

**Responses of Vincent Briccetti**  
**Nominee to be District Judge for the Southern District of New York**  
**to the Written Questions of Senator Jeff Sessions**

1. **In 2002 remarks before the Second Circuit Judicial Conference, you stated that the U.S. Sentencing Guidelines have the unintended consequence of encouraging prosecutors and defense attorneys to bargain over the facts, rather than pursue the correct result. You stated that the Guidelines try too hard to “pigeonhole” all cases, when they should instead serve only as guidelines and allow judges more discretion in sentencing.**

- a. **Under the Supreme Court’s decision in *United States v. Booker*, the federal sentencing guidelines are now advisory, rather than mandatory. Do you think that disparity in sentencing is less pronounced post-*Booker*? Or do you think that there is a greater potential for disparate or erroneous sentencing now that the Guidelines are advisory?**

Response: I am not familiar with any empirical data as to whether disparity in sentencing is less pronounced post-*Booker*. In my personal experience, I do not think that unwarranted disparity is either more or less pronounced post-*Booker* than it was pre-*Booker*. I do not think there is a greater potential for disparate or erroneous sentencing now that the Guidelines are advisory, so long as sentencing judges, in accordance with the law, calculate the applicable sentencing range and apply the sentencing factors set forth in 18 U.S.C. § 3553(a).

- b. **Under what circumstances do you believe it appropriate for a district court judge to depart downward from the sentencing guidelines?**

Response: Under the Sentencing Reform Act and governing case law, a district court judge must first calculate the applicable sentencing range, and consider as well any applicable policy statements in the Guidelines. The law also requires the judge to consider any applicable upward or downward departures as set forth in the Sentencing Guidelines. Finally, the law requires the judge to consider all of the sentencing factors set forth in 18 U.S.C. § 3553(a). If confirmed, I would follow the law in all of the foregoing respects. Because, as the Supreme Court has stated, the Guidelines are the “product of careful study based on extensive empirical evidence,” and also because one of the central purposes of the Guidelines is to reduce unwarranted sentencing disparities among similarly-situated defendants, I would give great deference to the applicable sentencing range. A judge may depart downward from the applicable sentencing range only when permitted to do so by an applicable downward departure provision of the Guidelines as applied to the facts of a particular case.

2. **According to an October 28, 2010 article in the *Legal Intelligencer*, there is a recent trend among federal judges to reject the federal sentencing guidelines for child**

**pornography crimes as “too harsh.” What are your views with respect to these particular guidelines?**

Response: I do not have any personal views as to the federal sentencing guidelines for child pornography crimes. In any event, if confirmed, any personal views I might have would be irrelevant. I would apply these particular guidelines in accordance with the law, as I would apply all other aspects of the sentencing guidelines.

- 3. In 2004, you represented John Dexter, the former headmaster of an elite Manhattan prep school, who was charged with possession of child pornography. As part of an Internet sting operation, an investigator with the Westchester District Attorney’s office posed as a 14-year old girl, and then as that girl’s 15-year old friend. The investigator then carried on a series of explicit chats with the defendant. Mr. Dexter planned to meet the 14-year old girl, but cancelled. After his arrest, a search of his home and office exposed more than a dozen images of children younger than 16 engaging in sexual acts. Mr. Dexter was sentenced to ten years of probation and six weekends in jail.**

**In 2001, you represented Reverend John Castaldo, a priest at Trinity Catholic High School, who was convicted of engaging in a sexually explicit Internet conversation with someone he thought was a 14-year old boy and sentenced to one weekend in jail and five years probation. At sentencing, you asked the judge for leniency because there was no “real” victim, no pornographic evidence on the defendant’s computer, and the defendant never followed through with his proposed meeting with the boy.**

**Is it your view that, in cases such as these, where there is no known child victim but rather a law enforcement officer on the other end of an Internet communication, a defendant should receive a lesser sentence?**

Response: No. It should be noted that in these and in every other case I have handled for a client over the past thirty years, whether as a federal prosecutor when my client was the United States or in private practice, and whether I was retained by the client or appointed by the court to represent the client, I have advocated for the client based on the facts and the law, and in accordance with my ethical and professional responsibilities.

- 4. In 2001, you represented Nicholas Puner, a prominent attorney, who pled guilty to third-degree sodomy charges after he abused two 15-year old boys. He also engaged in sexually explicit Internet conversations with young boys. After serving 40 days of his 60-day sentence, authorities released him. Not long after his release, investigators learned that he still visited certain Internet sites. Posing as a 14-year old boy, investigators discussed sexually explicit topics with Mr. Puner and subsequently arrested him for violating his probation. He was sentenced to one to four years in prison. You were quoted in the *Journal News* as saying that “[Mr. Puner] has a very powerful illness which is not controllable.”**

- a. **While I understand that Mr. Puner was sentenced according to New York’s sentencing guidelines, what factors should a U.S. District Court judge consider in determining whether a person convicted of a child sex crime has a mental or emotional condition that warrants a variance or downward departure from his or her applicable Sentencing Guidelines range?**

Response: As required by law, a district judge must consider the guidelines and policy statements contained in the Sentencing Guidelines, both as to the applicable sentencing range and as to any applicable upward or downward departures provided for in the Guidelines. The judge must also consider all of the sentencing factors set forth in 18 U.S.C. § 3553(a), in accordance with the law of the Supreme Court and of the Circuit Court of Appeals having jurisdiction for the district in which the judge presides. A variance or downward departure from the applicable sentencing range would be warranted only if the facts and law supported that variance or departure. Please also see my response to Question 1(b).

- b. **If Mr. Puner was before a federal district judge, do you believe that his “powerful illness” would have been a sufficient basis for a variance or downward departure?**

Response: Although it is very difficult to answer a hypothetical question like this one, because a federal court would be required to apply the sentencing methodology described above (please see my responses to Questions 1(b) and 4(a)) to the particular facts of the case, I do not believe his particular illness, which was documented in court, would have been a sufficient basis for a variance or downward departure.

- c. **The December 2008 Bourke-Hernandez study of federal inmates convicted of child pornography offenses found 85% of the participating inmates admitted in confidential sessions that they had gone beyond mere child pornography possession crimes and had physically abused a child. The 115 inmates with no prior known history of hands-on abuse admitted an average of 8.7 victims. What role should the specter of recidivism play in a judge’s decisions about sentencing child sex offenders?**

Response: As set forth in 18 U.S.C. § 3553(a), the sentencing court must consider, among other things, the “history and characteristics of the defendant,” and the need for the sentence imposed “to protect the public from further crimes of the defendant.” Thus, the specter, or likelihood, of recidivism would be an important consideration in a judge’s decisions about sentencing child sex offenders.