Conversations of a Lifetime

ILLUSTRATION BY MARC HARKNESS

THE POWER OF THE SENTENCING COLLOQUY AND HOW TO MAKE IT MATTER

BY ROBIN L. ROSENBERG

In recent years, there has been increased attention on sentencing, and particularly sentencing disparities. The thrust and focus of this attention have been on the statistics of sentencing and reforms, with the aim of making sentencing fairer and more consistent. Surely, this is a worthy discussion, but sometimes the focus on the quantitative aspects of sentencing can overshadow the individual stories behind the numbers. Those personal stories are often revealed at the sentencing hearing. At nearly every sentencing, the defendant's own words act as a critically important humanizing reference for the judge. Yet we spend too little time considering why that is and how to better acknowledge the importance of these statements.

That's unfortunate. Sentencing is a profound moment in a criminal case and in a defendant's life. The exchange between a judge and defendant is central to the court's role as adjudicator and as one human being sitting in judgment of another. While other aspects of the criminal justice system may at times seem mechanical, sentencing hearings are, at their core, deeply personal interactions. They present an opportunity to inject humanity into the process. Scripted or not, the sentencing colloquy almost always is the emotional focal point of a case. And, importantly, defendants' allocutions may have a real impact on the sentence imposed. Although the defense lawyer makes the formal argument to the court on a defendant's behalf, "the most persuasive counsel may not be able to speak for a defendant as the defendant might, with halting eloquence, speak for himself."[1]

Moreover, sentencing has a lasting effect — obviously for the defendant, who must live with the sentence and carry with him[2] the last words he has heard from the judge — but also for the victims of the crime, who may be present in the courtroom; for the defendants' loved ones, who are left behind; and even for the judge, who, in my experience, carries with her the weight of hundreds or even thousands of allocutions. For all parties, this truly is the conversation of a lifetime. So why not make it count?

THE SENTENCING COLLOQUY MATTERS

The sentencing colloquy often helps to present us with a better picture of the defendant. While there are instances in which a defendant is untruthful or inauthentic, I am more often than not impressed by the sincerity of the defendants' sentencing statements. Defendants usually articulate some degree of acceptance of responsibility for their actions and express their apologies to the judge, the government, and their family and friends. The defendant is often remorseful not just for having committed the criminal acts, but also for having disappointed many people — including, for example, having failed to meet his mother's expectations or not having served as a better role model for his children. A defendant's allocution animates his circumstances in a way that cannot be adequately captured by the written words of the presentence investigation report provided by the probation office.

Having the clearest picture of the defendant, in turn, helps us as judges to sentence more appropriately. By statute, judges must consider, among other factors, the "history and characteristics" of the defendant in imposing a sentence that is "sufficient, but not greater than necessary" to comply with certain purposes set forth in the statute.[3] The defendant's allocution and the court's response open the door for the judge to speak directly to the defendant and, through this process, come to know his "history and characteristics" all the better. In this regard, the colloquy helps realize the statutory requirements of federal sentencing.

Moreover, I strongly believe that if defendants perceive that they have the judge's attention and interest, they will have a higher likelihood of accepting the sentence as one that is fair. And if a defendant accepts the sentence as fair or even just legitimate, I suspect the defendant will pursue a more produc- ▸

tive path during and after incarceration. In a recent Rule 35(b)[4] sentencing hearing (which allows for the reduction of a previously imposed sentence), I learned of all of the positive steps that the defendant had taken while incarcerated. Among other things, he had led group programs within the prison and continued to play an active role, to the extent possible, in his children's lives. The defendant had already served several years of a lengthy sentence, so the hearing provided a retrospective on the defendant's decision-making and time spent post-sentencing. In this case, the defendant had chosen to do better in his life. If the judge's words at sentencing can have any impact on a defendant's choice to pursue a more productive and rehabilitative path, like this defendant had, then the sentencing colloquy matters more than we realize.

Finally, judges themselves learn through the process of a sentencing colloquy. Through my sentencing colloquies over the years, I have grown more comfortable communicating with the parties — finding the right words and tone — to impart the seriousness of the occasion, to clearly articulate the bases for the sentence I impose, and to respect the real toll that the process takes on those impacted by the sentence. I also believe that I have developed a better sense of the proper sentence to impose.

HOW DO WE MAKE THE SENTENCING COLLOQUY COUNT?

If we believe that the sentencing colloquy matters, the next question is what we can do to shape it for higher purposes. It is important for judges to reflect, if even for a moment, upon not only the sentences that they impose but also upon the sentencing hearing itself.

Invite. The actual invitation to speak matters. While judges must inform a defendant that he has the right to speak before the sentence is pronounced,[5] the manner in which the judge communicates this right — by sincere invitation rather than a formulaic recitation — can heavily influence the defendant's decision to address the court.

Listen. For judges, criminal sentencings are a routine part of the job. For this reason, it is tempting to view a sentencing hearing as simply a rote and impersonal scripted exchange between the judge and the parties. Nonetheless, a careful and willing ear is able to discern the seeds of redemption or the brick wall of denial. On rare occasions, one can actually sense the future and past meeting on hallowed ground as defendants face both their past crimes and future circumstances in a final legal judgment.

