District of Columbia
Advisory Commission on Sentencing
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MINUTES
Wednesday, February 16, 2000
D.C. Superior Court, 500 Indiana Avenue, N.W., Room 1500

Attending:	F. Weisberg	H. Cushenberry	R. Wilkins
	R. Johnson	S. Gervasoni	L. Hankins
	T. Kane	N. Joyce	E. Silbert
	J. Garrett	M.G. Terrell	John Clarke
	J. Sassman	D. Krentel	
	H. Brazil	J. Abely	K. Severy
	K. Hunt	M. Sedgewick	C. Chanhatasilipa

I. Call to order and introduction of guest

F. Weisberg called the meeting to order at approximately 5:15 p.m. Kim Hunt introduced Karen Severy, who recently joined Councilmember Harold Brazil's staff. Ms. Severy notified the ACS members of H. Brazil's intention to introduce a bill establishing sentencing guidelines. She would like to schedule meetings with individual ACS members as she works on the legislative proposal.

II. Briefing to review supervised release proposal

K. Hunt informed ACS members that Peter Hoffman has been retained as a consultant, whose principal responsibility is to advise the ACS on supervised release-related matters. He and M. Sedgewick will prepare a detailed memorandum regarding supervised release, and will distribute it with a packet of other materials on Friday, February 18th. P. Hoffman and M. Sedgewick are available to meet individually with any ACS member who has questions or concerns about the contents of the memorandum.

III. Abolition of parole for non-subsection (h) offenses

ACS members discussed Wilkins' proposal for a unitary sentencing system.

F. Weisberg said that the proposal comes close to an ideal overall scheme, but he is not willing to accept hard caps on imprisonment terms less than statutory maximum sentences.

H. Cushenberry called the proposal "extraordinarily thoughtful." Because it makes assumptions on time served and judges' exercise of discretion in the future without data to support those assumptions, it cannot be defended. The idea of keeping imprisonment terms constant is an important value, but not the only value. Fairness and predictability

are equally important values. He remains open to the idea, if supported by new, reliable data.

M.G. Terrell felt that she lacked sufficient information upon which to evaluate the proposal. She needs to review the proposal in a broader context, not in isolation.

R. Johnson felt that the ACS should promote a unitary system, leave life sentences untouched (note change in position), and leave the Youth Rehabilitation Act and its expungement provisions untouched (while acknowledging that a unitary sentencing system renders it unfeasible). The ACS should devote its efforts to devising a system for supervised release, then set about developing voluntary sentencing guidelines. He does not support caps on prison sentences in Wilkins' proposal.

T. Kane shares H. Cushenberry's concerns about the lack of reliable data to support the proposal. There is an element of inflexibility in the proposal that would not allow a judge to sentence an offender who deserves the maximum sentence. He prefers to take a sentencing guidelines approach.

Neither S. Gervasoni nor E. Silbert commented.

N. Joyce echoed others' unwillingness to establish hard caps on imprisonment terms. She noted that, if the ACS does not deal with "life" sentences, there is no way to accomplish truth in sentencing. A unitary system is easier for everyone.

J. Sassman for R. Rigsby noted Rigsby's unease with hard caps on imprisonment terms, given the lack of good data.

R. Wilkins reminded the ACS that the proposal does not embody his personal views. It was designed to urge the ACS to reach consensus on recommendations to the Council.

IV. Life sentences

F. Weisberg would keep life sentences as they are in the D.C. Code, and require a judge to find aggravating factors, similar to those a judge must find in sentencing a first degree murderer to life without parole). If a judge does not impose a life term, then "life" should mean 60 years for first degree murder, 40 years for second degree murder, and 30 years for any other offense carrying a potential life sentence.

R. Johnson said that the selection of a number to replace "life" is an arbitrary decision. He would rather closely monitor sentencing in the new determinate system, with an eye toward developing voluntary guidelines. He would be comfortable with a judge having the discretion to impose a 75 year sentence, even knowing that the defendant would serve 85% of 75 years.

H. Cushenberry was prepared to select a number, however arbitrary, to replace "life." Life could be defined as a term not to exceed 60 years. Whatever number is selected, it should apply to all offenses.

R. Wilkins suggested an approach similar to North Carolina's approach. The case of any defendant sentenced to life without parole is reviewed after 25 years, and every 2 years thereafter. This is an example that, even in a truth in sentencing jurisdiction, life does not mean natural life. When converting from a parole (back-end review) system to a determinate (no review) system, he cannot justify such long sentences. There is no proof that D.C. offenders serving life sentences spend more than 30 years in prison.

M.G. Terrell commented that it is difficult to gauge the community's position on life sentences, given the absence of outcry about the U.S. Attorney's recommendation to subject a D.C. defendant to the death penalty in federal court.

R. Johnson suggested that the ACS could leave "life" alone, and educate judges on how many years offenders are now expected to serve on life sentences. He suggested that the ACS give the Council a range of options from which to choose.

E. Silbert is puzzled as to the ACS' role on the issue. The numbers he is hearing (e.g., 60 years) will create a geriatric prison population, with offenders long past their crime-prone years. If he must pick a number, he supports the harshest penalty for first degree murder, and lower limits for second degree murder and other offenses.

H. Cushenberry voiced his newfound support for a proposal similar to F. Weisberg's approach: life without release remains on the books, with alternatives in the absence of aggravating factors.

V. Youth Rehabilitation Act

F. Weisberg supported the Wilkins' proposal in that it tied expungement to successful completion of supervised release. YRA sentences are one number, but YRA-sentenced offenders are eligible for parole at any time. Probation cases would still be eligible for YRA sentencing. Perhaps the ACS or the Council could impose different supervised release terms for those offenders who would have been eligible for YRA sentences.

R. Johnson thought that the Court or the U.S. Parole Commission could decide whether to expunge records, but that decision should not be based on supervised release.

T. Kane recommends that the Council repeal YRA provisions calling for housing youthful offenders in segregated facilities. BOP's experience conclusively proves that segregating young offenders together creates a volatile atmosphere which is counterproductive. See memorandum and handouts.

VI. Adjourn at approximately 6:50 p.m.