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A Judge's Education, a Sentence at a Time

By **BENJAMIN WEISER**

ON Feb. 2, 2004, Marlo Kidd awaited sentencing before Judge [Denny Chin](#) of Federal District Court in Manhattan. She had pleaded guilty to acting as a lookout for two masked gunmen who had robbed a bank in Yonkers, and under federal sentencing guidelines, she faced a prison term of up to six years.

Her lawyer, though, was asking the judge to sentence her only to home confinement, because she was raising five children who ranged in age from 5 to 13, and also caring for her 14-year-old sister, as their own mother had been a crack-cocaine addict. He had said that sending Ms. Kidd to prison would almost certainly result in her children being placed in [foster care](#), destroying what was left of the family.

His arguments gave Judge Chin pause. Ms. Kidd had provided him with copies of the children's report cards, which showed them receiving B's and B-pluses, even a smattering of A's, and very few absences from school.

"The report cards had an impact on me," Judge Chin recalled in a recent interview. "She was getting them out to school every day, and they were holding their own. I was impressed by this." Ms. Kidd, who had also apologized for her crime in a letter to the judge, was "a decent mother," he concluded. Moreover, one of his law clerks had shown him a news report on the terrible conditions in foster homes and facilities for children in New Jersey, where the children would most likely be sent.

But the robbery had been violent, with one robber killed in a police shootout. And the judge was seldom persuaded to grant leniency because of family circumstances — it was, after all, the defendants' crimes, not the sentence, that caused hardships for families.

In the end, he decided that Ms. Kidd had to go to prison, but he imposed only a 30-month sentence. "I cared very much about the future of the children," Judge Chin recalled, "but I was willing to take the risk that they would be sent to foster care, even

with a shorter sentence.” His decision involved weighing conflicting concerns and interests, he said, “something we have to do all the time.”

Judge Chin, 57, who last year was elevated by President Obama to the United States Court of Appeals for the Second Circuit, in New York, after nearly 16 years on the trial bench, is best known for the 150-year sentence he gave **Bernard L. Madoff**, arguably the most prominent white-collar sentence in the history of American law.

But it has been largely anonymous defendants like Ms. Kidd whose cases have influenced his thinking about how to balance punishment and rehabilitation, deterrence and compassion.

“There’s no doubt that all of these cases shaped me,” Judge Chin said, “and shaped the way I think, and the way I respond to things.”

He took the bench in 1994 at age 40 with little experience in criminal law. He has since sentenced more than 1,100 defendants, including at least a dozen who received sentences of life or the equivalent, according to court statistics. He quickly learned, he said, that preparation was crucial and that he must not agonize over his decisions. One seasoned judge had advised: “Rule and roll.” Be decisive. Don’t second-guess yourself.

In a series of interviews conducted in person and through e-mail over the past year, Judge Chin discussed his most challenging sentencing decisions, cases that became essential parts of his education as a judge. The interviews were unusual; judges rarely agree to discuss cases, even closed ones, like these, outside court. The exchanges provided a revealing look at how one judge approached the task of sentencing, which he called “the hardest thing” about being on the bench.

“It is just not a natural or everyday thing to do,” Judge Chin explained, “to pass judgment on people, to send them to prison or not.”

“I mean, there is so much at stake,” he added, “and there are so many different considerations that come into play.”

IN March 1996, **Patrick Regan**, a former New York City police officer, became the first defendant Judge Chin sentenced who had been convicted in a trial at which he presided.

The case had been bitterly fought: Mr. Regan, then 36, a highly decorated police veteran, was convicted of perjury. Prosecutors said he had lied during a grand-jury investigation of suspected misconduct by an anticrime unit of which he was a member. His lawyer, David S. Greenfield, contended that the government itself had engaged in misconduct,

trying to catch the officer in a perjury trap, an argument Judge Chin had rejected before the trial.

The government asked for a sentence within the guideline range of one-and-a-half to two years. But Mr. Greenfield, citing Mr. Regan's valorous record, sought probation. His client had made or assisted in many felony arrests; had been shot in the line of duty; and had been awarded the Police Combat Cross, the department's second most prestigious medal. The conviction and loss of his shield would be punishment enough, Mr. Greenfield argued.

Judge Chin recalled that the sentencing came against the backdrop of several high-profile police tragedies, including the suicide of an off-duty officer and the funeral of an officer killed in a Bronx shootout. "I had already come to appreciate how hard it is to be a police officer," he said.

He noted that sentencing law recognized that individuals with different levels of culpability should be treated differently, and that some crimes were more evil than others. As always, he said, judges must also look at other factors, like a defendant's history, background and motivation.