> "I strongly believe that if defendants perceive that they have the judge's attention and interest, they will have a higher likelihood of accepting the sentence as one that is fair. And if a defendant accepts the sentence as fair or even just legitimate, I suspect the defendant will pursue a more productive path during and after incarceration.

Explain. Judges should explain the sentences they impose in a way that the parties and the public can understand. The plain language explanation applies both to the methodology (i.e., ranges and minimums) and the rationale for the sentence. For example, if the judge is particularly concerned about deterrence, given a defendant's long criminal history, or protecting the public, because of the harmful nature of the crime, the judge should address these factors with candor, but in terms that a wide audience can understand and appreciate. Also, in multidefendant conspiracy cases, disparity invariably is an issue of concern. A judge speaking directly about the relative roles of the conspirators provides a basis with which others can judge the sentence imposed. Similarly, if there are mitigating factors, the judge should explain how she has considered them in her sentencing decision, regardless of whether they have resulted in a reduced sentence. Lastly, if letters have been submitted on the defendant's behalf or people have come to court as a show of support or to testify, the judge should recognize their contribution to the process and explain the importance of their support to the defendant regardless of the result. In short, the more explanatory the sentencing is, the more credible it is in the eyes of those who have to live with its consequences.

Look to the future. I fashion my comments at sentencings in order to help defendants think about and prepare for the future. I recommend programs and services available during incarceration

and impose conditions of supervised release designed to facilitate a successful re-entry to the community after incarceration. For a defendant with creative talents, this might mean encouraging him to use that ability as an outlet for healthy expression. For a parent, this might mean highlighting the positive impact he can have on his child's life. For an addict, this might mean emphasizing the importance and value of addiction treatment and urging the defendant to participate in programs to aid in recovery.

Even when sentences result in lengthy prison terms and the crimes are particularly despicable, there are words worthy of communication. Recently, I offered the following remarks to a defendant who was charged with sex trafficking and production of child pornography and was sentenced to 30 years in prison: "I do wish you well. I know sometimes it is hard to hear from a court when a sentence is imposed, particularly a significant sentence. I hope with time and with treatment and with reflection, still being a relatively young man, that there is time to learn and hopefully to live a productive life for yourself, for your family, for your friends, and for society." Every defendant has a future that is worthy of some degree of reflection. This is true even for a defendant who, like this man, will serve a very long sentence in prison.

Repeat and career offenders, including defendants being sentenced for violations of conditions of supervised release, almost always speak to me about their challenges navigating life's requirements after being in prison for a long period — their insurmountable difficulties in securing employment with felony records, earning enough money to gain housing and other forms of stability, battling addictions, and avoiding old associations with people who hold destructive power over them. My review of other judges' sentencing transcripts reveals these same threads. One particular defendant desperately grasped for the right words to describe the living nightmare he experienced when he was *not* placed in a halfway house upon being released from prison on a previous sentence that spanned over ten years and commenced when he was 26 years old. He said that at his lowest — homeless and hooked on oxycodone — he "just wanted to go back to prison because everything that I was given for re-entry failed." He also described lying about his specific drug use to qualify for a methadone clinic, because he knew he needed the treatment but would not technically qualify for it — a lie that, according to the defendant, ultimately led to a finding that he had violated his probation. Through the colloquy, the judge has an opportunity, however small, to try to shift the trajectory of the human being before her.

> "Every defendant has a future that is worthy of some degree of reflection.

Review. When the sentencing judge encourages the defendant to do better and explains the reasons for her sentence and the defendant addresses the court, a real conversation happens. It is a conversation of consequence — something that could ripple far beyond the courtroom itself and touch lives far in the distance. For this reason, I encourage judges to periodically review their own (and others') sentencing transcripts. In the course of this project, I have reviewed many of my own transcripts and the transcripts of some of my colleagues, and found the exercise to be invaluable. While in the midst of a sentencing hearing, it is difficult for the judge to impose a sentence and contemporaneously reflect upon the moment and the many dynamics at play. There can be so much activity in the courtroom during the sentencing — and then suddenly it is over, another sentencing, hearing, or trial may be scheduled immediately following, and then the moment is lost. A review of the transcript allows the judge to pause, reflect on and review her words, and see whether there may have been a better way to communicate or to listen. Developing additional records for one's later reference can also be helpful. To that end, I use a sentencing worksheet, on which I take notes during the sentencing hearing. I refer to the worksheet in subsequent sentencings of defendants who are being sentenced for similar crimes to ensure that I am consistent and to ensure that I avoid unwarranted disparities among similarly situated defendants. The sentencing colloquies that I memorialize ▸

ROBIN L. ROSENBERG is a United Stated District Court Judge for the Southern District of Florida. She previously served as a circuit court judge for the Fifteenth Judicial Circuit in Palm Beach County, Florida. She thanks her law clerk, Katherine Boyles, J.D., her Official Federal Reporter, Pauline Stipes, and her husband, Michael McAuliffe, J.D., for their invaluable assistance with this article.

on the worksheets help me greatly in this process.

