



Amicus Briefs Urge Reduction in Rubashkin Sentence

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We first [posted about Sholom Rubashkin](#)—the former plant manager at the now-defunct Agriprocessors, Inc. — back in May 2010, when Rubashkin was awaiting sentence for more than 80 counts of fraud in connection with his operation of the kosher slaughterhouse.

Since then, Chief U.S. District Judge Linda Reade of the Northern District of Iowa sentenced Rubashkin to 27 years in prison, an action that sparked an outcry from various quarters. Very recently, a trio of prominent legal advocacy groups — the Washington Legal Foundation (WLF), the American Civil Liberties Union (ACLU), and the National Association of Criminal Defense Lawyers (NACDL) — filed amicus curiae briefs with the U.S. Court of Appeals for the Eighth Circuit, asking the court to vacate the sentence and remand the case to another trial judge for resentencing. These somewhat unlikely allies are united in their effort to reduce what they see as an unfair and draconian sentence.

As we previously reported, prosecutors originally sought a life sentence for Rubashkin under the Federal Sentencing Guidelines, a decision that was widely criticized. Prosecutors eventually changed their tune and asked for a 25-year sentence. Judge Reade, however, decided to ignore the prosecutors' request and the outpouring of support for Rubashkin, instead sentencing the first-time offender to 27 years in federal prison. In August, Rubashkin's lawyers moved unsuccessfully for a new trial, arguing that Reade had clearly showed bias



against Rubashkin in view of evidence that Reade had had undisclosed discussions with prosecutors and immigration officials in the days leading up to the Agriprocessors raid. In their January 4, 2011, brief to the appeals court, Rubashkin's lawyers cited this evidence and argued that Rubashkin's conviction should be overturned or that a new judge should be appointed for a new trial.

On January 10, 2011, the WLF, representing 18 noted law school deans and professors, former federal judges, and former prosecutors (including Jeff Ifrah, founding partner of Ifrah PLLC), filed an amicus brief in support of Rubashkin with the pro bono assistance of Professor Douglas Berman, author of the influential blog Sentencing Law and Policy. The WLF made three arguments in its brief. First, the WLF argued that the district court's calculation of the guideline range was contrary to the Sentencing Guidelines. Second, the WLF argued that the district judge did not heed the Supreme Court's repeated admonition that a district court must not presume that a sentence within the calculated Guidelines range is reasonable. Finally, the group contended that the unreasonably harsh sentence imposed on Rubashkin is the functional equivalent of a life sentence given his age (51) and is inconsistent with his personal history as a father of ten children and respected member of his community.

In its brief, the ACLU highlighted Judge Reade's active participation with prosecutors before the raid on the kosher slaughterhouse, which included e-mails in which Reade asked for a "final game plan" for the raid and a "briefing" on the operation.

The widespread support for Rubashkin can best be explained by the fact that the problem extends well beyond Rubashkin personally. Rubashkin is just one of many defendants who have fallen victim to an antiquated sentencing system



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in an increasingly overcriminalized business world. Although Rubashkin faces a tough battle on appeal, he is probably one of the lucky ones: Not many defendants can say that they have garnered the support of several prominent legal advocacy groups.

This case tests the outer parameters of judicial discretion under the U.S. Sentencing Guidelines. It should be noted, however, that even a likely remand may not result in a significantly different sentence unless the appeals court also orders that a new judge be assigned for resentencing. The 8th Circuit could hear oral arguments in this case as early as May.

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The commentary and cases included in this blog are contributed by Jeff Ifrah and firm associates Rachel Hirsch, Jeff Hamlin, Steven Eichorn and Sarah Coffey. These posts are edited by Jeff Ifrah and Jonathan Groner, the former managing editor of the Legal Times. We look forward to hearing your thoughts and comments!

