

Two Letters to Judge Eaton

Paul D. Carrington

The two letters set forth below are quite factual; they were sent and received very much as they appear here. I have modified them only insofar as necessary to conceal the identity of the protagonist, who is entitled to have the events described remain a private matter. I publish them as a comment on current federal law limiting the discretion of judges in imposing sentences on offenders. With many others, I favored sentencing guidelines and was among the first to advocate them in 1965. Reflecting on decades of experience with them, I recant. The old system of absolute discretion in sentencing by the trial judge is better than what we have. What follows is a piece of evidence supporting that view.

A gracious response to the second letter was received from the elderly Judge Eaton, who expressed the hope that his descendants might ever read about his decision in Ike's case. I share his hope.

Paul D. Carrington
University of Michigan Law School
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September 16, 1971

Hon. Joseph Eaton
United States District Court
Southern District of Florida
Miami FL

Dear Judge Eaton:

I write in regard to Isaac Rosen who will come before you for sentencing next week.

I have known Isaac since 1956. At that time, his father Myron (Mike) was in the Army, as was I. We were both stationed at the Aberdeen Proving Ground. We both lived with our families in a building erected to house married soldiers. "Ike" was four when our second child was born there in 1957. Partly because his father was a Captain and I was a Private First Class, we were not close at that time.

But when my wife and I moved to Ann Arbor in 1965, we were pleased to discover the Rosens as neighbors. Ike sometimes played wiffle ball or touch football with our children.

In 1967, Ike was expelled from Ann Arbor Pioneer High School because he wore his hair in violation of the school's grooming rules. As a friend, I appeared before the Ann Arbor School Board to argue that the grooming rules were too severe. It happened that on the day of the school board meeting, a colleague took me into his bank while he cashed a check. The Presidents of the United States were pictured on the wall. I observed that only four of them would be permitted to attend Pioneer High School. I called that situation to the attention of the school board, and they rescinded the grooming rules.

Despite my success as his lawyer, Ike refused to return to school. He was an irrationally angry young man. Ann Arbor is the sort of town in which very smart children sometimes grow up too fast. Ike at fourteen was a strenuous anti-war activist and deeply embittered by what he perceived to be the bovine indifference of the community to the brutalities occurring in Vietnam. He could not stand it that his parents continued to go to work, keep house, visit with friends, and indeed go on living while there was Vietnam on the tube every night.

Not long after the school board rescinded the grooming rules, Ike moved out of his parents' house. I encountered him on the street a little later and saluted him; he gave me a hostile glare but did not otherwise acknowledge me. We then heard that he was living in a garret or a garage somewhere around town. Time passed, and his parents received word that he had moved to upper Michigan. A year passed. Somehow, he sent word to his father, Mike, that he was living in Amsterdam. Another year passed. It was rumored that he was now in Morocco. His grandmother went to Morocco to look for him in the dens and brothels of Marrakech, but she did not find him.

Then last spring, Mike called me to say that he had heard from Ike. "Great," I said. "But," he said, "he is in the custody of the United States Marshal. He has been busted for smuggling. He wants me to send him a lot of money so he can try to bribe a federal officer or judge to let him out. Should I do that?" Of course I derailed the absurd guardhouse idiocy, and found him a lawyer, an alumnus of this law school, and on his advice, Ike has pleaded guilty.

Meanwhile, however, he was allowed to return to Ann Arbor. Mike made him come see me. He was still as hostile as he had been that day on the street, but was at least submissive enough to ask my advice. I told him I had none, really, but that I did know an old judge Lincoln in state court in Wayne County who had told me that he had sentenced 25,000 children in his years on the bench, and that his iron rule was never to send one to training school if he had a job or if he was making progress in school. "Maybe, Ike," I said, "you might get a lighter sentence if you found work."

I do not know that my words made an impression, but he did find a job supervising newsboys for the Ann Arbor News. This was only part-time work, so he enrolled in the high school completion program at Washtenaw Community College. That did not fill his time, so he took a night shift job working in a tool and die shop. The daughter of the owner of the shop took a shine to him, and she is now his steady company when he is not working or studying. He now smiles. He smiles a lot.

It seems to me there is a good chance that Ike is now able to take care of himself and will do so. I don't know if you subscribe to Judge Lincoln's iron rule, but this might be a very good time to apply it.

I hope these thoughts are useful. Best wishes.

Sincerely yours,

/s/ Paul D. Carrington

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September 16, 1999

Hon. Joseph Eaton
United States District Court
Southern District of Florida
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Dear Judge Eaton:

This is my second letter to you. The first was written twenty-eight years ago today.

Perhaps you recall my first letter. I enclose a copy to refresh your recollection. You of course did not answer it. But, as his father reported the sentencing hearing to me, you asked Ike if it was true that he had trouble with authority. He grunted an affirmative answer. You acknowledged that you, too, sometimes had trouble with authority. You then stated that the pre-sentencing report told you that you ought give him at least five years of hard time. You then stated that his sentence was indeed five years. However, you said, "Just to show that I too can defy authority, I hereby suspend the whole sentence. If you get caught speeding in the next five years, you will begin with five years in the federal penitentiary and then they can worry about the speeding ticket on top of that. Go make a life for yourself, Mr. Rosen, and then you can forget the last four years."

You may not know that Ike a few weeks later married the girl friend mentioned in my previous letter. She was an undergraduate at Michigan. Ike finished his high school course, and enrolled at Eastern Michigan University in nearby Ypsilanti. After a year of all As, he transferred to the University of Michigan where he compiled a spectacular undergraduate record. He went on to do graduate work at the University of Chicago. His record there earned him a faculty appointment at Berkeley. He is now a professor of cell biology at that distinguished university. He and his wife have two children who prosper in school.

I salute your wisdom. I am informed that if Ike had come up for sentencing in 1999 that the judge would have had no authority to suspend the sentence, and that he would have spent as much as twenty years in the federal penitentiary. What a tragic waste!

Best wishes.

Sincerely yours,

/s/ Paul D. Carrington



Paul D. Carrington is a law professor and former dean at the Duke University School of Law.