



District of Columbia Sentencing Commission

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COMMISSION RETREAT MINUTES

Saturday, October 2, 2004
Galludet Unversity
Kellogg Conference Center
800 Florida Ave., N.E.
Washington, DC 20002

Attending	F. Weisberg	P. Riley	A. Flaum
	R. Johnson	T. Kane	A. Morris
	K. Patterson	B. Baldwin-White	E. Silbert
	B. Weinsheimer	J. Stewart	L. Hankins
	P. Quander	H. Cushenberry	D. Rosenthal
	M. Roberts	K. Hunt	C. Chanhatasilpa
	R. Buske	S. Vance	

I. Call to order at 9:08.

II. F. Weisberg called the meeting to order.

F. Weisberg provided a summary of the *Blakely v. Washington* decision of the U.S. Supreme Court and noted that the Court will be hearing oral argument on the fate of the U.S. Sentencing Guidelines on October 4, 2004. He further expressed his opinion that the DC Sentencing Guidelines will likely not be affected by *Blakely* or *Apprendi* given their hortatory nature.

F. Weisberg introduced Alina Morris, Kathleen Patterson’s new representative. Ms. Morris stated that she will be most likely be the representative attending all future Commission meetings.

F. Weisberg noted that Cross Current, a Pennsylvania-based software company specializing in public safety systems, is currently developing the Sentencing Guidelines Web. They have also been contracted by Superior Court to develop a stand alone website for lawyers to ask for guideline recommendations for hypothetical cases. He further noted that Cross Current would be making a presentation to the Commission at a later point during the retreat.

III. K. Hunt the provided a brief overview of what he intended to cover during the retreat.

K. Hunt displayed and explained a Power Point slide, which showed that the Commission has received 188 sentencing guideline forms as of September 29, 2004 from CSOSA. Forty four or 23% of these forms were completed by Superior Court Quality Assurance staff.

K. Hunt then displayed and discussed a graph of the recommended guidelines ranges and sentences imposed for 17 completed drug offense forms. Only 2 of these cases involved non-compliant sentences. Particular attention was devoted to a 72-month sentence in a Drug 2B box. This sentence may be due to a number of factors including: an enhancement, that there was time served, or that there were multiple counts but only one was received. The commission staff will be investigating this. P. Riley suggested looking at the Court jacket. P. Quander asked if multiple counts received multiple sheets, to which the answer was yes. **[ACTION ITEM: Follow-up on these two departures.]**

K. Hunt displayed a slide summarizing the inquiries received by the Commission regarding the application of the sentencing guidelines. The total number of inquiries was 132. 41% of these inquiries involved questions about the closest comparable DC offense for out-of-state convictions. 59% of offenses related to a variety of other inquiries. K. Hunt noted that the inquiries regarding out-of-state convictions were the most time consuming and complicated. He noted that there often is not a direct match between foreign offenses and DC offenses. He also noted that S. Vance is working on a mapping chart to compare DC offenses to out of state offenses. D. Rosenthal asked if this could become a part of the Cross Current system. K. Hunt stated that this may be possible but would be an additional cost. **[ACTION Item: Follow-up w/ D. Rosenthal regarding VA and MD crosswalks.]**

- IV. L. Hankins noted that the Implementation Subcommittee has made numerous policy decisions, particularly regarding out-of-state convictions and enhancements. She asked whether the full Commission wanted to know about them. P. Quander stated he had no objection to PDS and the U.S. Attorney's Office making policy decisions, but stated that he would like to know what those decisions are. **[ACTION ITEM: Report at next meeting]**
- V. Several representatives from Cross Current Corporation arrived to make a presentation regarding the Sentencing Guidelines Web. These representatives were Robert Gottfried, Sam Hirsh, and Mike Murphy. Mike Murphy was primarily responsible for making the presentation.

