

THE STORY BEHIND THE ALLOCUTION PLEADING

In determining the appropriate punishment, a court is to consider the factors set forth in Title 18, United States Code, §§ 3553(a)(1)-(a)(7). Particularly, the court is to consider: (1) the nature and circumstances of the offense and the history and characteristics of the defendant [18 U.S.C. § 3553(a)(1)]; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense [18 U.S.C. § 3553(a)(2)(A)]; to afford adequate deterrence to criminal conduct [18 U.S.C. § 3553(a)(2)(B)]; to protect the public from further crimes of the defendant [18 U.S.C. § 3553(a)(2)(C)]; to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner [18 U.S.C. § 3553(a)(2)(D)]; (3) the kinds of sentences available [18 U.S.C. § 3553(a)(3)]; (4) the applicable guidelines or policy statements issued by the Sentencing Commission [18 U.S.C. § 3553(a)(4)]; and (5) the need to avoid unwarranted sentence disparities among defendants with similar records with similar conduct [18 U.S.C. § 3553(a)(6)].

The court shall impose a sentence sufficient, but not greater than necessary to comply with the purposes set forth in 18 U.S.C. § 3553(a)(2).

The sentencing court is not required to consider individually each of the factors listed in Title 18, United States Code, § 3553(a) before issuing a sentence.

The sentencing court need only give the reasons for its action as required by Title 18, United States Code, § 3553(c). Thus, when imposing a sentence, a district court need only consider Title 18, United States Code, § 3553(a) *en masse* and state its reasons for imposing a given sentence.

After *Booker*, this Allocution Pleading has been used in numerous sentencing. Answering these questions for the sentencing Judge makes the defendant think about the sentencing process and provides insight that would never be reflected in the Presentence Investigation Report.

Counsel must make sure the defendant has not written something that ought not be written; *i.e.* denial of responsibility, inappropriate minimalization, etc.. Counsel's familiarity with the sentencing judge assists in tailoring the allocution statement.

The Allocution Statement answer sheet is almost always in the defendant's handwriting. This is partly because in many cases the defendant is detained pending sentencing without access to a typewriter or computer. Furthermore, handwriting tends to tell more about the individual. Here is an example of handwritten versus typed. The question is: *Why are you a better person now?*

First the typed:

Because other than this court Im not looking over my shoulder and I feel real good about myself. As being a good example for all my kids and liveing right and working and being drug free. I just feel alot better about myself and studying the Bible again that the number one reason I feel real good about myself and why Im a better person today and will keep trying to get better.

Now, the handwritten:

Because other than this court Im not looking
over my ~~sholder~~ shoulder and I feel real good about
my self. as being a good example for ~~all~~ all
my kids by liveing right and working and
being drug free I just feel alot better about
my self and studying the Bible again
that the number one reason I feel real good
is ~~about~~ about my self and why I am a
better person today and will keep trying
to get better.

There may be times a handwritten statement is not practical. For example, one defendant, while on pre-trial release, was involved in an accident in which he lost a finger and severely damaged other fingers and both hands. It was impracticable to have him write the statement, as his penmanship was illegible.

Most allocution statements are one to three pages in length. Some, like the first example, are rather lengthy. Again, counsel's familiarity with sentencing

judge assists in tailoring the allocution statement. If the sentencing judge enjoys brevity, instruct the client to keep it brief.

The allocution statement also keeps the defendant from freezing up and saying nothing when the judge asks if they have something to say.

A brief note regarding the two examples:

The first handwritten Allocution Statement was written by a defendant convicted of possessing pseudoephedrine knowing it was to be used to manufacture methamphetamine. He was college educated. He was in his mid-thirties before ever having problems with the law. Then he caught a couple of drug cases. There was a suppression hearing regarding the traffic case and the Judge called it “very close.” The government would not agree to a conditional plea. The case went to trial and the defendant was convicted. Despite the trial, the Presentence Report recommended acceptance of responsibility because the government refused to agree to a conditional plea and the Court agreed. The case was subject to a ten year mandatory minimum and the sentencing range was 140 to 175 months based on a total offense level of 29 and Criminal History Category V. The Court sentenced the defendant to 120 months and specifically referenced the Allocution Statement in the Statement of Reasons attached to the Judgment.

The typed Allocution Statement was written by the defendant whose hand was disfigured in an accident. He is a high school drop out and former Rogue's Motorcycle Club member. He was arrested originally in April of 2004 for being a felon in possession. The district court suppressed the evidence and the government appealed. The government won its appeal. (408 F.3d 1313) The defendant remained on conditions of release throughout the appeal process. While on conditions of release, the defendant suffered the debilitating accident. After remand, the defendant pled guilty. His sentencing is pending as of this writing.