



In Lerach Case, An Interesting Sentencing Distinction

August 11, 2011

The U.S. attorney's office in Los Angeles just took an interesting and nuanced position concerning a very high-profile request for community service as part of a guilty plea.

Disgraced plaintiffs attorney William Lerach pleaded guilty in 2007 to a charge of conspiring to obstruct justice and make false statements in many of his law firm's class actions. He completed a two-year prison term and is in the process of doing a required 1,000 hours of community service.

Lerach proposed, as part of his community service, that he would teach a class at the University of California Irvine School of Law on "Regulation of Free Market Capitalism - Are We Failing." The Probation Office said no - teaching in a law school isn't the same as working in a soup kitchen. Lerach appealed to U.S. District Judge John Walter.

The U.S. attorney's office did not express a view on the request, but the government drew an interesting distinction in its court papers. Lecturing law students on the mistakes that Lerach himself made, and cautioning them on how to stay on the ethical side of the line, "could serve to promote respect for law and provide deterrence to criminal conduct, in furtherance of 18 U.S.C. §3553(a)(2)(A) and (B) factors," the U.S. attorney wrote.

But mere discussion of American judicial and political history, even on regulatory failures in antitrust, consumer, and labor law, wouldn't serve those



purposes, prosecutors said, and those hours shouldn't count towards the 1,000 required.

Sections 3553 (a)(2)(A) and (B) discuss very basic principles of sentencing: the sentence needs “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense,” and “to afford adequate deterrence to criminal conduct.” Expressing remorse for one’s mistakes and showing others how to avoid similar mistakes can further those goals, but more general discussions cannot, prosecutors said.

White-collar criminals who plead guilty or are convicted at trial are often highly educated people, and sometimes, with apparently genuine remorse, they want to use their convictions as an opportunity to help others stay ethical. Can that count in any way as community service? Although the U.S. attorney’s arguments in Lerach’s case aren’t legally binding, they are instructive.

As it happened, Judge Walter wanted no part of Lerach’s request. On August 9, 2010, he rejected the request, finding that Lerach generally showed a lack of remorse for his crimes and noting that Lerach wasn’t even present in court that day.

For more information, [see the “Under the Radar” blog](#), which was the first to report on this issue.

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