

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
No. 08-CR-364 (RHK/AJB)

UNITED STATES OF AMERICA,

Plaintiff,

vs.

**DEFENDANT PETTERS'
SENTENCING MEMORANDUM**

THOMAS JOSEPH PETTERS,

Defendant.

Petters is imperfect yes but not evil. His run at life was rooted in the sale, the moment, the transaction, the unbending faith that tomorrow all will be well. It is the belief system of many a politician who refuses to see defeat and is unbowed by the endless scrutiny, the raising of funds for the next race because life is a race. It is the gestalt of the athlete who should have left the court but who still wants the last shot. It is the analysis that permits recovery from defeat, tempers victories. It is the mantra of American success—start with nothing, get up every day, work hard and you'll get somewhere but only if you keep going.

There are those who prefer a sense of confinement in position and life, a steady blandness. And those who run out to see what that line on the horizon might be, the confluence of the known and unknown, the real and the ideal. That Mr. Petters sprinted out from St. Cloud and a small stereo store, that his reach would exceed his grasp, that he over-promised and underperformed, that he loved his life and his family and his

employees and the memory of his murdered son, that he gave millions away, that he acted as a mentor, bought businesses and was visible in the community are all true.

That Mr. Petters' line, as the skiers would say, became indistinct and he fell down is true as well. But his conviction erases nothing of his life, much of which was exemplary. "We are all exceptional cases," Camus said. The Fall at 81 (1956). Mr. Petters most surely is.

By contrast, the Government's suggestion for a life sentence is hewed by a raw grid if not vengeance. There is no higher instinct to such an approach, the desire, in practical effect, to end a life. If we had stoning there would be many who would want to throw. If we had the death penalty for white collar fraud, some would say it is good and fair and right, let's just kill him. The Government, the Guidelines and victims collectively suggest a kind of vengeance that betrays our national heritage. It would be wrong to succumb.

For the task of the Court is to both honor the law and Petters' life. To that end, might we suggest a level of civility, a foreswearing of resentment toward him that seems to be shared by most. The foreswearing of not only resentment but an embrace of mercy and forgiveness is essential to reaching a just end. See Joseph Butler, Fifteen Sermons (1726) (discussed in Murphy & Hampton, Forgiveness and Mercy at 15 (1988)).

Soon the Court will greet Mr. Petters face-to-face. The question to be answered: how much time is enough and not a day more. The Court's view of Mr. Petters has never meant to be based on the mathematical, the mechanistic. "Justice is not only about

the right way to distribute things. It is also about the right way to value things.” Sandel, Justice: What’s the Right Thing to Do at 261 (2009).

Mr. Petters’ life should not be measured in coins. One of the great spiritual writers of the last twenty years, Marilynne Robinson, has described the process of thought that ought to be followed here.

Theologians talk about a prevenient grace that precedes grace itself and allows us to accept it. I think there must also be a prevenient courage that allows us to brave – that is, to acknowledge that there is more beauty than our eyes can bear, that precious things have been put into our hands and to do nothing to honor them is to do great harm. And therefore, this courage allows, as the old men said, to make ourselves useful. It allows us to be generous, which is another way of saying exactly the same thing.

Robinson, Gilead at 246 (2004).

To be useful is to be just. To be just is to be generous.

The most famous prayer of all for judges and lawyers alike is the prayer God prays: “May it be My will that My love of compassion overwhelms my demand for strict justice.” Mahzhor for Yom Kippur. It is sad that the central tenants of being human—mercy, compassion, forgiveness and empathy—do not appear in the Guidelines.

The Government and victims may be tempted to say, ‘well, I would not have started a company like this,’ and ‘I would not have promised this,’ and ‘I would not have lived in a larger house,’ and ‘I have never been to Las Vegas,’ and ‘I would have not driven a Bentley,’ and so on. But that is a cold and egoist approach. Better, “[i]t is kind to see individuals as they are, rather than how we might want them to be.” Phillips & Taylor, On Kindness at 93 (2009).

The character letters speak to Mr. Petters' benevolence. He cared about his employees in sorrow and happiness, shared their worries, sought their success. When Debbie Lindstrom was driving to work through a snowstorm and was delayed and did not appear, she recounts how "Tom had been so worried about me that he had been pacing the floor and standing at his office window requesting God to please make sure I was safe." The Government interviewed Ms. Lindstrom over and over again but did not call her.

Mr. Petters was also fond of children, his own and others. Writes a friend:

I am a single parent with the majority of the parenting skills, good and bad falling on me. I am not a hard driven person, and often second guessed by ability to give my daughter the ability and skills needed to succeed. Tom added that dimension to her life. At eleven years old, she knew Tom's phone number and could/would call if she needed strength, support and love. I am a 22 year flight attendant by career and have been on the go. I always knew as did my daughter that Tom would be a guide and mentor to both of us. Months of not talking, but always knowing he would be there if needed. He in return asked for nothing more than the best of what you could be. There was never strings with his friendship and time.

That friend asks that "there be a chance fo Tom to make his penance to god, the community and to all lives touch[ed] by him."

Here is another letter.