What follows is a curated set of sentencing transcripts — the spoken words of the defendants, the judges, and, in some instances, the victims. The transcripts are from criminal cases in the District Court of the Southern District of Florida, some from my court, some from the courts of my colleagues.[6] Each transcript is introduced with a brief summary of the crime committed and other relevant facts and is edited for length only. I selected them for their variety, their poignancy, and their capacity to illustrate the points I have introduced above. May they help remind us all of sentencings as important moments.

[1] *Green v. United States*, 365 U.S. 301, 304 (1961) (plurality opinion). Rule 32 of the Federal Rules of Criminal Procedure (Sentencing and Judgment) was codified to provide the defendant an opportunity to present mitigating circumstances and personal characteristics in order to allow the court to fashion an individualized sentence and to preserve the appearance of fairness in the criminal justice system.

[2] I use the masculine pronoun in this article intentionally. In the fiscal year 2016, just over 86 percent of federal criminal defendants were men. Overview of Federal Criminal Cases, Fiscal Year 2016, United States Sentencing Commission, available at www.ussc.gov.

[3] 18 U.S.C. § 3553.

[4] Fed. R. Crim. P. 35.

[5] Under Rule 32, a district court must "address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence." Fed. R. Crim. P. 32(i)(4)(A)(ii). This Rule codifies the right of allocution, which has existed at common law for centuries. *See Green v. United States*, 365 U.S. 301, 304 (1961) (plurality opinion).

[6] I reviewed approximately 200 transcripts from sentencing hearings that took place from roughly between 2012–2018 (although some date back to the early 2000s) before seven different federal district judges in the Southern District of Florida. The transcripts I selected for this article are examples of meaningful exchanges in the variety of cases that come before sentencing judges in federal court. The transcripts have been edited to eliminate individual identities. In addition, full transcripts have been shortened substantially for publication, but I have maintained the spoken words in their original form as much as possible and have edited the transcripts only to the extent necessary to make them understandable. Omissions are indicated by ellipses, and any editorial changes have been indicated with brackets.

"I SHOULD HAVE FOUND ANOTHER WAY TO EXPRESS MYSELF."

Mr. Jackson, a locally successful artist, pled guilty to one count of providing material support to a foreign terrorist organization — ISIS. He made plans to travel to Syria to join ISIS fighters there and was arrested after passing through security in the Miami airport. He faced a Guidelines-recommended sentence of 240 months' imprisonment; the government and defense counsel made a joint recommendation of 144 months.

Jackson's two codefendants pled guilty early in the case, while Jackson spent two years in prison awaiting his trial date, some of which was in solitary confinement. When he entered the courtroom, he told the judge that he always wanted to know what she looked like in person and thanked her for her appreciation of his case. His many family members, who drove down from Georgia to attend the sentencing, were featured in a lengthy video that his attorneys presented to the court.

In his statement, he acknowledged that he was not accustomed to speaking in public — that he was more introverted and liked to write. But this was a moment he clearly had been waiting for. He had rehearsed his words; they were scripted, but his emotions were not. I selected this transcript because I believe it sheds light on the feelings that can motivate one to take an action that is foreign and unfathomable — in this case, the decision to join ISIS. At the same time, it shows us the power in recognizing that those feelings can be harnessed for good or for evil.

THE DEFENDANT:

I know I said some very horrible things in planning to travel to a place that would raise eyebrows and anger, [] rightfully so. I am so sorry for everything, and [am] very sincere about that. . . . I see how unrational I was now in hindsight, in 20/20, when I look back. . . . I felt I had very little options in expressing myself. . . .

The media was filled with hatred of demons around the world, the United States, abroad, police killings of unarmed blacks, reports of homeless people getting killed in some cases, and beaten on the streets of America in some cases, and I felt as though I was a naked man being batted in the head. It was really -- it was unbearable for me. . . .

I intended no harm to anyone, nor did I do any harm to anyone. Harm was never my objective. . . . Going

to Syria was only a last resort for me. Secretly, I had my own plans for leaving. I made sure to take my food recipes, looking to start a food business in Germany possibly or some other place in Europe. I was trying to see if my art would have a niche there or some other place in that part of the world. . . .

I know that my emotional venting and blaming and disappointment of the -- of a flawed world that we live in was wrong. I should have found another way to express myself . . . . I am an expressive soul that feels the world impulses deeply. . . .

As to my life after being released from incarceration, I intend to explore the cultures of my family and friends that have proved to rise to the occasion of strong support for me. I wish I had not been so proud and shared with them my struggles when I was at my lowest point. That would have saved me the -- that would have been saving me from you today, your Honor, in court.

I am humbled by my family's love, understanding, forgiveness and grace. They have breathed new life into me and given me hope and a new perspective on things. With love and support, I intend to pursue my art, writings, baking career, and other talents that I have again. . . . The darkness of the past years have enabled me to find inside myself a new reservoir of love and understanding and forgiveness for myself and for others.

Under pressure, people can transform from ordinary material into diamonds, and they can crumble under pressure. I may have been close to breaking before, something I regret so deeply, but I know that I in fact can emerge from this as a diamond forged from the pressure to be a better person before everyone. Through the worst of life one becomes more aware for what he loves and who loves him. I intend to nurture that love into awareness for the ones around me. . . . I am deeply regretful and ashamed of my actions and particularly my words, very ashamed.

