

# TO OBJECT OR NOT – THAT IS THE QUESTION

A DISCUSSION OF BOSTIC OBJECTIONS IN A POST-MODERN WORLD



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## UNITED STATES V. BOSTIC 371 F.3D 865 (6<sup>TH</sup> CIR. 2004)

[W]e exercise our supervisory powers over the district courts and announce a new procedural rule, requiring district courts, after pronouncing the defendant's sentence but before adjourning the sentencing hearing, to ask the parties whether they have any objections to the sentence just pronounced that have not previously been raised.

If the district court fails to provide the parties with this opportunity, they will not have forfeited their objections and thus will not be required to demonstrate plain error on appeal. If a party does not clearly articulate any objection and the grounds upon which the objection is based, when given this final opportunity to speak, then that party will have forfeited its opportunity to make any objections not previously raised and thus will face plain error review on appeal.

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## UNITED STATES V. BOSTIC 371 F.3D 865 (6<sup>TH</sup> CIR. 2004)

Providing a final opportunity for objections after the pronouncement of sentence, will serve the dual purposes of permitting the district court to correct on the spot any error it may have made and of guiding appellate review.



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## SKIT ONE

You told a lie, an odious  
damned lie; Upon my soul, a  
lie, a wicked lie.

*Othello* Act 5, Scene 2

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1. You don't have to object that the sentence is substantively unreasonable

*United States v. Vonner*, 516 F.3d 382, 389 (6th Cir. 2008)(*en banc*)

2. Your objections must be specific – objecting on “procedural reasonableness grounds,” without more, is the same as not objecting

*United States v. Adams*, 124 F.4th 432, 438 (6th Cir. 2024)

3. For objections to a Guidelines objection, a defendant need not object to the factual findings supporting that objection

*United States v. Mooney*, 2025 WL 1202044 (6th Cir. 2025)

## WHAT WENT WRONG???

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## SKIT TWO



Fishes live in the sea, as men  
do a-land; the great ones eat  
up the little ones.

*Pericles, Prince of Tyre* Act 2,  
Scene 1

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1. Must object to a new procedural error – *United States v. Thomas-Mathews*, 81 F.4th 530,539 (6th Cir. 2023).
2. Might be an issue with the judge's question – "anything further?" *United States v. Morris*, 71 F.4th 475, 481 (6th Cir. 2023)

## WHAT WENT WRONG???

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## SKIT THREE

How now? A rat? Dead, for a ducat, dead!

*Hamlet* Act 3, Scene 4

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1. You must object to a court's failure to address 3553(a) factors - *United States v. Phillips*, 516 F.3d 479, 486 (6th Cir. 2008)
2. You must object to the imposition of an upward variance – and the grounds relied upon – *United States v. Fleming* 894 F.3d 764 (6<sup>th</sup> Cir. 2018)

## WHAT WENT WRONG???

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## SKIT FOUR

O day and night, but this is wondrous strange! And therefore as a stranger give it welcome. There are more things in heaven and earth, Horatio, Than are dreamt of in your philosophy.

*Hamlet* Act 1, Scene 5

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1. The court considering an improper basis for the enhancement - *United States v. Mosley*, 53 F.4th 947, 961 (6th Cir. 2022)

2. The court considering an “improper factor” is procedural – must be preserved - *United States v. Cabrera*, 811 F.3d 801, 808 (6th Cir. 2016)

**WHAT WENT WRONG???**

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## FINAL ADVICE:

- DON'T TRY TO THREAD THE NEEDLE

WHEN IN DOUBT, OBJECT

LISTEN NOT ONLY TO THE COURT'S FINDINGS ON OBJECTIONS, BUT THEIR REASONING

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# THANK YOU

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