"Where someone is guilty of lying to protect others, at least he is doing so not out of greed or to help himself," he said. "This motivation doesn't make the lying right, but at least it is understandable to some limited extent."

But he knew that prosecutors felt Mr. Regan had blatantly lied and interfered with a government investigation.

On the sentencing date, Judge Chin's courtroom was packed with police officers, who rose in unison when he asked the defendant to stand. The judge, who recalled feeling a bit nervous because of the spotlight on the case, told Mr. Regan that no matter how much good he had done in the past, he was bound by oath to tell the truth. In the end, the judge departed from the guidelines and imposed a term of one year plus one day (a technicality that allows a defendant to be released slightly early for good behavior).

"What did I learn?" Judge Chin recalled 15 years later. "I learned that this was going to be hard." But he said he had gained confidence, and did not agonize over the decision. "I felt I had done the right thing."

If Judge Chin believed that some defendants deserved leniency because of their otherwise unblemished history, in his eyes others forfeited their right to a break.

Such was the case with Pat V. Stiso, a Bronx lawyer, who had pleaded guilty to narcotics conspiracy and obstructing justice after being accused of, among other things, hiding money for the leader of a drug gang. He faced a guideline range of 70 to 87 months, for a possible term of more than seven years.

At the [sentencing](#), in March 1999, Judge Chin cited the many letters he had received depicting Mr. Stiso, then 38, as a loving father and committed defense lawyer who had also been involved in charitable work. But he said, “I cannot be compassionate.”

He said Mr. Stiso’s supporters had not seen his other side, which had allowed him to accept “tens of thousands of dollars in cash in grocery bags, money that was earned from the sale of heroin.” Defense lawyers had to do their jobs, he said, “but this is not a case about the blurring of a line. This case doesn’t even come close.” He sentenced Mr. Stiso to 87 months.

Looking back, Judge Chin said, the “mitigating factors did warrant leniency, and that’s why it was a struggle for me internally.”

But he was keenly aware, he said, “of the seriousness of his crime.” It was also painful, Judge Chin said, to watch a lawyer he knew, a courthouse regular, “just fail as a human being.”

“In a sense, he was like one of our own,” he said.

LIKE most judges, Judge Chin faced defendants who promised to reform their ways. Some fulfilled that pledge; others let him down. He tried not to become jaded or cynical, he said, and retained hope that people who had made mistakes could turn their lives around.

“A good judge has to care,” he said. “He has to want to make the world better.” He also believed that rehabilitation, along with punishment, deterrence and healing victims, was a legitimate goal of sentencing. As he put it, “I don’t like to give up on people.”

But two cases showed how difficult that goal was to achieve.

The first, in November 1998, involved Alethea Pierce, 38, a drug addict who had pleaded guilty to participating in a narcotics trafficking ring, and then had seemingly transformed her life. She had cooperated with prosecutors, testified against the ring’s leaders, and undergone drug treatment.

At sentencing, she said proudly that she was putting her life back together, reuniting

with two of her children, finding housing and taking courses to find a job. “I just like who I am today,” she said.

“Sentencing is often very hard,” Judge Chin observed, adding that her case would indeed be “an easy one.” He gave her time served — she was free to go.

But a year later she was back before him, after a series of positive drug tests. Still, she made it clear that she wanted another chance. “What none of you all know in this courtroom is the life of the addict,” she said.

“I’ve lived it,” she added, “and I like being clean.”

“Doing it your way hasn’t worked,” Judge Chin responded, but he decided to take a chance, agreeing not to send her to prison and ending court supervision of her case. He said he had one request: “I want you to write me a letter in a few months telling me that you’re doing great.”

He never heard from her again.

Daniel Sangemino was a Queens resident who had used high-pressure telephone tactics to solicit money for sham investments. He had even persuaded a 79-year-old Utah widow to liquidate her savings and take out a loan in order to send him \$149,000.

In April 2001, Judge Chin sentenced Mr. Sangemino, 25, to just over three years, including additional time for exploiting a vulnerable victim. Mr. Sangemino served his time but could not stay out of trouble. In February 2004, after arrests for harassment and drug possession, he was back before Judge Chin for violating the terms of his release.

He admitted to a longstanding drug problem. The judge told him he seemed bright and articulate. “If it’s the drugs, you really have to kick it,” he said.

The judge imposed eight more months, and recommended drug treatment. Again Mr. Sangemino did the time, and again he was arrested after his release, for harassment. Judge Chin imposed an additional 16 months. “I don’t know what you are doing with yourself,” he said, adding, “This is really your last chance.”

Mr. Sangemino, contacted recently, said that he had not returned to court and had worked hard to address his addiction issues. “I have lived a clean and sober life for five years,” he said.

