offense level 25 and a criminal history category II, a judge has almost no choice but to sentence the defendant for a period of sixty-three months to seventy-eight months, the range set forth in the *Guidelines Manual*.¹⁵

As a former prosecutor, one would assume that Judge Webb is particularly harsh when it comes to sentencing defendants. This is not the case. He famously grants downward departures on criminal history, which results in a lower sentencing range for a defendant.¹⁶ He also expresses continual frustration over his inability to depart from the guidelines, and he joins a long list of judges and legal commentators who have harshly criticized them for treating defendants as "inanimate variables in an equation."¹⁷ Judge Webb frequently expresses a desire to be more lenient than the guidelines allow. However, this is not because he is soft on crime. Instead, he is cognizant of the fact that, in almost all instances, imprisonment merely makes better criminals out of existing criminals. He often says that ninety percent of those sentenced to a term of imprisonment will re-offend, while ninety percent of those sentenced to a term of probation will not re-offend. For this reason, Judge Webb attempts to impose probationary-type sentences whenever possible in order to rehabilitate a defendant. At the same time, he is particularly harsh on

11. *Id.*

12. *Id.* § 4A1.3.

13. *Id.*

14. *Id.*

15. *Id.* at 335 tbl.5A.

16. *Id.* § 4A1.3. Section 4A1.3 of the *Guidelines Manual* provides for a departure from the criminal history category:

If reliable information indicates that the criminal history category does not adequately reflect the seriousness of the defendant's past criminal conduct or the likelihood that the defendant will commit other crimes, the court may consider imposing a sentence departing from the otherwise applicable guideline range.

Id.

17. Jack B. Weinstein, *A Trial Judge's Second Impression of the Federal Sentencing Guidelines*, 66 S. CAL. L. REV. 357, 365-66 (1992).

defendants who endanger the public or who commit particularly heinous crimes.¹⁸

While Judge Webb's main goal in sentencing is to impose a fair and just term of imprisonment, he also attempts to tailor the sentence to meet rehabilitative objectives. A large number of defendants are addicted to drugs or alcohol.¹⁹ Thus, he often recommends to the Bureau of Prisons that the defendant be allowed to participate in the 500-hour drug and alcohol treatment program of the Bureau of Prisons.²⁰ Treatment in this program can have a positive and lasting impact on a defendant's life. As reported by the Federal Bureau of Prisons,

Interim data, released in February 1998, revealed that, six months after release from custody, inmates who completed the Bureau's Residential Drug Abuse Treatment Program were seventy-three percent less likely than similar offenders who did not participate in the treatment program to be rearrested and forty-four percent less likely to use drugs. Data based on a three year follow-up study support these earlier findings and further suggest that the Bureau of Prisons' residential drug abuse treatment programs make a significant difference in the lives of inmates following their release from custody and return to the community.²¹

A number of defendants sentenced in the District of North Dakota are Indian²² since the federal courts have exclusive jurisdiction over certain enumerated offenses committed within Indian country²³ and since the State of North Dakota has four Indian reservations.²⁴ When an Indian defendant is sentenced, Judge Webb often recommends that the defendant serve his sentence at the Federal Prison Camp in Yankton, South Dakota, because this facility has a sweat lodge, which is used by some American Indians in spiritual rituals. In addition to recognizing the rehabilitative and religious needs of defendants, Judge Webb regularly recommends that defendants be placed in facilities near their families. If a defendant is detained pending

18. *See, e.g.*, *United States v. Brown*, 287 F.3d 684, 686-87 (8th Cir. 2002) (affirming an upward departure imposed by Judge Webb for a defendant convicted of child abuse where the twenty-month old child suffered from a perforated bowel, fractured skull, a burned head and ear, a severe cut on the chin, and a human bite mark on his leg).

19. *See supra* note 5.

20. This program is authorized pursuant to 18 U.S.C. § 3621(e) (2000).

21. Federal Bureau of Prisons, *Inmate Programs and Services: Substance Abuse Treatment*, available at <http://www.bop.gov>.

22. "Indian" is used instead of "Native American" in the Federal Criminal Code. 18 U.S.C. § 1151.

23. 18 U.S.C. § 1153.

24. *CJRA Advisory Group Report*, *supra* note 2, at 751.

sentencing or pending transfer to a permanent facility, Judge Webb often permits contact visits with the defendant's family. Also, if a defendant is released pending sentencing, he usually allows the defendant to voluntarily surrender.

From the preparation for a change of plea proceeding through the sentencing hearing, I constantly admire Judge Webb's ability to carefully and compassionately perform the difficult process of imposing judgment on criminal defendants. I am convinced that he has made better the lives of over one thousand people by treating each as a human being first and as a defendant second.