I thank you for taking the time and care and watching over my case, I really appreciate that. You have really did a very fine job in that over my case, and for the past two years, and listening to me today.

SENTENCE IMPOSED: 144 MONTHS' INCARCERATION

"IN AN INSTANT THESE PEOPLE WOULD KILL ME AND LEAVE [MY] CHILDREN TO GROW UP WITHOUT A FATHER."

The courtroom was filled to capacity in a lengthy sentencing hearing for two defendants, Mr. Johnson and Mr. Green, both arrested as part of a substantial drug-trafficking investigation. Two law enforcement officers, including a deputy U.S. marshal ("Victim 1" and "Victim 2"), were shot and injured during the execution of arrest warrants for Johnson and Green at the stash house. Both pled guilty to possession with intent to distribute cocaine and to the discharge of a firearm in furtherance of a drug-trafficking crime. For the drug charges, Johnson and Green faced Guidelines-recommended sentences of 121–151 months and 60–63 months, respectively. (These differences were due to the respective quantity of drugs and their different criminal histories.) For the weapon charges, both faced a mandatory minimum of 120 months consecutive to their sentences for the drug offenses. The government moved for an upward variance, recommending 30 years' imprisonment for both.

Each defendant made a statement, as did the two law enforcement officers shot responding to the crime. All four spoke about love of family and the crimes' impact on their own families, their suffering, and their own visions of justice. This conversation provides two starkly differing sides of the same event, requiring the judge (and the reader) to decide for himself whom to believe. It also asks us to once again consider the question of "nature versus nurture": How can two men with similar upbringings take such different paths in life?

DEFENDANT JOHNSON:

I [have] always be[en] a family man, first, I always kept a job, but unfortunately, after I was unemployed I made bad decisions that led me to illegal activities.

I accept full responsibility and understand there are consequences, but since my incarceration, I had time to reflect on why I am here . . . and I want the Court to know that is not the person who I am, I truly am, and I ask the ▶

Court[] to be lenient in its duties toward me and merciful in this judgment. Thank you. . . .

DEFENDANT GREEN:
I fully take responsibility for my actions and I can only express great regret and say sorry to everyone involved in this situation as to what has occurred. I apologize to Officers [Victim 1 and Victim 2], who are involved directly, I want to say sorry to you guys. . . . I know I am not perfect. I never said I was, no one is, but I am a moral man, and I would never intentionally fire a gun at somebody just because, or for no reason to harm anybody purposely, especially law enforcement. That would be me giving up on my family, my kids, and that is something I would never do.

Your Honor, I led a quiet life, I have responsibilities to my kids, family, my job, to the kids I coach, their parents, and to just say I would throw all that away is not right. . . . I would like to say, Your Honor, I'm sorry. I had obligations to raise my family and that is all I want to do, is take care of them. I have been here for 15 months, going on 15 months, it has been very hard being here and knowing my loved ones are out there. It is unbearable to me, I am suffering, they are suffering from this, and it is a situation that we got put in, and it is not going to change.

I look to you and hope that you are lenient and merciful in your judgment and take those things into consideration, please. Thank you. . . .

VICTIM 1:
Your Honor, as a law enforcement officer, you never know what your day will hold for you as you kiss your family good-bye and go to work. You patrol neighborhoods in an effort to prevent crime and handle the day-to-day business of keeping our streets safe. Most days interaction with people is positive because people are honest, hard[-]working, productive members of society.

Then there are the days you come face-to-face with career criminals, people who have no desire to be honest or productive members of society, criminals who prey upon the decent people who have no regard about who they hurt in the process.

On November 20, [] my team came face-to-face with two such predators, two men that began lengthy criminal careers as teen-agers. Despite multiple arrests and second, third, fourth chances, they aspire to be only criminals. . . .

In an instant these people would kill me and leave the children to grow up without a father. Men like this have no place in a society of laws, and I ask the Court to impose the maximum term of imprisonment allowed. Thank you. . . .

VICTIM 2:
My name is [Victim 2], I am a Deputy U.S. marshal and a victim in the case. I served nine years in the National Guard, I fought for my country, I worked as a Military Police officer, and I achieved rank of staff sergeant. . . . The reason I am here is because of decisions we have made in our lives. Being here this afternoon, the defendants who happen to be the same age as me, I don't know a lot about them. I was present at the change of plea hearing and they each stated they started college and dropped out. They have had opportunities, and they have good family support.

Despite this, they admitted to abusing drugs and operated a drug stash house instead of a true living. We found children's toys in the backyard which means they were bringing their children, they mentioned in the statements, around these things. . . . I was raised in a low[-]income, single parent home. My family lost the house in a fire at the age of ten, we didn't have a shirt or a toothbrush, I know what it is like living this.

I was working at the age of 13. During this time, I had an on[-]and[-]off[-]again relationship with my father who struggled with drug and alcohol abuse. I joined the Armed Forces right after high school for many reasons, one of which was to provide for my education. . . . Like the Defendants, I dropped out of my first semester of college; but unlike the Defendants, I dropped out because I was activated to go fight for my country. . . .

