

APPENDIX M:

Sentencing Exercise Materials

Sentencing Case Study: *State v. Cates*

DEFENDANT'S SENTENCING PROPOSAL

Mr. Cates was convicted at trial. The prosecutor requests a period of incarceration in a state prison facilitation and treatment within the prison system as a component of any probation period. The prosecutor stressed that although the victim had no physical injuries she was suffering from severe emotional and psychological injury that has profoundly changed her life by diminishing her trust in others and preventing her from engaging in activities she once enjoyed. At his sentencing hearing, Mr. Cates' attorney offers the following sentencing proposal. How do you respond?

Your Honor, my client is sorry that the situation got out of hand on their date, mostly because of the alcohol they both consumed. He understands that Ms. Larsen is upset and he regrets the misunderstanding. He never intended to cause her any harm.

Consider the many factors in this case which show that incarceration is inappropriate. Why ruin a good kid's life? This is Mr. Cates' first offense. He has not been in trouble with the law before this incident. There were no weapons; he wasn't violent; he did not threaten Ms. Larsen. She wasn't hurt. Ms. Larsen wasn't beaten or even bruised.

Therefore, we think it appropriate that Mr. Cates be placed on probation and continue the treatment he has already begun on an outpatient basis. He will also be required to complete community service.

We have met with the college officials who have agreed to his continued enrollment once he has been placed on probation. Thus, he will have stability in his life.

Your Honor, Mr. Cates has begun treatment with Dr. Jacob Stuart. Dr. Stuart is well known and has worked with many criminal offenders over the past three years. He has effectively treated many of his patients. Mr. Cates has been attending individual therapy sessions with Dr. Stuart and is actively participating in those sessions. His parents are supportive and are paying for his therapy.

Dr. Stuart conducted a careful risk assessment and evaluation of Mr. Cates, using the MMPI to determine the type of treatment plan to employ in this case. Dr. Stuart also believes the defendant is a good candidate for treatment and is a low risk to repeat this offense because he does not fit the profile of a rapist and this was his first encounter with the law.

The other component of the doctor's treatment plan is to have the court direct the defendant to perform community service in either a rape crisis center or a domestic violence shelter, so that he can understand the harm suffered by women and develop empathy with them.

My client is ready to do the recommended community service.

Sentencing Hypothetical I—*State v. Lujan*

You need to impose sentence on Mr. Lujan, based on the following information. What would you do?

FACTS:

According to records of the Albuquerque [substitute city in your state] Police Department, on December 10, 2003, the victim Lisa Salazar reported that at approximately 3 a.m. she was asleep in her bedroom when she heard a knock on the window. She saw her ex-husband, Ben Lujan, at the window. She went to the front door with the screen separating them and met Mr. Lujan who stated that he wanted to see the children. He then offered her money to see the children. She accepted the money but denied contact with the children because of the hour. When she opened the door to receive the money, the defendant pushed his way into the house. He forced her to the ground just inside the front door and forced vaginal intercourse on her. A short time later he attempted anal penetration, which failed. At one point in the encounter the couple's five-year-old daughter came out of her bedroom and witnessed the event. The victim attempted to fight the defendant. She reported that during the entire incident the defendant was choking her, holding her down by the neck, and grabbing her. A physical exam of the victim revealed slight bruising on her right wrist, a small scratch on her forehead, faint marks on her neck, redness around the vaginal opening. Sperm was also found in her vagina.

In an interview with officers the defendant at first denied any contact with the victim, but later changed his story and stated that he did go to the residence at her request and that they engaged in consensual intercourse.

SEX OFFENDER-SPECIFIC EVALUATION

Following the completion of all assessments and interviews the evaluator determined that the defendant was not an appropriate candidate for outpatient treatment. He was determined to be a significant risk to the community because of the high degree of force utilized in the offense, denial of the offense, the use of alcohol and drugs during the offense, previous domestic violence arrests and his age. Although his scores did not indicate psychopathy, he scored significantly on lack of remorse, failure to accept responsibility and poor behavioral controls. It was noted that the defendant showed little internal motivation and that he cooperated minimally with the evaluation process. Consequently, the evaluator recommended secure inpatient treatment at the Department of Corrections.

