

October 7, 2008

Arkansas Eastern Probation Office
233 Richard Sheppard Arnold
United States Courthouse
600 West Capitol Avenue
Little Rock, AR 72201
Phone: 501-604-5240

To Whom It May Concern:

Regarding the Sentencing Hearing of Michael C. Kelley (misspelled in some records as Kelly), I have known Mike Kelley for seven years. We met when I was doing freelance website development and he contracted me to post a manuscript he'd written on the Internet. Since that time we have become good friends, as dear to each other as any two people could be.

Throughout that time Mike has proven himself to be an honest, thoughtful and appreciative person. A man of good character who cared for his aged and ailing father for nearly a decade, prior to the senior man's death resultant of leukemia when he was 98 years old.

I have witnessed Mike Kelley deal with grave hardships, including the death of his father and loss of his home resultant of actions not of his doing and truly beyond his control. And I have noticed that even during the roughest of times he is always willing to help anyone in need the best way he can.

Also for the record, Mike Kelley:

- ◆ Is a Navy vet of the Vietnam War;
- ◆ Is a gifted musician who plays the piano and harmonica and composes music;
- ◆ Has a tenacious work ethic and until this trouble was consistently employed as a dishwasher with the same establishment for nearly all of the seven years we've known each other.

In the interest of further substantiating Mike's value to my family, his friends and our community I have attached several letters of reference, a couple of which were drafted earlier this year for a previous hearing (which never came to pass).

Also included is a letter from Keith Jensen, president of Universal Pultrusions LLC, a Marshall, Arkansas-based door, frame and louver manufacturing facility where I serve as communications director, offering to employ Mike at our factory on his release.

If Mike's sentence could be mitigated to house-arrest with work privileges, I pledge to be held personally accountable for his conduct and compliance with all orders of the court. As to my competency and character to secure such a promise, certain attachments provide background on me and I welcome the opportunity to be interviewed and/or provide documentation further substantiating my integrity.

Thank you for your earnest consideration. I and many others pray for Mike Kelley's speedy release.

Respectfully,

Christine Louise Beems

INDEX OF ATTACHMENTS:

- Personal research notes on Federal sentencing and drug law.
- Letter of character reference, E. Robert Jones
- Letter of character reference, Judith Johncox
- Letter of character reference, Adam Weiss
- Letter of character reference, Shalom Weiss
- Letter of character reference, Shawna Weiss
- Petition to free Mike Kelley
- Editorial by Christine Beems, gozarks.com, re: Justice Stephen Breyer, featured speaker at the Clinton Presidential Library, March 2006
- Photo of Michael C. Kelley and Christine L. Beems, volunteering as Santa & Mrs. Claus, December 2007
- Letter of employment offer, Keith Jensen, President Universal Pultrusions LLC
- Example of work-product of Christine L. Beems, Communications Director, Universal Pultrusions LLC company brochure

Personal Research Notes on Federal Sentencing Law

C. Beems, October 5, 2008

SENTENCING HEARING PROCEDURES

In many jurisdictions mandatory minimum sentences or guidelines have been adopted, and sentencing is no longer discretionary. In these jurisdictions the sentence is based upon a series of factual findings about the offense and the offender. This fundamental change in the nature of the sentencing process makes the sentencing hearing more like the trial; in both proceedings the determination of particular historical facts requires the application of particular legal rules. This is especially true in the federal system, which has adopted key features of real offense sentencing. In the federal system and in states that employ real offense sentencing many of the facts upon which the sentence depends are not elements of the offense, and they will not have been established by the finding of the defendant's guilt. The case for the application of the rules of evidence is the strongest in the federal system and in any states that employ nondiscretionary real-offense sentencing. For example, in a federal drug prosecution the key determinant of the defendant's sentence will be the quantity and type of drug. These facts are not currently deemed to be elements of the offense, and therefore they are not established by the conviction. They are determined, instead, at sentencing. If these findings are unreliable, then the offender will not receive the appropriate sentence.

"[i]n resolving any dispute concerning a factor important to the sentencing determination, the court may consider relevant information without regard to its admissibility under the rules of evidence applicable at trial, provided that the information has sufficient indicia of reliability to support its probable accuracy" (U.S.S.G. § 6A1.3(a) (Policy Statement)).