After my tour overseas I returned home, I took care of my dying father and worked full time, took up to six college courses a semester to graduate on time. . . . I worked hard and stayed out of trouble and that got me where I am. These

are the choices that I made in my life that led me to the outside of the door that morning.

Let's talk about what happened the morning of November 20, []. This is a multi-agency case with the U.S. Marshals assisting with the take-down. . . . We yell "Police with warrant, come to the door" every single time. I could say it in my sleep I have said it so many times. . . . Once it was determined the Defendants were not going to open the door we breached, and during this time yelling, "Police with warrant, come to the door." . . .

As [Victim 1] testified to, doors opened with one to two swings. This didn't happen as it does on exterior doors constructed with steel or fiberglass. This was made of wood and cardboard and, essentially, the ram went straight through. During the breach, shots were fired, [Victim 1] was shot in the shoulder, I was shot in the hand. [He] was shot close to the shoulder cap, neck and face, all possible fatal hits. I was shot in my hand, my hand wrapped in front of -- my hand in front of my face. If I wasn't on the shield, that round would have hit me in the face more than likely causing a fatal hit.
Your Honor, these were fatal shots, these weren't shots in a ceiling, hall or wall. These are shots that would have likely killed anybody on the receiving end of the shots. . . .

Let's talk about how these decisions and events have affected my life. Professionally I am out of work for 15 months, the longest I have been out of work since I was 13. . . . Financially, I missed overtime opportunities, my salary was reduced to two-thirds pay. I lose out on contributions to retirement and overall retirement time. I know we went over my injuries. There are a few things I would like to expand on. You know about the amputation, contact pain, all the surgical scars. . . .

I have daily reminders of what happened. Every time I leave my home, the scars are very pronounced, people ask what happened. . . . Not a lot of people know somebody who has been shot before, people are interested, and I find myself telling the story over and over again. . . .

I am going to be in a lifetime of pain, permanently disfigured, lifetime of surgery. I will be permanently disabled despite all of my efforts. . . .

"Your Honor, as a law enforcement officer, you never know what your day will hold for you as you kiss your family good-bye and go to work.

There is a chance I will be permanently disabled, but I am fighting for the career I love.

Let's talk about the emotional affect. This has affected my family tremendously. . . . My mother received that phone call she dreaded receiving every day when I was in Afghanistan. My fiancée[] received the phone call that she dreaded every time I leave that door with body armor on and my gun. Every police officer here will tell you that you don't know if it is the day, if you will come home after the day. This is a loss to my family, more tremendous now. . . .

In conclusion, I have sat in many sentencing hearings right there where the Defendants are sitting. Defendants cry and express remorse and say sorry, and as soon as we leave the courtroom they are laughing and joking. . . . These are crocodile tears, they are not sorry. They are sorry they got caught. If we didn't arrest them that day they would have been operating that organization. They were mere inches away from accomplishing their goals. . . . If there is no difference between shooting one law enforcement officer and shooting two, it sends a clear message to the community that if you shoot one police officer, you might as well shoot them all. Thank you very much.

SENTENCE IMPOSED ON GREEN:
308 MONTHS' INCARCERATION

SENTENCE IMPOSED ON JOHNSON:
330 MONTHS' INCARCERATION

▶

"[I]F THERE IS A MONSTER AT ALL RELATED TO THIS CASE, WE ALL KNOW WHO HE IS."

The defendant, Ms. Traversi, was convicted of wire fraud for participating in a Ponzi scheme. As a young lawyer, she posed as the head of a local office of the state bar and made a single phone call to cover for her codefendant's fraud. That phone call, in part, induced institutional investors to finance the scheme, which defrauded them of over $60 million. Eighteen people were sentenced as part of the case. Her codefendant, who was her partner at a law firm and her former professor in law school, was the mastermind of the scheme.

The probation office calculated a Guidelines-recommended sentence of 324–405 months. The court disagreed as to the loss calculation that could be attributed to Traversi and determined a lower Guidelines range at the sentencing hearing. Later, Traversi would appeal her conviction to the Eleventh Circuit; it was affirmed. The U.S. Supreme Court denied her subsequent application for a writ of certiorari. This colloquy reminds us of the incredible power of authority figures — for better and for worse — and shows us that appearances are often misleading.

THE DEFENDANT: I made a phone call that hurt people and, if I could take that phone call back, I would take it back in a second. I would never willingly or knowingly hurt anybody. I would never willingly or knowingly take money from somebody. That is not who I am at all. I wasn't raised that way. You can see from my family. That is not who I am. . . .

My relationship with [the codefendant] was very complicated. . . . I started with him, he was my mentor, law professor. He turned into a monster for me for awhile, and then I didn't work for him anymore. I worked under other attorneys. I had a drug and alcohol issue that was very bad, and he did -- my mom called him, and she said, what do I do with my daughter? He helped. He told us where to go. He gave me the time off.

From that day forward, I was forever grateful to him for helping me with that. How could I turn my back on him when he called me and he told me he was in trouble and he had Bar complaints filed against him[?] . . . It is important for me to get out that I am not a [liar], I am not a fraud. I wouldn't steal. I wouldn't hurt a fly. I just wouldn't.