PROBATION DEPARTMENT RECOMMENDATION

The probation department recommended that the defendant be sentenced to DOC for a period of 10 years to life, with mandatory parole as required by statute, in light of his denial of the offense, his minimal remorse, and his lack of motivation to comply with sex offense specific treatment.

THE PLEA AGREEMENT

The parties agreed that the defendant will plead guilty to Second Degree Burglary, a class three felony. The People do not oppose a sentence of probation with terms and conditions to include compliance with sex offender supervision and no contact with the victim.

PROBATION RECOMMENDATION IN LIGHT OF THE PLEA AGREEMENT

Although the plea agreement calls for probation, the defendant does not appear to be an appropriate candidate for community supervision. Even though he agreed to sex offender treatment, he will not be subject to statutes governing sex offenders because he was not convicted of a sex offense, resulting in a possible compromise to the safety of the community. However, if the Court determines that probation is appropriate, it is recommended that he be placed on probation for no less than 10 years while being required to participate in sex offender treatment. This type of sentence would allow the defendant the ability to provide monetary support for his children.

THE VICTIM IMPACT STATEMENT

When asked what she would like to recommend to the judge at the time of sentencing for Mr. Lujan, she replied, "I agreed to probation because I was afraid he wouldn't be convicted if we went to trial. It's my word against his and I don't want to put my child on the stand to testify against her father. I just want him to get treatment and to stay away from me and the children! I can't and won't be able to trust him."

Sentencing Hypothetical II

The victim, a 21-year-old woman, was crying and intoxicated when she met five men at a downtown bar. Her friends had left her stranded without a car. The men, all college students from upper middle class families, offered her a ride home. Instead of driving her home, they drove her to one of their homes where one of the men secretly laced her beer and food with LSD. She had sexual intercourse with one of the men. After that she passed out.

The victim testified that because of the LSD given to her without her consent, she could not remember specifics about the assault. She was unconscious or asleep during most of the assault.

Three of the five defendants were granted immunity by the prosecution in return for their testimony. The three men who testified said they were unable to have intercourse with the victim because they were too high on LSD, but that they watched and laughed while one of them, Carl, assaulted the victim with a miniature liquor bottle, a shoehorn, and a greased table leg. Carl also put his fingers in her vagina. The fifth defendant, Mark, took photographs while Carl was doing this. No one tried to stop Carl, who was laughing throughout. After the woman reported the assault to the police, Carl and Mark destroyed the video.

Carl claimed that the victim was a willing participant to the finger and liquor bottle insertions. He denied ever having used a shoehorn and the table leg. He claimed that the victim claimed rape only because he refused to give her \$500.

Mark was charged with one count of sexual battery and one count of tampering with evidence. In exchange for his testimony, he pled guilty to a lesser charge of failing to report a rape and tampering with evidence.

The jury deliberated for one day. It convicted Carl of possession of LSD with intent to deliver and tampering with physical evidence, both third-degree felonies. It acquitted him on all the sexual assault charges.

Both Mark and Carl are seniors at the state university. Mark has no prior record. Carl has had minor drug arrests.

Mark

In this state, failing to report a rape and tampering with evidence are [insert offense level] punishable by [insert possible sentences].

What would you want to learn from the presentence investigation?

Would you seek a victim impact statement?

Assuming the statement in the hypothetical is all you know, impose sentence: [list possibilities in your state, e.g.,

Straight probation of ___ months or ___ years.

Probation with 30 days in jail.

Probation with 60-90 days in jail.

Probation with six months or more in jail.

Prison sentence of ___ years.

Other (specify).]

What kind of treatment, if any, would you order?

What community service, if any, would you order?

What conditions, if any, would you impose?

Carl

In this state, possession of LSD with intent to deliver and tampering with evidence are [insert offense level] punishable by [insert possible sentences].

What would you want to learn from the presentence investigation?

Would you seek a victim impact statement?

Assuming the statement in the hypothetical is all you know, impose sentence: [list possibilities in your state, e.g.,

Straight probation of ___ months or ___ years.

Probation with 30 days in jail.

Probation with 60-90 days in jail.

Probation with six months or more in jail.

Prison sentence of ___ years.

