

Final Argument Punishment

I. Introduction

- a. MAY IT PLEASE THE COURT
- b. Sad and serious business of case.
- c. You wield a great deal of power/authority-no one can question you
- d. Range of punishment
 - i. Imprisonment
 - ii. Probation under strict supervision
- e. So we are past the fact issue guilt/innocence.
- f. Down to the moral question
- g. How much pain to inflict on Defendant
- h. How much pain you inflict is reflective of the kind of person you are and your personal beliefs.
- i. How much pain you inflict reveals the quality of your relation to your fellow man.
- j. There is a concept among all civilized people that the punishment should be proportionate to the crime.
- k. I am here humbly, hat in hand asking for your consideration for the Defendant.
- l. Sometimes despite our best intentions, preparation and purposes; wisdom fails.

II. PUNISHMENT

a. **WHAT IS IT FOR**

- i. There are 3 Distinct Theories of Punishment
 1. RETRIBUTION: Vengeance-an outlet for victim's & society's own social aggression & emotional instability - state will appeal to this no doubt -emotion not reason - looks backward. I have been done wrong, I will do to you equally or higher.
 2. DETERRENCE: Does it work? Scarlet letter, severed hand -dark impulses simmer beneath surface of all of us - aggression is most primitive and dangerous impulse-revenge is close cousin-it looks backward -fear of prison is a deterrence-who most fears it? Those who have never been.
 3. REHABILITATION. Reform -looks forward -this is our situation -this we must do to make the best of the situation - can you rehabilitate in prison? Reason tells you more likely to alter criminal behavior in the community than in prison. The most modern theory- society evolves -concepts of justice mature.

b. **RANGE OF PUNISHMENT IS GREAT**

- i. IMPRISONMENT is last resort-It is not our 1st choice as a society. Redeeming and changing
 - 1. Higher range of punishment is for those who must be warehoused.
 - 2. The range of punishment goes from first offenders to habitual criminals; from sociopaths to the careless, reckless, foolish, multiple offenders, violent offenders, weapons used, premeditation
- ii. PROBATION
 - 1. Only if 10 years or less in prison assessed
 - 2. Intensive supervision
 - 3. community ties intact
 - 4. punishment in this case is by design of our law at the lower end
 - 5. self esteem possibly redeemed-must have self esteem & contact with community resources to build upon
- c. **WHO SHOULD QUALIFY FOR PROBATION**
 - i. He is probation eligible-who is he-look at his life.
 - ii. CRITERIA:
 - 1. Very little or no criminal history.
 - 2. Not habitual criminal-not someone now on probation or parole-someone who's actions arose from a moment of passion and not from a continuous scheme & design- no kidnapping-no guns-no beating-not predatory, not violent
 - 3. A person who can be served by the community's psychological, supervisory & social resources.
 - 4. Someone who would be greatly injured by prison -someone who has never been before & fears it with a sickness of soul.
 - 5. Someone who has the ability to compensate the victim-the victim's counseling needs
 - 6. Someone who has no emotional or mental illness or disturbance problems that would impede rehabilitation.
 - 7. Stable employment history-who has positively contributed to society in the past
 - 8. Someone who can conform to close supervision & accountability-someone who didn't flee from the accusation.
 - 9. Someone who has suffered consequences of act already - paid lawyers, taken off work -come to court-didn't flee from the accusation-loss of vote -respect of others-lost employment possibilities.
 - 10. Someone with potential to reform- prison has a numbing monotony of routine & constant reminders that you are finished as a man.

11. Positive prospects for rehabilitation and successful treatment because of family ties and commitment.
12. If violate probation then get the full amount of time.
13. A probationer with monitoring by a no-nonsense judge.
14. The issue is not whether the crime deserves punishment.
15. The issue is the appropriate punishment.

d. **PRISON**

- i. 10 yrs in prison what happens in 10 yrs.-children not yet born-lost moments to share with family& friends- look backward in your own life.
- ii. You've been locked in jury room-time moves slowly when confined or at beck and call of others

e. **CHARACTER WITNESSES**

- i. Character witnesses have testified in the Defendant's behalf
- ii. The state may belittle these friends who stood up for the Defendant.
- iii. But friends like these reflect the most noble and faithful acts of friendship.
- iv. They say I can tell you his act was inconsistent with his real character which is good.
- v. Look at the people you heard from.
 1. They are good people- no one could be critical of them.
 2. They are people who know him best
- vi. The best way to assess a man's character is to ask those who know him best.
- vii. They are willing to help him rehabilitate.
- viii. The state hasn't shown you the Defendant has a bad reputation.
- ix. No record of
 1. convictions
 2. jailing
 3. probation or supervision
 4. imprisonment
- x. There is no doubt he is probation eligible.
- xi. No parade of persons saying he is a bad man and you should send him to prison.
- xii. Family and friends affected by jury's decision on punishment.

f. **HOW IMPORTANT IS CHARACTER OR REPUTATION**

- i. It has considerable value
 1. can't buy it
 2. can't acquire it quickly
 3. result of a lifetime of actions & relations with others
- ii. The Defendant is before you with proof of his good character & reputation for years.
- iii. State will compare Defendant and victim.

- iv. Jury can help victim by making Defendant pay for counseling.
- v. Victim needs counseling.
- vi. Victim can't pay-Defendant can pay-you have the power to take money out of Defendant's pocket.
- vii. Unfortunate circumstances the victim suffered can't be undone.
- viii. What is before you is Defendants future and potential
- ix. How will it help victim if Defendant is in prison

g. **PROBATION CONDITIONS**

- i. **See Court's Charge**
WHAT ARE THEY? (Argue all the applicable conditions including jail time as a condition)
- ii. **REVOCABLE EVEN ON LAST DAY**
- iii. Probation is not a joke -It is well established in our laws and community-designed by the legislature and approved by the people-it works every day in our community and will work for Defendant. Leave Defendant in the hands of the expert and experienced –the judge.
- iv. A man can change in 10 yrs for good or worse. Most people sent to prison will be back in society eventually
- v. Don't do state's bidding. Do what you think is best-make this decision your decision-no one can quarrel with it- retribution is a close supervision & fine -rehabilitation-potential exists.
- vi. Professionals/ persons who the court trust say probation.
- vii. If you feel you may err, err on side of humanity. If you question your wisdom, err on side of leniency, caution and mercy.
- viii. Let the judge control.
- ix. Despite our best intentions, preparations and evaluation, sometimes wisdom fails.

h. **INDIVIDUAL VERDICT**

- i. D.A. gets last word.
- ii. Make your choice do it carefully-no going back.
- iii. You each individually must live with it
- iv. I leave Defendant in your hands.