Rule 32 provides that the probation officer shall generally make a presentence investigation and prepare a report before sentence is imposed. This report is intended to include information about the defendant's history and characteristics as well as information necessary to make the determinations required to impose a sentence under the federal sentencing guidelines. Because the federal guidelines are a modified real offense system, this requires the probation officer to make numerous determinations about "relevant conduct" beyond the elements established by the defendant's conviction. For example, the probation officer may have to determine what quantity and type of drug was involved in a narcotics case. In contrast, in jurisdictions involving charge offense sentencing there would be less focus on fact-finding that goes beyond the elements of the offense, except as it bears on the defendant's personal characteristics and history. Rule 32 provides that the probation officer shall serve the presentence report on the prosecution and defense before the sentencing hearing, in order to permit the parties to raise any objections to the report prior to the hearing.

<http://law.jrank.org/pages/2088/Sentencing-Procedural-Protection-Rules-evidence-procedure-at-sentencing.html>

United States Supreme Court Cases on Sentencing Issues: Reasoned basis for judges exercising decision-making authority.

The sentencing judge, as a matter of process, will normally begin by considering the presentence report and its interpretation of the Guidelines. He may hear arguments by prosecution or defense that the Guidelines sentence should not apply, perhaps because (as the Guidelines themselves foresee) the case at hand falls outside the “heartland” to which the Commission intends individual Guidelines to apply, perhaps because the Guidelines sentence itself fails properly to reflect considerations, or perhaps because the case warrants a different sentence regardless. See Rule 32(f). Thus, the sentencing court subjects the defendant’s sentence to the thorough adversarial testing contemplated by federal sentencing procedure.

Another important part of the majority opinion is its discussion of certain procedural issues. Specifically, the Court (and in this it was joined by Justices Scalia and Thomas) examined the district court’s statement at sentencing to determine whether it complied with the requirement in section 3553(c) (including the nature and circumstances of the offense and the defendant’s history and characteristics), that the court “state in open court the reasons for its imposition of the particular sentence.”

The Court stated that the amount of detail required in such a statement would vary depending on the circumstances of the case, but that the district court “should set forth enough to satisfy the appellate court that he has considered the parties’ arguments and has a reasoned basis for exercising his own legal decision-making authority.”

http://www.uscourts.gov/ANRPT/2007/chap3_07.pdf

~~~~~

**Federal Sentencing Guidelines Ruled ‘Advisory’**

In 2005, the court ruled that the federal sentencing guidelines, an elaborate set of rules designed to ensure that similar crimes be punished similarly across the country, ran afoul of the jury trial requirement. But it decided that the remedy was to make the guidelines advisory rather than mandatory, as they had been.

<http://www.washingtonpost.com/wp-dyn/content/article/2007/06/21/AR2007062102088.html>

~~~~~

Top Court: Sentencing Rules Not Mandatory

WASHINGTON (Reuters) - In a major criminal law decision, a closely divided U.S. Supreme Court ruled on Wednesday that federal judges no longer must follow the long-criticized sentencing guidelines in effect since 1987.... In the court’s main opinion, Justice Stephen Breyer said federal judges are no longer required to apply the guidelines, and only can consider them, along with certain other sentencing criteria, in deciding a defendant’s punishment.