Now 36, he said he had held a steady job, obtained an associate's degree and planned to attend Queens College next year. He has also been paying restitution.

"I really don't feel good about what I did in the past," he said. He added that Judge Chin had treated him fairly. "I'll never forget his expression. He wasn't angry. He was, like, 'C'mon.'"

IN 2004, Judge Chin appeared on a bar association panel to discuss a new book called "The Myth of Moral Justice: Why Our Legal System Fails to Do What's Right." The author, Thane Rosenbaum, a Fordham law professor, had known the judge for years.

"One of the interesting concepts in Professor Rosenbaum's book," Judge Chin told the audience, "is that the law lacks a soul. The law lacks tenderness. The law is objective and cold and inhumane. The law abhors emotion. I don't think that's true.

"Every time I sentence a defendant, there is a lot of emotion," he said. "I think there is a lot of humanity in the law."

But in one 2002 sentencing, a lawyer protested that Judge Chin showed too much emotion. The defendant, Steven Chin Leung, facing passport fraud charges, had then tried to fake his own death in the 9/11 attacks.

In court, Judge Chin called Mr. Leung's actions despicable and selfish, and said his ruse had diverted critical law enforcement resources after 9/11 while the bogus claim was investigated. The guidelines called for a sentence of two to two-and-a-half years, but Judge Chin, acknowledging that there was "a lot of emotion involved," went for a higher sentence, imposing four years.

Mr. Leung's lawyer asked Judge Chin to reconsider, saying that the sentence was "extreme" and that the judge had let his emotions weigh "more than they should."

Judge Chin disagreed. "Emotion comes into play in every sentencing decision," he replied. "Obviously, however, you can't let emotion cloud your judgment, and I don't believe I have done that here."

IN discussing his decisions, Judge Chin acknowledged that he often wondered what happened to defendants who had appeared before him — if his ideal was to balance punishment and rehabilitation, how had it worked in the real world? To find out, The New York Times tracked down some of those people.

Mr. Regan, now 52, said in an interview at his lawyer's office that the support he

received from fellow officers had never wavered. When the time came for him to surrender to the authorities, he said, a group of officers met him at his house in the Bronx and flew with him, at their expense, to Kentucky, where he served about eight months. Officers also met him at La Guardia Airport when he came back.

Having lost his job and pension, Mr. Regan opened a contracting firm, remodeling apartments in Manhattan. He said he appreciated Judge Chin's rejection of the government's harsher sentencing request. He recalled returning to the courthouse one day, perhaps for his appeal, and standing outside with other officers when he saw Judge Chin leaving the building. The judge walked over, shook his hand and wished him luck, Mr. Regan recalled, saying, "He seemed like a guy with a great heart."

Mr. Stiso, the former lawyer, spoke at his mother's home in New Rochelle, N.Y. He recalled being shocked when Judge Chin imposed the top of the recommended range. "My knees buckled," he said.

But today, Mr. Stiso, 50, said he feels lucky. After serving more than five years in prison, he returned to the same house and loyal and loving family, he said. Although he lost his law license and thriving legal practice, he found work selling investments in life insurance policies and also consults with other white-collar defendants about what they will face in prison, he said.

"I have no problem with the sentence I received," Mr. Stiso said. "The entire experience saved me." He said it was not the amount of time that changed him; it was "having to go through" the process.

THEN there is Ms. Kidd. Judge Chin had given her six weeks to surrender to begin her 30-month sentence, but she failed to appear at the appointed time. She was arrested again and given eight additional months by a different judge. Ms. Kidd, 37, said in an interview in June that she had been unable to find an acceptable caretaker for the children. "I could never bring myself to leave my kids," she said.

While she served her sentence, she said, her mother, who had addressed her own drug problem, and other relatives and friends came together to help care for the children. "I had people that stepped in," Ms. Kidd said, including some she did not know well — "in such a great way," she added.

Since her release in 2007, she said, the family has held together. She works in retailing and is studying nursing, she said.

“I feel like I got that second chance that everybody’s talking about,” she said, adding, “And I’m taking full advantage of that.”

Judge Chin was pleased to hear about the progress the defendants had made. He had always felt Ms. Kidd “was doing something right,” he said.

But, he added, they were only a small fraction of the defendants he had sentenced over the years; he would never learn what had happened to most.

“That’s why it makes it so hard. You can’t predict the future. You don’t know what’s going to happen,” Judge Chin said. “You do what you think is best for the defendant, for society, and you hope it works out.”

This article has been revised to reflect the following correction:

Correction: October 7, 2011

An earlier version of this article erroneously stated that the guideline range for Mr. Leung was two-and-a-half to three years.