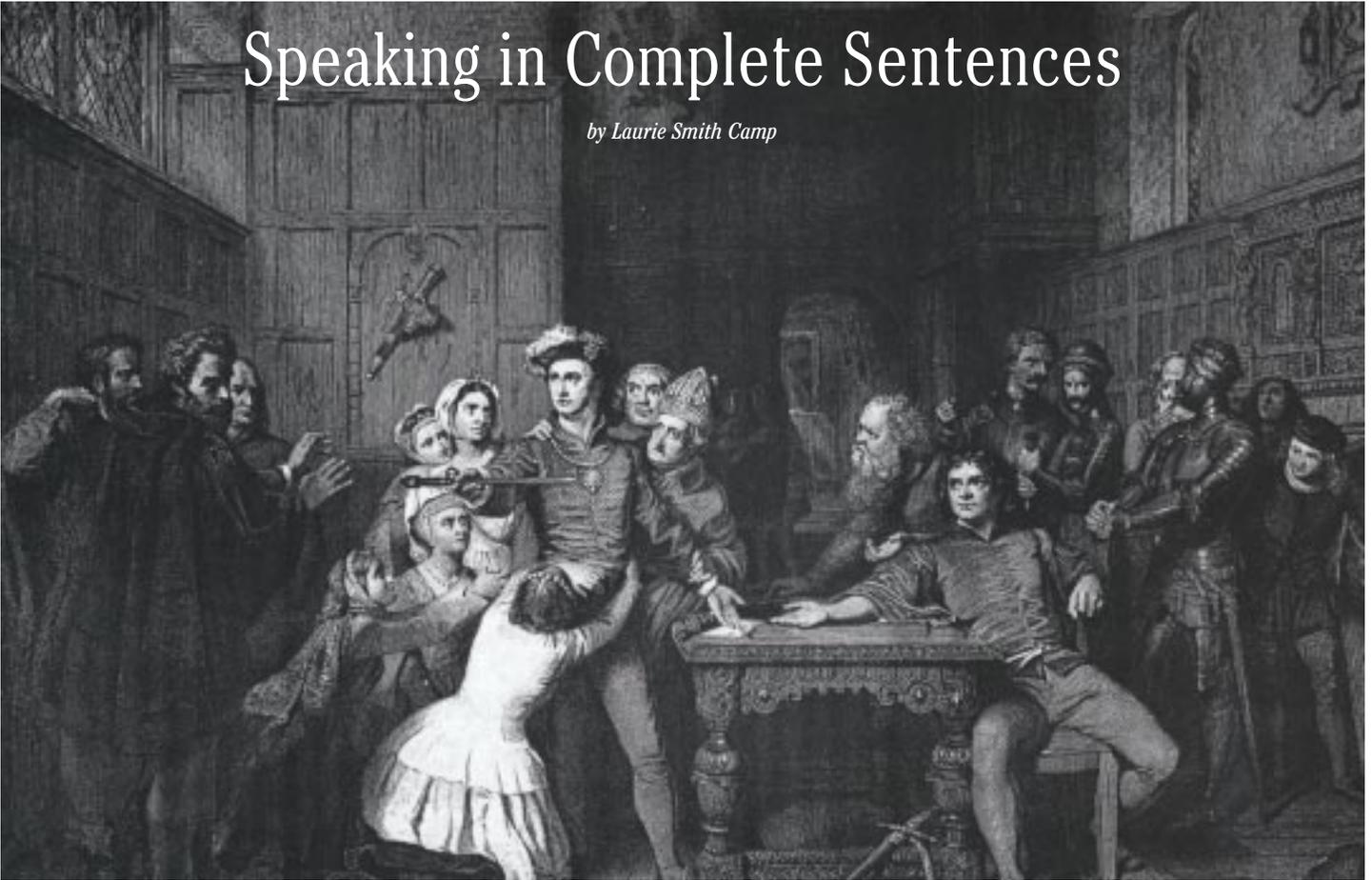


Speaking in Complete Sentences

by Laurie Smith Camp



The illustration for this article is an etching of a painting entitled: "The Justice of the King."¹ The man seated at the table has been found guilty of striking another man in the presence of the King. The penalty is loss of a hand. The King is handing a sword to the victim to carry out the sentence.²

In this etching, we see from the accused party's expression and his relaxed attitude that he does not expect his sentence to be carried out.

Like the defendant in the etching, many criminal defendants sentenced in Nebraska do not expect to serve the sentences they receive. Generally, they are proven to be right.