I have lost so much as a result of working at this firm. I thank God I have not lost my family. I have obviously not lost my friends and I am really ready to move on. I have been living this nightmare for a very long time, and I thank your Honor for your time and I thank everybody in this courtroom for their love and support. . . .

THE COURT:
I hope everybody understands, nobody, nobody claims that [the defendant] is a monster. I know her adopted daughter used this as a metaphor and her mother referred to that, but, you know, if there is a monster at all related to this case, we all know who he is. And I want to tell you something, sitting in the courtroom and listening to him, it was really chilling because we forget sometimes how devious, how corrupting, how far reaching the [tentacles] of corruption can be when somebody starts doing what [the codefendant] did . . . .

I suspect the people in [omitted] County look back and it is just shocking how corrupting that influence was, and all, and all beneath this veneer of respectability, this extraordinary law firm of 70 lawyers, beautiful, magnificent offices, noted public figures walking the halls. . . . Money was just flowing in and flowing out and favors were being dispensed and the lifestyle looks like it got wilder and more grand, you know, $125,000 [Maserati] to your secretary, multiple homes, so on, so forth. It staggers your understanding of what goes on, and then you suddenly realize beneath this the whole thing is fraudulent, the whole thing is fraudulent. . . .

[The defendant], as a young woman, went to law school, met [her codefendant]. He was a professor and became a mentor and, ultimately, offered her a job. The testimony at trial reflected just how [mercurial] he could be. Very charming today, outrageous memos tomorrow, demands that people do things and seemingly forget about that and distribute tickets to games and what have you. It is hard for me to think of what it is like to work in a law firm like that.

Most of us who work for people assume the people we work for have integrity. They know what they are doing, and it is a up and up business or law firm. Now, we know today all of that is not true. The law firm didn't begin to generate moneys that would have supported it. The whole thing, the whole thing was predicated on this Ponzi scheme of a magnitude that is just really hard to comprehend. . . .

SENTENCE IMPOSED: 60 MONTHS' INCARCERATION

"LOOKING BACK AT MY LIFE, I AM NOT SURE HOW I MADE IT AS FAR AS I DID."

The defendant, Mr. Harris, a former decorated police officer, was sexually abused as a child — and later abused his own stepchild. The sentencing hearing conjured forth one's worst nightmares. Harris pled guilty to three counts of distribution and one count of possession of child pornography. He pled no contest to coercing and enticing a minor, his stepdaughter, to engage in sexual activity and one count of producing child pornography of his stepdaughter. He faced a Guidelines-recommended sentence of life in prison. Here we are forced to reckon with the fact that victims often become defendants, and that the cycle of abuse is sometimes most difficult for those with the most motivation to break free.

THE DEFENDANT:

Looking back at my life, I am not sure how I made it as far as I did. I never knew the love of a father, because he was tragically murdered before I was born. As a single parent, my mother gave her best effort to support us. Despite working two jobs, we found ourselves living in poverty. From my earliest recollections, my mother struggled with her own demons in the matter of drug abuse which she battled for many years.

It wasn't uncommon for me at an early age to find myself alone unsupervised for a night or even a weekend. I would be left with the responsibility of taking care of myself and when my mother would eventually return home, often times I would take care of her as well. On other occasions, I would spend the night with a babysitter or I would be taken to a friend's house with a sleepover.

It was during some of the sleepovers that my friend's older brother would sexually molest me, while other times my friend's parents would sexually abuse me. . . . His parents would abuse both of us, and have us perform sexual acts on each other. Yet, in spite of my precarious upbringing, I was able to overcome that, and I was extremely proud of the life I was building. . . .

I deeply regret every picture and video I ever viewed or possessed and my heart breaks truly for each victim who was harmed and ultimately exploited as a result of that material. I am continually stricken with intense feelings of guilt, shame, regret and remorse because of my selfish behavior. The situation has caused untold amounts of pain and grief to my dearest family, to my wife and all of her family and to every one of my friends and my community. I pray that one day I may be afforded the opportunity to make amends to those people my decisions have affected.

Finally, Your Honor, I humbly ask you that the Court may show mercy so that one day many years from now I may be given a second chance at life in order to redeem myself. . . .

THE DEFENDANT'S WIFE:

I wanted to speak today on behalf of my children and to explain why I ultimately feel [Mr. Harris] should spend the rest of his life in prison. When [Mr. Harris] and I began our relationship, I was a single mother with two young daughters. [Mr. Harris] seemed like the perfect partner and father figure. He gained my trust with ease and showed his affection, care[,] and love for my daughters.

He always talked about wanting a big family, and he helped to support my girls and I. We eventually got married and had our first child together. We had the ideal family and complete relationship, or that is what I thought. . . . I had no reason to ever speculate that he could have hurt my children in any way. . . .

I married this man thinking he was the perfect father, friend and partner. But . . . I was begin- ▶

ning to realize I had been sharing my life with a monster. The material possessions serve no value to me, it's the loss of trust and the arrival of fear that we have had to experience since this has come to light. Both of my daughters, along with myself, are in therapy and will need to continue this healing process. He ruined the definition of trust.