<http://www.nacdl.org/public.nsf/mediasources/20050112b>

~~~~~

**1st Circuit Court rules federal sentencing guidelines not presumptively reasonable -**

A criminal sentence applying the federal sentencing guidelines does not enjoy a presumption of reasonableness after the U.S. Supreme Court's decision in *U.S. v. Booker*, 125 S.Ct. 738 (2005), where the court held that the mandatory application of the federal sentencing guidelines violated the Sixth Amendment. The upshot of all this is to encourage trial court judges not to adhere slavishly to the guidelines, but to exercise reasoned discretion in deviating from their recommendations.

[http://goliath.ecnext.com/coms2/gi\\_0199-7114976/Resurrecting-the-sentencing-guidelines.html](http://goliath.ecnext.com/coms2/gi_0199-7114976/Resurrecting-the-sentencing-guidelines.html)

---

### **Federal Judges not bound by guidelines**

In the court's main opinion, Justice Stephen Breyer said federal judges are no longer required to apply the guidelines, and only can consider them, along with certain other sentencing criteria, in deciding a defendant's punishment.

<http://www.nacdl.org/public.nsf/mediasources/20050112b>

---

### **Judges Discretion Restored, Criminal Sentencing Transformed**

In *United States v. Booker (Booker)*, an unusual two-part opinion transformed federal criminal sentencing by restoring to judges much of the discretion that Congress took away when it put mandatory sentencing guidelines in place. In the first opinion, the Court held that the current mandatory sentencing guidelines violated defendants' Sixth Amendment right to trial by jury by giving judges the power to make factual findings that increased sentences beyond the maximum that the jury's finding alone would support. In the second part, a different majority concluded that the constitutional deficiency could be remedied if the guidelines were treated as discretionary or advisory rather than mandatory. As a result of the decisions, the Court struck down a provision in law that made the federal sentencing guidelines mandatory as well as a provision that permitted appellate review of departures from the guidelines. In essence, the high Court's ruling gives federal judges discretion in sentencing offenders by not requiring them to adhere to the guidelines; rather, the guidelines can be used by judges on an advisory basis.

<http://www.fas.org/sgp/crs/misc/RL32766.pdf>

---

### **Court Revisits Sentencing Guidelines**

"extraordinary reduction (in sentencing) must be supported by extraordinary circumstances." *Gall v. United States* (06-7949).

<http://www.washingtonpost.com/wp-dyn/content/article/2007/10/02/AR2007100201154.html>

---

### **No presumption of reasonableness for sentencing guidelines**

Justice [David H. Souter](#) said that a presumption of reasonableness for within-guidelines sentences creates "gravitational pull" on judges, moving them toward reliance on the sentencing guidelines and making it unclear what was accomplished by declaring the guidelines advisory in the first place.

<http://www.washingtonpost.com/wp-dyn/content/article/2007/06/21/AR2007062102088.html>

~~~~~

Presumptively Unreasonable to *Not* Deviate from Guidelines

Mr. Claiborne's Supreme Court appeal, *Claiborne v. United States*, No. 06-5618, thus presents the other side of the coin: not whether it is presumptively reasonable to issue a sentence within the guidelines range, but whether it is presumptively unreasonable not to do so.

<http://www.sentencing.nj.gov/downloads/pdf/articles/2006/Nov2006/news12.pdf>

~~~~~

### **Extraordinary Circumstances Justify Substantial Variance from Guidelines**

*States v. Booker* requires that a sentence which constitutes a substantial variance from the guidelines "be justified by extraordinary circumstances." In *Booker* we invalidated both the statutory provision, 18 U. S. C. §3553(b)(1) (2000 ed., Supp. IV), which made the Sentencing Guidelines mandatory... As a result of our decision, the Guidelines are now advisory,

<http://www.supremecourtus.gov/opinions/07pdf/06-7949.pdf>

~~~~~

Supervised Release and Home Confinement

18 U.S.C. § 3583(a) provides that, unless otherwise required by statute, a term of supervised release may be imposed upon a defendant at the discretion of the sentencing judge. 18 U.S.C. § 3583(c) sets forth several factors intended to guide the judge's decision whether to impose supervised release:

The court, in determining whether to include a term of supervised release, and, if a term of supervised release is to be included, in determining the length of the term and the conditions of supervised release, shall consider the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), and (a)(6).

The § 3553 factors listed include: the nature and circumstances of the offense and the defendant's history and characteristics; to afford adequate deterrence to criminal conduct; the need "to protect the public from further crimes of the defendant;" the need to provide needed educational, medical, vocational, or correctional resources to the defendant; the sentencing range specified by the Sentencing Guidelines; relevant policy statements by the Sentencing Commission; and the need to avoid unwanted disparities in sentences. 18 U.S.C. § 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6).