M. Murphy first explained the steps of the business process.

M. Murphy then explained a screen of the software where offender/case information is entered. D. Rosenthal inquired whether there is a way to flag errors in the "identifier number" or PDID. M. Murphy responded there is not currently a way to do this, but this can be done. F. Weisberg asked what would happen if further errors are discovered and if people at different stages of the form completion correct earlier mistakes. He asked whether a major overhaul would be necessary. M. Murphy responded that a major

overhaul would not be required, that this is an organic system where changes could be made. It is expected that the Commission will have an ongoing maintenance contract to handle any errors that are found or changes that need to be made.

M. Murphy then explained the “offense screen” of the software. L. Hankins asked what the “supplemental information” space was for. M. Murphy explained this space could be used for anything, as it was a free field for text entries. P. Quander suggested that this space could be used to hold defense attorney contact information, which would be very helpful for CSOSA, especially when the original attorney has changed. P. Riley asked why attempted ADW is in the system. M. Murphy explained that this data was pulled from Appendix C but that the quality assurance portion of the project would test the data to make sure that it was accurate. L. Hankins suggested that Commission members, specifically PDS and the USAO, take an active role in this process to ensure accuracy. She also asked whether the software web could automate the calculations of lapsing and reviving rules for criminal history scoring. K. Hunt replied that this is not present in the current version but maybe something to consider for the next version.

- VI. Following a brief break, K. Hunt began discussing the monitoring of sentencing guidelines in DC. He explained that the monitoring would be the highest priority for the commission staff over the next 2 years of the pilot project. The Commission would collect and analyze guidelines information to track compliance, identify areas of improvement, and better understand sentencing practice.

K. Hunt explained that the first element of monitoring the sentencing guidelines will guideline reporting of the number of cases initiated after June 14, 2004; the number and % of guideline recommendations distributed to judges; and the number and % of actual sentences reported. Guideline reporting would also involve identifying errors in reporting offense severity group and criminal history score; recommendations to improve guideline sentence reporting; and recommendations to improve training. The question was asked how sentences would be tracked. [**ACTION ITEM: Felony sentencing report needed from Criminal Division.**]

Regarding guideline compliance reporting, P. Riley asked whether calculations would be done primarily by Cross Current. K. Hunt responded this would eventually be the case. P. Quander asked whether there is any way to capture the period between when a case begins and is resolved, and how the rate of pleas and trials may be changing? K. Hunt responded that this issue would be discussed at a later point. R. Johnson asked how we can exclude cases that have dropped out of the system after being initiated. K. Hunt responded that we will never know about cases that drop out of the system, but that the Commission will not receive forms for offenses that do not result in a conviction and have not gone to sentencing.

K. Hunt then turned to the departure reporting, the second element of guideline monitoring. Departure reporting includes reporting on the number of departures; the direction of departures; the number of dispositional and durational departures; and the reasons for departures, including aggravating and mitigating factors, and other legal factors (e.g., victim injury) and extra legal factors (e.g., gender) that may be associated

with departures. Departure reporting also involves identifying departures that may be related to “time served” sentences and making recommendations for increasing compliance.

Regarding departure reporting, P. Riley asked what data we are looking at to determine whether there are departures based on extra-legal factors. The answer is information collected through the guideline form. D. Rosenthal asked if the “direction of departures” can be separated by offense, to which K. Hunt answered yes. He added that this could also be done by box or offense severity group. B. Weinheimer suggested distinguishing *departure* reporting from *compliance* reporting. F. Weisberg asked how we would capture sentences like the 72-month sentence. K. Hunt responded that the commission staff may want to contact the sentencing judge. B. Weinheimer suggested a form letter to the Judge. P. Riley suggested that we examine the court jacket first. R. Johnson suggested that we can contact the judge through email in a process similar to that of the family court. M. Roberts suggested we frame the request purely as a request for information so that we do not discourage departures or give the perception that the Commission is attempting to “catch” maverick judges.

K. Hunt then discussed analysis of sentencing ranges, the third element of guideline monitoring. This element involves analyzing the average sentence within each box and crime; the distribution of sentences within each box; the percentage of sentences that hit either the top or the bottom of the box; and the effect of enhancements and distribution of sentences with enhancements. This element also involves recommendations to either tighten or relocate ranges.