My daughters are in constant fear of everyone, especially men and police officers. They sleep with me many nights after having nightmares and being too afraid to sleep. He ruined many years of my daughters' childhood and stole their innocence that can never be replaced. They will be affected by [his] actions for the rest of their lives. He left my daughter with the only vision of a father is that of someone who uses them and hurts them, someone that isn't safe. . . .

My worst nightmares are real. I live with unbearable guilt that I could not fulfill the duty I had as a mother which was to protect my children and to keep them from being harmed. . . .

I do not believe for one second he had any doubt about what he was doing. . . . He is a monster and he should have to spend the rest of his life behind bars without an opportunity to ever abuse or take away anyone else's innocence. He stole something from my children and my family that can never be replaced.

SENTENCE IMPOSED: LIFE IMPRISONMENT

"PAST BEHAVIOR IS A GOOD INDICATION OF FUTURE BEHAVIOR, AND I ASK THAT YOU NOT LOOK AT MY PAST BEHAVIOR."

Mr. Bryant, a 41-year-old father, had a long history of addiction. During a period of relapse, Bryant was charged with two counts of conspiracy to possess, with the intent to distribute, 50 or more grams of methamphetamine. He pled guilty to one of the counts. Bryant had three prior felony convictions involving the sale of personal-use quantities of methamphetamine. Based in part on this criminal history, he faced a Guidelines-recommended range of 262–327 months in prison. I was struck in this case by the brutal honesty of the defendant, who recognized (rightly, I believe) that he could not guarantee self-improvement, but instead only pledge a commitment to that idea.

THE DEFENDANT:

[M]y fractured moral compass has led me into institutions like this time and time again because of the relapse and addiction I have to methamphetamine. . . . I didn't choose one day to be an addict. This is not my path. . . . I am not trying to excuse my behavior, it is abhorrent. I understand now the cause and effect of illegal activity and how it affects society and I see that and I see how it has broken my mother's heart. Aside from that violence of breaking her heart, the only violence done was the violence done to myself, on my arms when I tried to commit suicide my third or fourth day in custody in Miami . . . .

My antipathy toward methamphetamine has led me to who I am now, and I will never lose [my battle with addiction] again. I can't do that, Your Honor. What I can say is, standing before you with nine months clean and sober, it is going to be very challenging for me to stick a needle through the scars to get high again, because the very thing that brought me to that place when I was slicing myself up, I had no veins to cut, Your Honor. . . .

So, I am not really afraid of a life in prison for the next five, ten, 20 years, whatever it may be. I don't think that is where society wants me, I don't think that is where the community wants me, but I don't know, obviously, what is best for me at this moment. . . .

I am not sure what tomorrow will bring, but I know today as I am standing before you, today I am clean and sober. I can't promise you that tomorrow will be the same, but I can promise you as I woke up today, I am pretty confident when I go to sleep tonight I am going to go to sleep clean and sober. I can only do that day by day, I can't project it in the future, and I believe with the help of those people behind me, yourself and God's, that I have a bright

future ahead of me, and obviously that choice is yours. . . .

My methamphetamine use is ultimately something I am going to use as a tool to guide others who want to choose that boring life that I spoke of earlier. There are no guarantees. Past behavior is a good indication of future behavior and I ask that you not look at my past behavior, because it is scary.

THE COURT:
The Court is charged with the responsibility of imposing a sentence which is sufficient, but not greater than necessary to reflect the seriousness of the offense charged, to promote respect for the law, to provide just punishment, to afford adequate deterrence to criminal conduct and to protect the public from further crimes of Mr. [Bryant]. There is no way to make an objective determination based on these standards; it is all subjective. However, judges deal with these types of matters on a regular basis and over time get a feel for what they feel is fair and just . . . .

The Court certainly cannot overlook the addiction that Mr. [Bryant] struggled with for a large portion of his life. I think many of the crimes were a result of the addiction, [but] not all the crimes . . . . I was impressed by the testimony of Detective [] who described his interaction with Mr. [Bryant]. He said that Mr. [Bryant] was honest, open, that he cooperated fully. . . .

Having considered all of these matters, and I do want to thank those of you who were part of the church, and who are part of Mr. [Bryant's] therapy group for coming in and also writing letters and sharing your opinions about Mr. [Bryant]. It is very helpful to the Court.

SENTENCE IMPOSED: 202 MONTHS' INCARCERATION

"I WAS SELFISH, I WAS GREEDY, I WAS LOST."

Mr. Lancaster was caught using counterfeit currency at a casino and a department store and later found to have tens of thousands of dollars of counterfeit currency in his possession. He pled guilty to conspiracy with intent to possess, pass, and utter counterfeit notes and possession of counterfeit notes. He faced a Guidelines-recommended sentence of 27–33 months. At his initial sentencing, Lancaster expressed the intention to right his past wrongs and start a new life. This transcript reminds us that some defendants appear simply incapable of change — and that drugs and alcohol may often be at the root of that inability.

THE DEFENDANT:
My addiction to drugs and gambling by far pays its toll and is not an excuse, it is my responsibility that I do not continue to live my life in that self[-]destructive way where I fibbed myself, you know, stuck between a battle between my flesh and spirit, and not knowing what is right anymore. I was living recklessly; I was really greedy.