Around 2000, our front desk receptionist had been kicked out of her apartment by her ex-boyfriend and didn't have the down payment for another apartment. She was sleeping on friends' couches while trying to save money. Nobody asked Tom for the money and how he found out about her situation we aren't sure but one day he gave her the \$500 deposit money and said he wanted to know she was safe and warm every night.

Mr. Petters' family's view is consistent across the board. A niece writes:

He is an incredibly decent man, a generous one who in the past has donated his wealth to help bring about dreams for other people. He has helped people in serious crisis, and protected his family, while also wanting everyone to see the world and be happy. In his mind, the world was in need of improvement, and he was here to make it better for everyone. He was the kind of guy who would really see you as a person and look after you. These things are not in the newspaper headlines, they are not on television. Not anymore, although they used to be.

Writes the daughter of Mr. Petters' sister, Mary, who was killed in an automobile accident in St. Paul:

He was a very busy man, to put it lightly, but it never prevented him from spending time with us. He loved his sister (our mother) very much, and wanted to do everything he could to [] honor her by being there for us and stepping in – he loved, and still loves us just as she had. It wasn't just to honor our mother, but I believe he enjoyed being around her daughters who reminded him of her.

From a sister-in-law, this: "On January 8, 2006, Tom confronted me about my alcohol abuse. His courage and concern saved my life and I have not had a drink since that day four years ago." Mr. Petters helped her avoid a fate described by F. Scott Fitzgerald: "First you take a drink, then the drink takes a drink, and then the drink takes you."

Mr. Petters' brother Jon, the de facto leader of the family as of October 2008:

When my sister was nearly beaten to death by her estranged husband, and relapsed into deathly alcoholism, Tom was there. I had given up on her and decided that she really wanted to die. My entire family except my parents had also given up. We had been to court, committed her to treatment, in and out of treatment. It came to a point where we barely knew where she was. When Tom found her she was almost dead. Literally lying on the floor of a stranger's house unable to walk because of her physical condition. It was Tom who would not give up on her. He persisted in the courtroom to have her committed again. It was emotionally exhausting trying again to save someone who showed no hope of recovery. Today, my sister is sober and the proud mother of two children and a loving husband.

It was she who sat in the court room almost every day for weeks often with her 14-year-old son. There is a reason why she loves her brother, Tom.

A childhood friend, echoing Robinson's edict, writes that "Tom was a kind and generous man, and grew into a bigger than life adult. His generous spirit is genuine and comes right from his heart."

Writes a prominent physician, "Mr. Petters has always shown a tremendous empathy and concern for dealing with people in crisis, such as physical ailments, chemical dependencies, and reversal in economic situations."

Each letter could be quoted in full.

For better and as here for worse, there has always been a desire in the law to take a life away. "For centuries the death penalty, often accompanied by barbarous refinements, has been trying to hold crime in check; yet crime persists. Why? Because the instincts that are warring in man are not, as the law claims, constant forces in a state of equilibrium." Camus, Resistance, Rebellion and Death (1960).

Camus would have been a fine judge. He would say from the bench that the criminal law doesn't persist in a happy state of equilibrium and never has. He would necessarily hold that not all crimes should be treated equally even if the Guidelines suggest that, if the ranges coincide, they should be. He would say a strict quantum approach is absurd.

Here the corpus dilecti, the lost money and usurious interest left unearned, is not by definition a life. The corpus is number, the investors dreaming of the rule of seventy.

In the Courts across the land, property offenses are given more lenient treatment than crimes of violence. The latter group of crimes strike fear and safety concerns, while the former concern something that can be replaced. The loss can be temporary. The loss can even be edifying, a coming to terms. It is often said an auto-accident, “At least no one was hurt and no one died.” Or this. “Thank goodness we’re still here.”

For Mr. Petters a life sentence would say to him, it’s all meaningless now, what you’ve done will not be measured, your good deeds don’t matter and never have.

The law ought not arrive at such a place. To do so would embrace the frailties of life while ignoring its glories.

Mr. Petters has been vilified and demonized. But there is always another side and his is rich and loving. The song this Court should listen to is Walt Whitman’s chant to the Mr. Petters of today and the defendants of tomorrow who will face higher and higher guidelines yet. To the government, to those in prison, those free, the lost, the found, the hopeless, and the addicted, the river of separation is not so wide.

The homeward bound and the outward bound,
The beautiful lost swimmer, the ennuye, the onanist . . . the money-maker,
The actor and actress, through with their parts and those waiting to commence,
The affectionate boy, the husband and wife, the voter, the nominee
that is chosen and the nominee that has fail’d,
The great already known and the great any time after to-day,
The stammerer, the sick, the perfect-form’d, the homely,
The criminal that stood in the box, the judge that sat and sentenced
him, the fluent lawyers, the jury, the audience,
The laughter and weeper, the dancer . . . ,
the consumptive, the erysipalite, the idiot, he that is wrong’d,
The antipode, and everyone one between then and them in the dark,
I swear they are averaged now – one is no better than the other
The night and sleep have liken’d them and restored them.
I swear they are all beautiful,

Everyone one that sleeps is beautiful, every thing in the dim light is beautiful,
The wildest and bloodiest is over, and all is peace.

Whitman, "The Sleepers," in Leaves of Grass at § 17 (1900).

Dated: March 8, 2010

s/ Paul C. Engh

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