Regarding the analysis of sentencing ranges, P. Riley suggested that these analyses be done for each separate offense. She further stated it is important to compare non-enhanced crimes and enhanced crimes. Finally, she noted it might be necessary to “loosen” each box rather than just “tightening” them. F. Weisberg also suggested that the data be categorized based on whether there was a guilty plea or a trial verdict in order to compare them.

K. Hunt next turned to the fourth element of guideline monitoring, which is the adequacy of offense severity rankings. This element involves an analysis of compliance by offense within a given offense severity group and an identification of inadequately ranked offenses. This element also involves recommendations to move selected offenses to a higher or lower offense severity group.

K. Hunt then discussed the fifth element of guideline monitoring, which is the adequacy of criminal history scoring. This encompasses an analysis of out-of-state offenses, which entails comparing automated criminal history scores from Superior Court database (DC offenses) with Guideline database (DC + out-of-state offenses). An analysis of criminal history scoring further involves an audit of selected out-of-state scoring on guideline worksheets. Finally, it involves an analysis of compliance by criminal history category.

K. Hunt turned to the sixth element of guideline monitoring, which is dispositions within shaded regions. This element involves analyzing:

- a. Proportion of probation and short split sentences within light shaded boxes.
- b. Proportion of short split sentences within dark shaded boxes.
- c. Factors associated with probation or short split within the same box. Factors that may lead to atypically high or low levels of probation or short splits.
- d. Average length of imprisonment for those eligible for probation sentence.
- e. Recommendations regarding changing the rules for giving probation or short split sentences within shaded boxes, if any.

F. Weisberg asked how we can capture cases where, for example, the split sentence (suspended sentence) component of the sentence is compliant but the lengthy prison sentence is not (example: a 6 year sentence in box 7A).

K. Hunt next discussed the impact of the guidelines, which is the seventh element of guideline monitoring. This element involves studying:

- a. Changes in the middle 50% of sentences, before and after guidelines.
- b. Changes in guilty pleas, 11(e)(1)(c) pleas, and trial rates.
- c. How will adjustments to guidelines affect the proportion of people sent to prison? To probation? Run simulation model to highlight likely outcomes.

P. Riley asked if the software is currently ready and able to run a simulation model. She also asked if the model would be able to take into account factors such as declining rates of certain offenses. K. Hunt responded that the software is designed to include these factors. P. Riley then asked if the software web allow for daily updates on sentences. K. Hunt responded that currently it is being set up for weekly updates but it could be changed in the future.

T. Kane suggested that a significant amount of interaction between the Commission and the staff is necessary because the proposed research tasks are very complex. He suggested that this interaction is necessary to establish and prioritize the workload. F. Weisberg noted that the proposed data analysis is very complex and suggested that perhaps the Commission should look to its decisions over the past few years and then run tests with data to determine whether these decisions were correct. **[ACTION ITEM: Prepare an agenda for the research Subcommittee. Include research questions to be analyzed, and timetables. What were the key choices made in our development of guidelines? How many do we want to revisit?]**

Lastly, K. Hunt discussed the eighth element of guideline monitoring, which is the acceptance of the guidelines. This element entails surveying judges and practitioners to identify areas in need of improvement. It further involves recommendations for adjusting the guidelines based on survey results.

Regarding the acceptance of the guidelines, A. Flaum suggested it is important to get the community sentiment about the guidelines, as not everything is amendable to quantification. L. Hankins suggested that, though probably not scientifically, we attempt to analyze practitioners' experiences with the guidelines, including different plea bargain practices (example: requirement that a party waive a departure argument). Along these lines, E. Silbert noted it is dangerous to provide data and argue a conclusion based on this data, since it may involve hidden plea bargaining, etc. He added that surveys and focus groups should be done on a regular basis. K. Hunt summarized the group's concerns as follows: First, we should have surveys and focus groups to gather judge, practitioner and community sentiment about the guidelines. Second, we should have research subcommittees to discuss the research projects given the many problems and pitfalls. T. Kane stated that Commission staff should collect contextual measures that control for as many factors as possible in their study of the guidelines.