I take that back. I do know what is right, however, the carelessness in my life, I just wasn't abiding by my principles and morals that my mother raised me to have. . . .

THE COURT:
You seem motivated to do better than you have done. You are highly educated, you graduated from college up in Boston, [], you're very articulate, you express yourself well, you have family members here who care about you, a fiancée. That is a lot more than a lot of people who have come through the courtroom.

I hope for you that you are able to act on the words that you have, I believe truthfully, set forth to the Court that you want to do better. You clearly seem to suffer, according to your own words and the PSI [Pre-Sentencing Report], from serious issues that can be addressed through proper treatment. . . . The package of the supervised release including the RDAP program will get you on your feet and you can return to society and be the person you want to be and be there for your mother, stepfather, fiancée, and brother, and live a fulfilling life. That will be my hope for you.

SENTENCE IMPOSED: 27 MONTHS' INCARCERATION

Lancaster served his sentence and was subsequently released under supervision. Within months, he violated the ▸

terms of his release by testing positive for cocaine on several occasions. As a result, he was resentenced to an additional prison term. He did not make a statement at his resentencing.

THE COURT:

Mr. [Lancaster], some parting words. It seems what is being presented here in court is a situation whereby you have a drug problem and maybe some mental health issues, none of which are things to be, you know, embarrassed about to avoid and find ways to lie and be dishonest, but to the contrary to own up to it. Many people have many problems, and that is how life is, but you have a structure in place to give you support. You have a Probation Officer, a term of supervised release you should look at as a blessing rather and curse or burden, because you have people who really care about you and are looking for the services that you need.

2nd SENTENCE IMPOSED: 6 MONTHS' INCARCERATION FOLLOWED BY SUPERVISED RELEASE

Lancaster later violated the terms of his second supervised release, this time trafficking in cocaine, for which he was again sentenced to prison time. The defendant did not make a statement at his sentencing.

THE COURT:

[I]t would be my hope that whatever is driving the continuation of violations of the law -- and it has been continuations -- as I indicated, this is the first case I have had where I have seen two sets of violations of two different supervised releases, ...

[I]t seems to be indicative of something that is going on, that is, either a pattern or a continuation of something that is causing you trouble that manifests itself ultimately in violations of the law. So, I hope whatever that is that while you are in custody you take advantage of programs that are certainly available to you to address it and certainly when you are out of custody that you continue addressing whatever those issues are. . . .

3rd SENTENCE IMPOSED: 18 MONTHS' INCARCERATION AND REVOCATION OF SUPERVISED RELEASE

"I AM A GOOD, DECENT PERSON. I AM NOT PERFECT."

Mr. Marks was a police officer and a proud immigrant to the United States. After he was in a car accident, he lied and told the other driver he was "on the job" with the FBI at the time of the crash. He was charged and pled guilty to making a materially false statement in connection with a matter within the United States' jurisdiction. The sentencing colloquy brought everyone in the courtroom to tears. He faced a Guidelines-recommended sentence of 10–16 months in prison for the lie. Here we see that a single mistake can have a lifetime of consequences, and that one of the greatest punishments for a crime may be the loss of one's own perception of oneself.

THE DEFENDANT:

I came to the United States as a young 20[-]year[-]old man seeking the American dream. I achieved my American dream first by becoming a U.S. citizen, and second by becoming a police officer. Being a police officer was my life's calling. I lived an honest, productive life, and I was fortunate enough to have helped people over my 24 years of service. . . . I would only hope that the many good deeds and services I provided the citizenry outweigh the one bad thing I have ever done. . . .

I will now forever be known as a convicted felon, which is frightening and so foreign (Defendant crying). I am ashamed and embarrassed. I accept the responsibility for my actions and will use the adversity of the situation as a lesson in a productive way. I will not make excuses for my behavior and blame someone. To the contrary, they taught me right from wrong and instilled moral values into me. I am a loving dedicated man to my daughter, and I am especially dedicated to [my wife] who is my loving partner and has been my rock throughout this ordeal. . . .

Your Honor, I am a good, decent person. I am not perfect. I pray you see this today and render a lenient sentence. Thank you . . .

I will now forever be known as a convicted felon, which is frightening and so foreign. I am ashamed and embarrassed. I accept the responsibility for my actions and will use the adversity of the situation as a lesson in a productive way.

THE COURT:
For however a difficult and tragic day this is, at least you had the good fortune of having your family and friends come and to be able to hear how they think of you, and nothing in any of the words that were uttered about what happened in this one misstep, this one lapse of judgment, this one bad decision, has taken away, has shaded, has distorted their view of who you are as a human being, nor has the Court taken a different view of you as a human being, nor should you yourself. We do make mistakes . . . .

You have been defined by a career that you have taken much pride in and that has been taken away from you. . . . You accepted responsibility immediately and you are paying a dear price for it, but it doesn't mean that is the end of who you are and life as you know it in a certain way, but now it can be in a new way, and all of the great things people have said about you and the Court has learned about you can be channeled to your family, loved ones, and community, albeit in a different way, and I hope we all can benefit from the good things that you can provide and you don't define yourself by a label and by a bad decision. . . .

SENTENCE IMPOSED: 3 YEARS' PROBATION