

**The Top Ten Things I Learned From
*Apprendi, Blakely, Booker, Rita, Kimbrough and Gall***

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As a district judge, I read with interest, and even tried to follow, the Supreme Court's sentencing opinions in *Apprendi, Blakely, Booker, Rita, Kimbrough and Gall*. With tongue partly in cheek, here, in descending order, are the top ten things I learned from those missives:

10. Following the Court's approach, always put off to tomorrow what you can do today.
9. You don't need experience in actually sentencing people in order to totally screw up the law of sentencing. It is telling and painfully obvious that not a single Justice ever had to look a federal defendant in the eye while not knowing what law to apply.
8. Footnote 9 in *Blakely* ("The Federal Guidelines are not before us, and we express no opinion on them.") is the biggest practical joke in the history of American law. See lesson One below.
7. The "merits" and "remedial" opinions in *Booker* satisfy George Orwell's definition of "Doublethink." That is, the two opinions, and Justice Ginsburg's swing vote to make both the law, reveal "the power of holding two contradictory beliefs in one's mind simultaneously, and accepting both of them."
6. Never impose a sentence that is too harsh or too lenient. To quote Baby Bear, make it "just right" or, perhaps more importantly, to satisfy Justice Breyer, make sure it is just "reasonable."
5. Some sentencing judges *used* to take the Supreme Court seriously, but that got harder and harder beginning with and following *Apprendi*.

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4. In an Ivy League sort of way, it makes sense to address the “crack” question fifteen years after everyone else knew something was terribly wrong. *See* lesson One below.
3. Justice Scalia’s dictum should be rewritten this way: The rule of law is the law of rules except when it isn’t.
2. Sentencing judges can be divided into two groups—those who are damn sure they’re right and those (like me) who have no clue.
1. There are a lot of really good, hard-working people “in the field” plus tens of thousands of defendants who deserved far better than the seven years of “water boarding” that ensued between *Apprendi* and *Gall*.