- VII. During lunch, K. Hunt conducted a visioning exercise, which asked the commission members to describe their ideal sentencing system. R. Buske noted the members' comments on flip charts.

The first issue discussed was each Commission member's idea of what they want out of sentencing guidelines. L. Hankins mentioned that the Commission and guidelines seen as a whole, proportional, and not whittled away as a result of an adversarial relationship with the Council, etc. J. Stewart seconded this point. K. Patterson hoped that public expectations would be largely satisfied, reducing citizen pressure to take actions that might undermine the "whole" of the guidelines. A. Flaum seeks greater predictability as one goal. B. Weinsheimer suggests that predictability not undermine the need to move cases through the system, allowing different offenders to be treated differently as warranted. R. Johnson wants a connection between the community and the courts so that the process makes sense to the public. B. Weinsheimer said that he wants a system that has a sense of justice and fairness after the outcome is determined. J. Stewart added that she is interested in the Commission's ability to assess the impact of legislation. E. Silbert stated that guidelines should limit disparity but not to the point of undermining judges' ability to dispense justice. His comments highlight the tension between disparity reduction and justice in individual cases.

The next topic during lunch was the role of the Guidelines and Commission. L. Hankins started it off by saying that the Commission has the data and the analysis capabilities to inform the City Council and others about impact assessments. J. Stewart added that policy cannot be made based on the worst case scenario and that the Commission should show what it can do in terms of data collection. She followed up by saying it is important for the Commission's Community Outreach Subcommittee to inform the public. K. Patterson agreed that the Commission should be responsible for disseminating information that it collects, contributing to public education. M. Roberts wants the Commission to inform others about what their limitations are and that sentencing will not resolve all social issues. L. Hankins agreed that there is a limitation to what the Commission and the criminal justice system can do. She added that she wants to Commission to not be lobbyists but more of a resource for information. K. Patterson

stressed that the Commission should serve as a rapid response resource for data to the media and others. This would be important for the budget decisions/process. K. Hunt responded that there should not be a problem releasing aggregate information. R. Johnson wants the Commission to be able to inform the City Council on which aggravators are used and with which offense.

- VIII. Following lunch, K. Hunt displayed the Commission's current mission statement and asked whether changes should be made and, if so, when. R. Johnson suggested that the mission statement include the Commission's job of providing research and education to the public. The commissioners agreed that the current mission statement needed to be changed, as it is more akin to the mission of a sentencing system rather than a sentencing commission. They recommended that the mission statement focus more on what the *commission* should do rather than what the guidelines should do. J. Stewart suggested that the Commission staff develop and circulate a draft of a new mission statement, to which K. Hunt agreed. The second section should focus in part on educating the public and the advisory function to the Council. **[ACTION ITEM: Revise and Circulate proposal]**
- IX. K. Hunt then displayed the responsibilities and purposes of sentencing commissions according to the American Law Institute's Model Penal Code. One suggested purpose of a sentencing commission is to conduct a correctional resource projection. B. Weinsheimer questioned the value of this purpose. K. Hunt noted that the Commission was required by its mandate to be able to project how changes to the law or the guidelines will impact resources, and that for the budget beyond 2006, it is an important issue. K. Patterson pointed out that there is a tremendous budgetary cost to DC jails due to sentencing, and that this application could be very useful. K. Hunt responded that the current model does not account for jails but can be added.

An additional suggested purpose is to promote research and data collection within sentencing systems – especially connected with the attempt to assess “what works” in corrections practice. In response to this purpose, B. Weinsheimer suggested that this task is not practical and that we do not possess the necessary data or resources. R. Johnson, however, noted that some questions can in fact be answered by the Commission and would be helpful to the courts and the public (for example: what is the recidivism rate for a particular offense). A. Flaum agreed that this type of research would be helpful. P. Riley agreed with B. Weinsheimer and questioned whether we have sufficient data for such research. M. Roberts noted even limited data and research would be very helpful and provide a public service.