The U.S. Department of Justice reports that most states are moving toward sentencing structures which are increasingly determinate or "predictable." Such states are using mandatory minimum terms, less

good time, and truth-in-sentencing statutes which require that inmates serve a certain percentage of their maximum terms.³ At least 27 states, and the District of Columbia, have adopted systems of sentencing which require that inmates who have committed serious crimes of violence serve not less than 85 percent of the court-imposed sentence.⁴ Inmates in the federal correctional system serve an average of 87 percent of their court-imposed sentence.⁵

Nebraska's most dangerous, violent offenders serve only an average of 45 percent of their maximum, court-imposed sentence.⁶

The purpose of this article is not to advocate for longer sentences or shorter sentences, nor to suggest barbaric "alternatives to incarceration" such as that illustrated in the etching. This article's objective is to demonstrate why Nebraska's sentencing structure is puzzling to many lawyers, as well as to the general public and crime victims.

Nebraska has an indeterminate sentencing system. This means that when a judge sentences a defendant for a felony offense, the judge can impose a minimum term which is used to figure parole eligibility, and a maximum term which is used to figure when the defendant will be discharged.⁷ Because inmates receive good time on their sentences, the public is generally not aware of how long an inmate will serve before becoming eligible for parole or being discharged.⁸

To address this problem, the Nebraska Legislature enacted LB 529 in 1993. The bill accomplished three things. First, it required sentencing judges to state on the record the time the defendant will serve

Laurie Smith Camp has served as Nebraska's deputy attorney general for criminal matters since 1995. Camp was chief of the Attorney General's Civil Rights Section from 1991 to 1995; general counsel for the Nebraska Department of Corrections from 1980 to 1991; and in private practice from 1977 to 1980.

before becoming eligible for parole and before being discharged, assuming that he or she lost no good time. Second, it repealed a statute which provided that if a judge did not impose a minimum term, the statutory minimum term for the offense would be used to figure the parole eligibility date. The repeal of that statute allowed Nebraska judges to impose determinative sentences providing for no parole eligibility. Third, the new law repealed a statute, which provided that minimum terms could be no greater than one-third of the statutory maximum term for the offense.

After the enactment of LB 529 in 1993, Nebraska's prison population increased dramatically. At the same time, violent crime in Nebraska decreased. Judges were making use of their new authority to impose determinative sentences, preventing some inmates from becoming eligible for parole. Judges were also using their new authority to impose minimum terms greater than one-third of the statutory maximum, thereby delaying inmates, parole eligibility. One can only speculate whether judges imposed longer sentences as a result of the requirement that they state on the record the amount of time an inmate would serve before becoming eligible for parole or being discharged.

In 1997, the Legislature decided that it could not afford to provide judges with the sentencing discretion, which LB 529 permitted, nor could it afford truth-in-sentencing. To reduce prison crowding, the Legislature reinstated the one-third cap on minimum sentences for Class IV felonies, and eliminated determinative sentencing -- providing that if a court imposed a sentence of a definite term of years, the statutory minimum term for the offense would be used to figure parole eligibility.

Now you will be quizzed on what you have learned. If you skipped the footnotes, you are at a disadvantage. Please complete the sample sentences, then check your answers on the next page. If you find the answers surprising, you are not alone.

Nebraska's criminal sentencing statutes can be misleading and unpredictable, and they place substantial discretion in the hands of parole board members and prison administrators to determine how much of the court-imposed sentence an inmate will actually serve. 

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Sample Sentences²¹

	How long will the inmate serve before being eligible for parole?		How long will the inmate serve before being discharged?	
	If good?	If bad? ¹⁹	If good?	If bad?
Class IV Felony, e.g., driving on a license which has been revoked for a third or subsequent DWI - 20 month to five year sentence ²⁰				
Class III A Felony, e.g., assault on an officer using a motor vehicle - 5-year sentence (no minimum stated)				
Class III Felony, e.g., manslaughter - 20 year sentence (no minimum stated)				
Class II Felony, e.g., 1 st Degree Sexual Assault - 50 year flat sentence (no minimum stated)				



Footnotes

¹The Justice of the King" is the work of Scottish painter John Faed.

²In early criminal codes, imprisonment was not used as a punishment for crime, although prisons and dungeons were used to detain accused criminals pending trial or to confine political prisoners and hostages. Early codes such as that of Hammurabi (18th Century B.C.), the Hebrews (14th Century B.C.), and Draco (7th Century B.C.) prescribed death and mutilation as punishments. William the Conqueror abolished the death penalty in England (temporarily) in about 1080 A.D., substituting trial by ordeal. Once the trial was over, the question of punishment was moot. The first prisons to be used as punishment for crimes emerged in Europe in the 1700's. The first penitentiary in the United States was established by Quakers in Philadelphia in 1789.

³Bureau of Justice Assistance, National Survey of State Sentencing Structures, Monograph, September 1998, pp.xi, 18; National Institute of Justice, "Sentencing & Corrections, Issues for the 21st Century," September 1999.

