



Crime & Punishment

James Alan Fox on criminal behavior and the justice system

COURTS AND SENTENCING

The Kerrigans and the Bishops

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We can all recognize and sympathize with the heartbreak endured by the Kerrigan clan. After having lost a husband/father to a violent family feud, Brenda and Nancy Kerrigan hoped and prayed, begged and pleaded, not to have their son/brother Mark lost to incarceration as punishment for his role in causing the father's death. In a tear-filled appeal delivered prior to sentencing, the Kerrigan women suggested that the victim, 70-year-old Daniel Kerrigan, would not have wanted to see his son go to jail for the crime, but to be sent home to help the family grieve.

Despite the free-flowing emotions witnessed in her court, Middlesex Superior Court Judge S. Jane Haggerty was unconvinced and made the absolutely right decision to reject the family's request. As always, justice should be based on an objective assessment of the facts, notwithstanding the bidding by family of the victim or perpetrator.

In other cases discussed in this space, I have argued that although the point of view presented by victims or their survivors should be considered in the sentencing decision, it should hardly be the primary factor. This has earned me a reputation for being offender-friendly, □ to put it nicely. So in applauding the stiff penalty given Mark Kerrigan after his conviction for assault and battery against his elderly father, am I somehow now offender-unfriendly □? Actually, wanting to limit personal persuasion by family in either direction is nothing but consistent.

The somewhat unusual situation in the Kerrigan trial was, of course, that the victim's family and the defendant's family was one and the same. However, the interests of the state in seeking justice and punishing criminals should not change because of this oddity. Had the defendant been a stranger or even a mere acquaintance of Daniel Kerrigan, wouldn't Brenda and Nancy Kerrigans have sought justice in the form of a substantial penalty? Is the harm to the victim and the social order any less because the defendant was the victim's own son?

Suppose that the Kerrigans' expressed wish for leniency and no jail time had been honored so as not to compound their loss. How different would this have been from what the family of Amy Bishop achieved when she was not charged back in 1986 for fatally shooting her brother? Yet today, the public and politicians alike are outraged that the Bishops may have succeeded in using their influence and position to have daughter Amy spared prosecution. Had the Kerrigans been as successful in using their notoriety to affect the outcome for Mark, would there have been the same sort of outrage?