L. Hankins stated that there are other costs of the sentencing of the defendant that can be looked at such as gender bias. P. Riley responded that there is also the impact of crime on the victims' families. T. Kane noted that recidivism research is often not helpful for policy-making because it pushes policymakers towards incapacitation. K. Hunt pointed out that the “What Works” line of studies relies only on the most scientifically sound studies. E. Silbert stated that, despite Kane's caveats and warnings about the limits of research, the more research the Commission can conduct, and the more information it can provide is helpful for making informed judgments. T. Kane agreed with E. Silbert

that research would be valuable. T. Kane again cautioned, however, that all recidivism research leads to conclusions about incapacitation and not deterrence or rehabilitation. T. Kane generally suggested that the Commission: (1) complete the mission statement; (2) prioritize tasks; and (3) break down the workload. P. Riley stressed that she wants Commission staff to establish a clear and coherent cohort of cases that are sentences in a particular year that would be the baseline to compare future years to.

- X. K. Hunt then shifted to the discussion to intermediate sanctions. He summarized the legislative mandate regarding intermediate sanctions and asked what the nature of the Commission’s work should be on this subject. R. Johnson noted that “so called intermediate sanctions” already exist, as they are provided by CSOSA as a condition of probation. He stated that the Commission should discuss the current options available but go further to create or establish new programs. M. Roberts asked what would happen if CSOSA’s current leadership was not present in the future. B. Baldwin-White stated that there should always be alternatives to incarceration available. A. Flaum noted that the legislative language is designed to provide alternatives to incarceration and this should be the Commission’s focus. F. Weisberg opined that it is beyond the mission of the Commission to incorporate intermediate sanctions into the sentencing guidelines at this time. P. Riley suggested that the Commission could incorporate P. Quander’s experience on intermediate sanctions into our annual report. Lastly, F. Weisberg stated that he is interested in research that showed how often judges use halfway houses as a condition of probation.

K. Hunt then offered a proposal for intermediate sanctions, which included four steps. First, the Commission should assess the sentencing patterns in shaded boxes. The Commission agreed with this step. Second, the Commission should determine what intermediate sanctions and treatments are being applied for those sentenced to probation (Ordered by court, ordered by CSOSA policy). Third, the Commission should study whether Judges are using Judgment and Commitment Orders to direct programs and sanctions. Regarding this step, P. Quander stated that the CSOSA can provide this information better following the completion of the Cross Current project so that CSOSA can easily match up cases. P. Quander did note, however, that CSOSA may be able to provide the information earlier. [**ACTION ITEM: Current activities, current plan, how often judges use halfway houses, EM, etc.**] The Commission agreed that this third step should be pursued. Finally, the fourth step of K. Hunt’s proposal is to develop recommendations for whether to refine the role of the guidelines based on Steps 1 through 3. The Commission agreed.

In the interim, the Commission believes that intermediate sanctions are available in the District and are built into the guidelines as probation with stringent conditions. We have a number of programs. We will work to identify more programs. When appropriate, these strictures are to be an alternative to incarceration.

- XI. F. Weisberg offered two concluding comments. First, he expressed his gratitude to the Commission members and the staff for their hard work and civil discussion. Second, he

expressed concern about errors that might occur in the Cross Current system and whether the Commission would be required to pay a significant amount of extra funds. He would prefer that any changes or adjustments to the software web be made now instead of down the road, including adding a CJA list of defense lawyers [**ACTION ITEM**] and the characterization of attempts/conspiracies/completed acts [**ACTION ITEM**]. L. Hankins again suggested that Cross Current Corporation return to make a presentation to the implementation subcommittee, CSOSA, judges, Quality Assurance personnel, etc. to run through the process when the project is closer to completion, to which F. Weisberg agreed.

XII. Adjourned at 2:30 p.m.