Letting the Punishment Fit the Crime

Contributed by John Browning
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Judges from around the country engage periodically in what’s called “creative sentencing.” Some legal observers criticize such punishments as forms of public shaming taking us back to the days of Puritans putting people in the stocks. Others, like Ohio State University law professor Doug Berman (who writes the Sentencing Law and Policy blog), point out that creative sentencing frequently does good, such as when a defendant is ordered to read books and write reports or enroll in an educational program. He says “When done well by the right folks with the right idea in mind, creative sentencing can be a good thing. There are lots of folks for whom prison may do more harm than good, not just for themselves but for society.”

With overcrowding in prisons and correctional budgets stretched tight for many states, I think creative sentencing can offer a workable solution to a number of sentencing quandaries, where merely warehousing someone at taxpayer expense won’t drive home the message nearly as effectively as other means. For example, a Georgia judge recently had to sentence an Augusta personal injury lawyer in a case involving his conduct with an 18 year-old babysitter. Joseph Neal, Jr. was originally accused of sexual assault for his role in allegedly plying the babysitter with wine and marijuana before engaging in a threesome with his wife. A misdemeanor plea bargain was reached when prosecutors acknowledged the difficulties in winning the “he said/she said” case, and Neal was sentenced to 3 years of probation. But Judge James Blanchard evidently still found Neal’s conduct as sleazy as most of us would, and wanted a punishment “in keeping with the conduct in this case.” So, he ordered Neal to perform 100 hours of community service—at a sewage treatment plant.

Other judges use creative sentencing for “teachable moments.” When a marital spat between Joseph Bray and his wife began with Bray’s failure to wish his wife a happy birthday and escalated into a charge of domestic violence, the presiding judge took the opportunity to teach the Plantation, Florida man a lesson. Instead of setting a bond, Judge John “Jay” Hurley ordered Bray to undergo marriage counseling, but also to “get some flowers . . . go home, pick up his wife, get dressed, take her to Red Lobster. And then after they have Red Lobster, they’re going to go bowling.” Similarly, Judge Michael Nettles of South Carolina didn’t see the point in “throwing the book” at a defendant in his court recently—unless you count the Good Book, that is. 28 year-old Cassandra Tolley pleaded guilty to a drunk driving crash that seriously injured two people. But in accepting her plea (and sentencing her to 8 years in prison), Judge Nettles also listened to Tolley and to what brought her to such a low point in her life.

Tolley told the judge how her drinking problem had begun with horrific physical abuse suffered as a child. When she was 11, a relative poured gasoline on Tolley and set her on fire. Scars from the burns are still visible on the young woman’s face. After Tolley explained that she was a Christian and detailed the remorse that she felt over the crash she caused, Judge Nettles ordered substance abuse counseling and also ordered the defendant to read the Old Testament’s Book of Job and write a report about it. Job, of course, is a man of faith and father of 10 who loses everything—including his livelihood, his children, and his health. Yet, his faith in God never wavers, and his health is restored, he fathers 10 more children, and God doubles his previous wealth. Tolley’s pastor was present in the court for her sentencing, and he believes that the unusual sentence was meant to teach Tolley that “Job made it through, and [the judge] wants her to know she can, too.”

How do you teach a hardened criminal a lesson in taking his crimes seriously? By punishing him for not taking it seriously, that’s how. Boyd William White Twin was convicted of assaulting his companion with a deadly weapon in front of their young children, and threatening the woman about choosing “which child he should kill first.” Yet after sentencing Twin to 78 months in prison, federal Judge Charles Kornmann of South Dakota saw Twin smiling. After asking the defendant if he thought there was something humorous about the sentence, Judge Kornmann tacked on an additional six months as an enhancement—a move that was recently upheld on appeal. Twin now has 84 months to learn to wipe that smile from his face.

And finally, though it’s not exactly creative sentencing, you have to admire the humor displayed by Judge Carnes of the U.S. Court of Appeals for the 11th Circuit in a recent case. A young man named Larry Butler was appealing the dismissal of his excessive force lawsuit against Dorethea Collier, who worked for the Palm Beach County (Florida) Sheriff’s Department. It seems that Butler had visited Collier’s home for a tryst with Collier’s 19 year-old daughter. Deputy Collier came home early, surprised the young lovers, and did what many armed parents would do if they returned home to find a naked stranger in their daughter’s bedroom: she punched him, drew her gun, handcuffed him, and threatened to kill him before calling her husband (who also hit Butler) and the sheriff’s department. In upholding the dismissal of the case, since Mrs. Collier was acting as a private citizen and not in her official capacity, Judge Carnes began by invoking the 1972 Jim Croce song “You Don’t Mess Around with Jim:”

“In one of his ballads, Jim Croce warned that there are four things that you just don’t do: ‘You

don’t tug on Superman’s cape/You don’t spit into the wind/You don’t pull the mask off that old Lone Ranger/And you don’t mess around with Jim.’ He could have added a fifth warning to that list: ‘And you don’t let a pistol-packing mother catch you naked in her daughter’s closet.’”

Whether it comes down to creative sentences or having your lawsuit tossed, it all comes down to getting what you deserve—because sometimes the punishment really does fit the crime.