

FACEBOOK - SCRIPTED JUDGE'S GUIDE

You Be the Judge Sentencing Exercise - Judge's Guide

Facebook Posts: Harmless Sarcasm or a Serious Threat?
How Aggravating and Mitigating Factors Affect Sentencing Decisions

INSTRUCTIONS

Judge: After listening to a volunteer read a fictional scenario, you will be the judges on this case.

1. We'll start with the scenario just as it is, and you will determine the sentence within the parameters set out for you.
2. Then I will add in aggravating factors that would argue for a stiffer sentence and mitigating factors that would argue for a lighter sentence.
3. After I give you a new factor, I'll ask: Who would give a more severe sentence based on that factor and who would give a more lenient sentence?
4. To wrap up the exercise, I will ask you to weigh the totality of **all** the factors, and determine your ultimate sentencing decision. Then we will discuss.
5. Who would like to come up to the microphone and read the one-paragraph scenario so that everyone can hear you?

FICTIONAL SCENARIO

Andy Jackson is an 18-year-old senior at Northwoods High School. When he sees his girlfriend, Sarah Somers, at a movie theater holding hands with their classmate, Sam Jonas, he becomes very upset. That night, Andy writes a post on his Facebook page. In it, he calls Sarah and Sam vulgar and offensive names. He says Sarah will regret sneaking around behind his back and Sam will never play tennis again when Andy is finished with him. Sarah and Sam are concerned and their parents alert the school and police authorities. Ultimately, Andy is charged with and convicted of communicating a threat online in violation of federal law. Andy could face years in prison.

Judge: Now that you've heard the scenario, each of you is the judge. When deciding on an appropriate sentence, the judge looks to the facts and circumstances of the case. I'd like to remind you that aggravating factors would favor making the sentence more severe, and mitigating factors would favor making the sentence less severe. After I give you a factor, you can raise your hand and tell me if it is aggravating or mitigating and how that factor would affect your sentencing decision.

How would you sentence Andy if:

AGGRAVATING FACTORS

1. This is not the first time that Andy has threatened Sarah and Sam online and in person.
2. The school told Andy last year to stop posting content that could be read as threats.
3. Sarah transfers to another school as a result of the postings.
4. Andy lies to investigators, telling them someone must have hacked his computer.

MITIGATING FACTORS

1. Andy puts a disclaimer on the posts that they are copy for the school's literary magazine *Sarcasm*.
2. Other than a speeding ticket, Andy has a clean criminal history.
3. Andy is a member of the school's Web Ethics Society (WEB).

Judge: To wrap up the exercise, I will ask you to work with the person next to you and weigh the totality of **all** of the factors and decide what your ultimate sentencing decision is. Then we will discuss.

Note: This exercise is based loosely on an alleged violation of 18 U.S.C. § 875(c) (communicating a threat).