With regard to imposing special conditions of supervised release not enumerated in the statute, 18 U.S.C. § 3583(d) allows that

[t]he court may order, as a further condition of supervised release, to the extent that such condition-

(1) is reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D);

(2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D); and
(3) is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a);

any condition set forth as a discretionary condition of probation in section 3563(b)(1) through (b)(10) and (b)(12) through (b)(20), and any other condition it considers to be appropriate.

18 U.S.C. § 3563(b)(19) specifically identifies home confinement as a permissible discretionary condition of supervised release.

<http://ca10.washburnlaw.edu/cases/2000/04/99-1526.htm>

Heller decision, re: passive ownership of guns

The high court's ruling should make it more difficult to add huge sentence enhancements simply because someone owns a gun, according to Douglas Berman, a law professor at the Moritz College of Law at Ohio State University, commenting on the Heller decision which he said demonstrates that it is "unfair" to add punishments onto drug offenses "based solely on handguns passively stored in (a person's) home."

http://stopthedrugwar.org/chronicle/544/weldon_angelos_55_years_Supreme_Court_gun_case_challenge

Denial of due process

"The denial of due process in parole revocation simply mirrors society's overall attitude of degradation and defilement of a convicted felon. It is sad 20th Century Commentary that society views the convicted felon as a social outcast. He has done wrong, so we rationalize and condone punishment in various forms. We express a desire for rehabilitation of the individual, while simultaneously we do everything to prevent it. Society cares little for the conditions which a prisoner must suffer while in prison, it cares even less for his future when he is released from prison. He is a marked man. We tell him to return to the norm of behavior, yet we brand him as virtually unemployable, he is required to live his normal activities severely restricted and we react with sickened wonder and disgust when he returns to a life of crime."

~Former Chief Circuit Judge Donald Lay

Federal Penalties: Growing marijuana is a felony under Federal law. Penalties will vary according to the **amount of marijuana** that is found growing, measured by weight.

<http://www.legalmatch.com/law-library/article/growing-marijuana.html>

QUESTION: Was the efficacy as a drug of what Mr. Kelley reportedly grew ever tested? That is, was it ever clearly established that Mr. Kelley was growing legally definable marijuana and not hemp (aka: 'ditch weed')? Both hemp and marijuana have THC,

however hemp has less than 1 percent THC by weight, rendering it ineffectual as a drug, while marijuana contains 5 percent THC or more by weight.

Dr. Paul Mahlberg, a cell biologist at Indiana University, has a license from the Drug Enforcement Administration to grow experimental marijuana and hemp. He described them as varieties of cannabis sativa, a species whose cell structure he has studied for 30 years. "If you had hemp and marijuana here and set it on the table, could you tell the difference?" Dr. Mahlberg was asked. "The answer is no, not in young ones," he answered.

<http://query.nytimes.com/gst/fullpage.html?res=9503E4DE1439F932A35757C0A96F958260&sec=&spon=&pagewanted=2>

~~~~~  
**Myth:** United States law has always treated hemp and marijuana the same.

**Reality:** The history of federal drug laws clearly shows that at one time the U.S. government understood and accepted the distinction between hemp and marijuana.

[http://naihc.org/hemp\\_information/content/hemp.mj.html](http://naihc.org/hemp_information/content/hemp.mj.html)

~~~~~  
Personal note: The definition applied to ‘plant’ (in context of current drug policy) is not scientifically supported and therefore unreasonable. A recently rooted slip or sprouted seed is a ‘seedling’. And a ‘seedling’ is:

1. (Science: botany) A young tree that is generally less than 3 feet high.
2. Any recently-sprouted seed or recently-rooted cutting; a growing slip, esp. one ready for transplanting.

~~~~~  
**Individualized Assessment, Compelling Justification Support Degree of Variance**

The Guidelines are not the only consideration, however. Accordingly, after giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the §3553(a) factors to determine whether they support the sentence requested by a party.<sup>6</sup> In so doing, he may not presume that the Guidelines range is reasonable. See *id.*, at \_\_\_\_\_. He must make an individualized assessment based on the facts presented. If he decides that an outside-Guidelines sentence is warranted, he must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance. We find it uncontroversial that a major departure should be supported by a more significant justification than a minor one. After settling on the appropriate sentence, he must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing. *Id.*, at \_\_\_\_\_.

Regardless of whether the sentence imposed is inside or outside the Guidelines range, the appellate court must review the sentence under an abuse-of-discretion standard. It must first ensure that the district court committed no significant procedural error, such as

failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the §3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence-- including an explanation for any deviation from the Guidelines range. Assuming that the district court's sentencing decision is procedurally sound, the appellate court should then consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard. When conducting this review, the court will, of course, take into account the totality of the circumstances, including the extent of any variance from the Guidelines range. If the sentence is within the Guidelines range, the appellate court may, but is not required to, apply a presumption of reasonableness. *Id.*, at \_\_\_\_\_. But if the sentence is outside the Guidelines range, the court may not apply a presumption of unreasonableness. It may consider the extent of the deviation, but must give due deference to the district court's decision that the §3553(a) factors, on a whole, justify the extent of the variance. The fact that the appellate court might reasonably have concluded that a different sentence was appropriate is insufficient to justify reversal of the district court.

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=06-7949>

---

### **Humanitarian Rehabilitation**

A wide range of correctional programs have been implemented to alleviate prison overcrowding and lower recidivism rates. Some were established as alternatives to incarceration. Intensive probation supervision and electronic monitoring, for example, are two popular community-based sentences that are imposed in lieu of incarceration for offenders who can be managed safely under strict conditions of supervision.

Furlough programs were created mostly with rehabilitative or humanitarian intentions. Typically, violent offenders, inmates who are considered flight risks and those serving life sentences are excluded from furlough programs. Other selection criteria include offenders' institutional records and their willingness to comply with searches, drug tests and other conditions of program participants.

*~Encyclopedia of Crime and Punishment, Furlough Programs, by David Levinson*

---

***Items below were inserted for reference subsequent to document submission***

### **“Wired” Informants Prohibited**

The Montana Supreme Court’s 4-2 decision this week to overturn a 20-year precedent that allowed police to surreptitiously record conversations of suspected criminals without a search warrant is being hailed by defense attorneys but denounced by prosecutors and law-enforcement agents.

The Court held that the Montana state constitution’s right to privacy prohibits the police from “wiring” informants and recording their conversations with suspects without a warrant. The Court said that a district judge should have suppressed evidence in two

cases involving informants wired with secret microphones, one in a suspect's home and another in an automobile. ~~~

<http://bozemandailychronicle.com/articles/2008/08/21/news/20privacy.txt>

~~~~~  
FOR IMMEDIATE RELEASE OCTOBER 11, 2008

AREA RESIDENT FILES FEDERAL LAWSUIT

Requests His Petition Be Made Public

Fayetteville, AR: A Washington County resident, Ben Gover of West Fork, on Friday September 19 filed a federal lawsuit at the U. S. Federal Building, Fayetteville. The filing, according to Gover, "addresses the constitutional issue of justice," specifically the federal government's laws and policies regarding marijuana and its practices of drug sentencing and guidelines, as well as other issues.

Gover alleges that while the U. S. Constitution was crafted to allow for correction, subsequent laws, policies, and procedures enacted have been written in a way that prevent access for initiating change. His petition seeks redress of these obstructions.

Materials in support of Mr. Gover's petition, as well as the text of the lawsuit itself, are being made public through the website of Drug Policy Education Group, Inc. as a public service, as requested by Gover, and are located at <http://www.dpeg.org/nwa-man-sues-feds.php>

The lawsuit is filed Pro Se, with motion attached asking that "The court appoint a qualified disabled attorney, and the 'Court qualified' appointed attorneys representing this action should be eligible for payment under the 1976 Civil Rights Attorneys Fees Act, as the occurrences of racial discrimination in this case has been well documented, and enforcement of these laws in inner cities has frequently yielded factual reports concerning racially discriminatory actions involved."

Gover cites his own experience with serious longterm medical problems as a trigger for his suit. A summary of his medical details is also available at the website, as well as his letter to President Bush requesting an immediate pardon for all nonviolent marijuana offenders. Mr. Gover, a U. S. military veteran of Vietnam, is presently awaiting another round of treatment at National Naval Medical Center in Bethesda, Maryland.