⁴U.S. Department of Justice, Office of Justice Programs, "State Efforts to Manage Violent Long-Term Offenders," 1998-99; Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants FY 1999 Program Guidance and Application Kit (U.S.D.J. Office of Justice Programs).

⁵Bureau of Justice Statistics Special Report, Federal Justice Statistics Program, June 1999.

⁶State Efforts to Manage Violent Long-Term Offenders," supra, at p.56. The U.S. Department of Justice defines such offenders as those committing murder, non-negligent manslaughter, forcible rape, aggravated assault, and robbery. Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants, supra, at p.2-3.

⁷Neb. Rev. Stat. §§ 29-2204 and 83-1,105.01 (Cum. Supp. 1998). Fourteen states have completely abandoned indeterminate sentencing. See "Sentencing & Corrections, Issues for the 21st Century," supra, at p.3.

⁸Neb. Rev. Stat. §§ 83-1,107 and 83-1,110 (Cum. Supp. 1998). Inmates in Nebraska's prison system are serving time under six different good time laws. Those sen-

tenced under current law receive six months of good time per year on the maximum term credited from the date of sentence. The minimum term is merely reduced by half to determine parole eligibility, although no such reduction is allowed on "mandatory minimum" terms, and parole eligibility is deferred for inmates who use drugs or alcohol or who refuse to comply with a "department-approved personalized plan."

⁹Neb. Rev. Stat. § 29-2204 (Cum. Supp. 1998).

¹⁰Neb. Rev. Stat. § 83-1,105 (1987).

¹¹State v. Cook, 251 Neb. 781 (1997); Johnson v. Clarke 258Neb. 316 (1999), 5 Neb. App. 496 (1997).

¹²Neb. Rev. Stat. § 83-1,105 (1987).

¹³Department of Correctional Services annual reports show incarcerations rates of 2673 in FY 94/95; 3016 in IFY 95/96; 3231 in FY 96/97; and 3334 in FY 97/98.

¹⁴Nebraska Crime Commission annual statistical reports show arrests for violent crime in Nebraska of 1746 for 1995, 1536 for 1996, and 1507 for 1997.

¹⁵In September of 1995, the Nebraska Department of Correctional Services reported that 407 of the 2,085 inmates committed since the effective date of LB 529 had received longer sentences as a direct result of the bill. The average length-of-stay increases were six months for Class IV felonies; 23.5 months for Class III felonies; 93.5 months for Class 11 felonies; and 112.5 months for Class IB felonies.

¹⁶LB 364, 1997 legislative session, legislative history. The bill became "operative" on July 1, 1998.

¹⁷Neb. Rev. Stat. § 29-2204 (Cum. Supp. 1998).

¹⁸Neb. Rev. Stat. §§ 29-2204 and 83-1,105.01 (Cum. Supp. 1998).

¹⁹Assume the inmate has not been found guilty of drug or alcohol offenses, and has complied with a "department-approved personalized plan," although he or she otherwise has spread terror throughout the institution.

²⁰This is now the longest minimum term which can be imposed for such an offense. A review of the files of



such offenders who received minimum sentences greater than one-third of the maximum term prior to the effective date of LB 364 revealed that they had an average of 21 prior offenses and an average of more than three prior Driving Under Suspension convictions.

²¹This final footnote is for those of you who are still lost in Nebraska's statutory sentencing maze. On the Class IV Felony, the 20-month court-imposed minimum term is reduced by half to compute parole eligibility, whether or not the inmate is "good." On the Class IIIA, III and IV Felonies, no minimum was stated by the court, and so the statutory minimum terms for the offenses are imposed by operation of law. The statutory minimum term for a Class IIIA Felony is zero, and so the inmate is eligible for parole immediately. The statutory minimum terms for Class III and Class II Felonies are one year. Those terms are reduced by half to compute parole eligibility, whether or not the inmates are "good." All the maximum terms, used to compute discharge dates, are reduced by six months good time per year, credited from the date of sentence. Good time is forfeited only after due process hearings. See Neb. Rev. Stat. ss 20-105, 830-1, 107 and 83-1, 110 (Cum. Supp. 1998); and 83-4, 109 to 83-4, 123 (1994).

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Sample Sentences Answers				
Class IV Felony, e.g., driving on a license which has been revoked for a third or subsequent DWI - 20 month to five-year sentence	10 months	10 months	2.5 years	5 years
Class III A Felony, e.g., assault on an officer using a motor vehicle - 5-year sentence (no minimum stated)	0	0	2.5 years	5 years
Class III Felony, e.g., manslaughter - 20 year sentence (no minimum stated)	6 months	6 months	10 years	20 years
Class II Felony, e.g., 1st Degree Sexual Assault - 50 year flat sentence (no minimum stated)	6 months	6 months	25 years	50 years