Other (specify).]

What kind of treatment, if any, would you order?

What community service, if any, would you order?

What conditions, if any, would you impose?

Prosecution Brings a Motion of Judgment Notwithstanding the Verdict

Query: How could the jury convict Carl of helping to destroy photographs of the assault and fail to convict for the underlying crime?

Would you: Order a pre-sentence investigation? Allow Carl to remain free on bail? Carl maintains he committed no crime during the “party” and should be released on bail pending sentencing and appeal.

Discussion

This hypothetical sets out the facts of a 1992 case from Tampa, Florida. The judge’s sentences were as follows:

Sentencing: Mark

Six years of probation with the following conditions:

Drug and alcohol rehabilitation program.

600 hours of community service at a rape crisis center after the rehabilitation program.

Weekly urine tests for drugs and alcohol for the duration of the probation period -- one dirty test and a warrant for his arrest will be issued.

Full-time employment after returning from the rehab center, not with anyone who has business or social ties to either his family or friends.

No contact with Carl or the other men who were at the “party.”

Note: Experts indicate that sentencing a sex offender to community service at a rape crisis center is completely inappropriate. As discussed in the sex offender unit, rapists do not develop victim empathy by being around rape victims and may in fact abuse these women.

Sentencing: Carl

Carl was held without bail pending sentencing. His sentence is not known.

Sentencing Hypothetical III

Defendant Chris Santos, a 30-year-old Latino man, appears before you for sentencing, having been convicted of rape. Santos is a Bolivian graduate student currently working part-time as a waiter while taking classes. He has no prior convictions. He has never been married.

The victim, Sarah Bentson, is a 28-year-old white woman who works as a paralegal in a small law firm. Bentson and her boyfriend, Tom, live across the hall from Santos in the same apartment building and are in contact with him occasionally. The relationship between Santos and Bentson before the attack was friendly; she and her boyfriend once invited Santos to their apartment for dinner, and Santos had keys to their apartment when they vacationed. The night of the assault, Tom was out of town on business. Santos asked Sarah Bentson for the loan of some tomato sauce he needed for a recipe and then invited her to his apartment for dinner. After she entered Santos' apartment, Bentson realized that Santos smelled of alcohol. She tried to make a polite excuse to leave but Santos made sexual comments and suggested that Bentson sleep with him. Bentson refused and tried to leave. Santos grabbed Bentson, forced her to the floor and raped her.

What is your sentence?

Note particular reasons for your sentence below.

Before trial, Santos enters a plea bargain for [fill in a sentence that is appropriate to your statute and guidelines].

Would you accept the plea bargain over the objections of the victim?

Sentencing Hypothetical IV

Defendant George Smith, a 26-year-old white man, appears before you for sentencing, having been convicted of rape. Smith has no prior convictions. Smith is divorced, has three children, and works as a parking lot attendant in a large city.

The victim, Anne Tudor, is a 24-year-old black woman who is divorced and has one child. Tudor is a dental hygienist in a private dental office. She parked her car every day in the lot where Smith works. Because her shifts did not always overlap with those of Smith, Tudor saw him approximately three times a week, at which times she was cordial, exchanging greetings with him and occasionally stopping to chat. The morning of the assault, Tudor had parked her car and was about to get out when Smith knocked on the window and told her that she would have to move her car because she was in a reserved space. Smith offered to drive her to the parking lot exit and then park her car for her. Tudor accepted his offer and moved to the passenger side while Smith sat down in the driver's seat. Smith did not drive toward the exit, however, but to a lower level of the lot where he parked in a remote area. Ignoring Tudor's protests, Smith locked the car doors and raped Tudor. After the assault, Smith left Tudor in her car. Smith was apprehended later that night.

What is your sentence?

Note particular reasons for your sentence below.

Before trial, Smith enters a plea bargain for [fill in a sentence that is appropriate to your statute and guidelines].

Would you accept the plea bargain over the objections of the victim?

Sentencing Hypothetical V

Defendant Peter Mitchell, a 24-year-old white man of medium build, appears before you for sentencing, having been convicted of rape. Mitchell is divorced, has no children and works as a bank teller.

