



The Fate of an Iowa Butcher — Scapegoat or Cautionary Tale?

May 14, 2010

On June 22, 2010, Chief U.S. District Judge Linda Reade of the Northern District of Iowa will impose a sentence on Sholom Rubashkin, formerly the plant manager at Agriprocessors, Inc., the now-defunct Postville, Iowa, kosher slaughterhouse.

The sentencing comes more than two years after a massive immigration raid that netted a total of 289 undocumented workers and led to Rubashkin's arrest and conviction. Rubashkin originally faced a life sentence for more than 80 counts of fraud in connection with his operation of the slaughterhouse. During his closing argument on April 30, 2010, U.S. Attorney Peter Deegan asked the federal judge for a sentence of 25 years, which is less than the life sentence originally requested by prosecutors.

Using the Federal Sentencing Guidelines, prosecutors determined that Rubashkin's crimes warranted a life term in prison given the many victims in the case, including the banks and cattle owners who lost money to Rubashkin because of the fraud. This determination was roundly criticized by Rubashkin supporters—including prominent members of the Orthodox Jewish community and several former U.S. attorneys. The prosecutor's decision to ask for only 25 years may be related to the outpouring of support for a lesser sentence.

The life sentence originally sought shows how ineffective the Guidelines can often be in imposing standard sentences that are proportionate to the crime. The jury found in a special interrogatory that Rubashkin did not profit personally from the false invoices that he presented to the lending bank. Evidence of his modest, religious lifestyle, as well as of his extraordinary charity efforts, was proffered at trial but objected to by prosecutors and excluded by the trial judge. Notwithstanding Rubashkin's personal history, prosecutors viewed a life term as an appropriate prison sentence.

The prosecutor's formulation of a life sentence was based on calculations of "loss" under the Guidelines. See Ifrah, "[Sentencing Based on Loss](#)," National Law Journal, April 28, 2008 (subscription required). Rubashkin had \$27 million of loss attributed to him for purposes of sentencing.

However, in large-loss fraud cases such as this one, loss becomes a poor proxy for the seriousness of the offense, as even the Guidelines themselves concede in noting that a downward departure may be warranted in cases where the guideline sentence "substantially overstates the seriousness of the offense." See USSG §2B1.1, cmt. n.19(C).



A life sentence in this case is completely disproportionate to that meted out to virtually all other criminals in Rubashkin's class. Moreover, by originally recommending a life sentence, prosecutors essentially treated Rubashkin's crime as more heinous than rape. The original sentence recommendation is most likely reflective of the community standards of Iowa and, perhaps, of the particular biases of the prosecutors in Iowa.

Although the 25-year sentence is a marked improvement from the life sentence originally sought, it essentially amounts to a life sentence for a 51-year-old father. Some see him as a scapegoat; others view this as a cautionary tale resulting from a crackdown on illegal immigration. Regardless, the gross disparity between the original life sentence requested and Rubashkin's crimes is evident. Judge Reade's decision to take a three-to-five week adjournment to impose a sentence — although giving the appearance that she is taking the sentencing under consideration — is most likely her way of letting the heat die down in this case. Her decision will impact not only the small Iowa community, but also white-collar sentencing procedures as we know them.

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