The victim, Tracy Wilson, is a 22-year-old white woman who works as a bartender in a biker bar. On the night of the rape she went out to the parking lot at about 3 a.m. and walked to her car. While searching through her purse for her keys, she was attacked by Mitchell, who had been hiding behind her car. Though Wilson fought against Mitchell, he was able to overpower her without a weapon and rape her. After the assault, Wilson drove to the police station to report the rape. She sustained bruises on her wrists and shoulders, and her blouse was torn. Mitchell was apprehended later that night.

What is your sentence?

Note particular reasons for your sentence below.

Before trial, Mitchell enters a plea bargain for [fill in a sentence that is appropriate to your statute and guidelines].

Would you accept the plea bargain over the objections of the victim?

Sentencing Hypothetical VI

Defendant Robert Woods, a 20-year-old white man, appears before you for sentencing, having been convicted of rape. Woods is a college junior, a member of a national fraternity and a member of the basketball team. He has no prior convictions.

The victim, Jessica Chen, is a 19-year-old Asian-American woman who is a sophomore at the same college Woods attends. Chen and Woods dated briefly the previous year but had not had a sexual relationship. The night of the assault, Woods and Chen went to a fraternity party. When they returned to Woods' apartment at 1:30 a.m., both were intoxicated. The two engaged in consensual kissing for a while, but then Chen fell asleep. Chen testified that she woke up and realized that Woods had his penis inside her vagina. Chen told Woods to stop, but he ignored her protests. Immediately after the assault, Chen did not tell anyone about it or report it because she was ashamed and did not think she would be believed. Weeks later she confided in a friend, who convinced her to report the assault to the police.

What is your sentence?

Note particular reasons for your sentence below.

Before trial Woods enters a plea bargain for [fill in a sentence that is appropriate to your statute and guidelines].

Would you accept the plea bargain over the objections of the victim?

Sentencing Hypothetical VII

Defendant John Weber, a 17-year-old white high school senior, appears before you for sentencing, having been convicted of sexual assault. He has no prior convictions.

The victim, Nancy Barron, is a 17-year-old white student at another high school in the community. Barron knew Weber through mutual friends; she had spoken to him at several parties prior to the assault. The night of the assault, Barron ran into Weber at a party. He offered to drive her home. Instead of driving her home, Weber drove Barron to his apartment. His parents were away. They made small talk for a while, and then Barron offered to make coffee. When she came back from the kitchen, Weber grabbed her. She yelled at him because some of the coffee spilled on her, and she was startled. When she put down the coffee, he again grabbed her, and, ignoring her protests, digitally penetrated her and rubbed himself against her body. When she told him to stop and pushed him away, he got angry. He slapped her in the face and then reinserted his fingers. When Weber stopped, Barron ran out, knocked on the door of Weber's neighbor and called the police.

What is your sentence?

Note particular reasons for your sentence below.

Before trial Weber enters a plea bargain for [fill in a sentence that is appropriate to your statute and guidelines].

Would you accept the plea bargain over the objections of the victim?

Sentencing Hypothetical VIII

Defendant Peter Samuels, a 27-year-old white attorney specializing in real estate, appears before you for sentencing, having been convicted of sexual assault. He has no prior convictions.

The victim, Meena Narayan, is a 29-year-old South Asian associate at a real estate development firm. Samuels and Narayan had been working together on a project over several months that had just been completed. The week after the project was completed Samuels invited Narayan to meet him at a popular hotel bar near her office to celebrate the success of the project. After two glasses of wine Narayan began to feel ill and somewhat woozy and told Samuels that she needed to go home. Samuels told Narayan that he had a suite in the hotel and she could rest there until she felt well enough to go home. Narayan accepted. The next morning she woke up alone in the hotel room with no clothing on. Narayan had no memory after leaving the hotel bar, which was not typical for her after having two drinks. She was uneasy and called a friend who urged her to go to the emergency room. Narayan was tested for drug-facilitated rape drugs and tested positive for rohypnol and the semen evidence matched Samuels' DNA.

What is your sentence?

Note particular reasons for your sentence below.

Before trial, Samuels enters a plea bargain for [fill in a sentence that is appropriate to your statute and guidelines].

Would you accept the plea bargain over the objections of the victim?