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**THE AMERICAN UNIVERSITY**

**CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT**  
Institute for Advanced Studies in Justice  
The American University Law School  
Washington, D.C.

A Program of the  
Adjudication Division  
Office of Criminal Justice Programs  
Law Enforcement Assistance Administration  
U.S. Department of Justice

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**COURT MANAGEMENT PROJECT**

✓ SENTENCING GUIDELINES WORKSHOP

MEETING SUMMARY

March 1979

**NCJRS**

JAN 15 1980

by

**ACQUISITIONS**

Courts Technical Assistance Project Staff

CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT  
The American University Law Institute  
4900 Massachusetts Avenue, N.W.  
Washington, D.C. 20016  
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## I. ATTENDEES

### SENTENCING GUIDELINES WORKSHOP

March 16-17, 1979

Maricopa Co., Ariz., Superior Court  
Hon. Stanley Z. Goodfarb, Presiding  
Criminal Judge

Denver, Colorado District Court  
Cabell Cropper, Planner, CO Admin.  
Office of the Courts

Florida Sentencing Study  
Kenneth J. Plante, Proj. Director  
Gordon Abernethy, Research Ass't.  
Richard Kern, Research Ass't.

Georgia Admin. Office of the Courts  
John T. Shope, Ass't. Dir. for Oper.

Kentucky Admin. Office of the Courts  
Don Cetrulo, Staff Attorney

New Orleans, LA, Criminal District  
Court (March 17 only)  
Hon. Rudolph Becker III, Proj. Dir.  
Rivers Trussell, Ass't. Ct. Admin.

Mass. Superior Ct. Sentencing Guidelines  
Project  
Michael Hutner, Project Director  
Amy Craddock, Res. Supervisor

Michigan Felony Sentencing Project  
Marvin Zalman, Project Director  
Garrett Peaslee, Res. Assoc. & Prgmr.

Minn. Sentencing Guidelines Commission  
Dale G. Parent, Dir. of Research  
Kay Knapp, Senior Researcher  
Jan Smaby, Commission Chairperson

Montana  
Hon. Gordon R. Bennett, Dist. Judge  
Clyde Peterson, SPA Ct. Specialist

New Jersey Sentencing Guidelines Project  
Jack McCarthy, Project Director

North Dakota Admin. Office of the Courts  
Ted Gladden, Ass't. Ct. Admin.

Ohio State Bar Foundation  
Tom Swisher, Director of Research

Penn. Sentencing Guidelines Commission  
Hon. Curtis Carson, Phil. Ct. of Com. Pleas  
and Commission Member  
Sam McClea, Exec. Dir., PA House Jud. Comm.

Phil. Ct. of Com. Pleas Sentencing  
Guidelines Project  
Saundra DiIlio, Ct. Prgms. Analyst  
Robin Lubitz, Ct. Prgms. Analyst

Rhode Island Admin. Office of the Courts  
Susan McCalmont, Projs. Mngr., Jud. Plng. Cncl.  
Len O'Brien, Coordinator, Jud. Plng. Unit

Utah Division of Corrections  
Richard Oldroyd, Dir. of Research

Wash. Admin. Office of the Courts  
James Larsen, Dir. of Plng. and Operations  
Sara Wassenaar, Magistrate Ct. Coordinator

Wisconsin Sentencing Study  
Sandra Shane-DuBow, Prncpl. Invstgr. and Dir.  
Walter F. Smith, Ass't. Director

Resource Participants  
Richard Sparks, Rutgers University  
Paul Sutton, National Center for State Courts  
Leslie Wilkins, Albany, New York (March 16 only)  
Sherwood Zimmerman, Carnegie-Mellon University

### Criminal Courts Technical Assistance Project Staff:

Joseph A. Trotter, Jr.  
Caroline S. Cooper  
R. William Linden, Jr.  
Christina P. Clark  
Dixie K. Knoebel  
R. Michael LaBelle

## II. WORKSHOP AGENDA

Netherland Hilton  
North Hall  
Cincinnati, Ohio  
March 16 - 17, 1979

FRIDAY, MARCH 16

4:30 P.M. - 6:30 P.M.      ORIENTATION      North Hall

## DESCRIPTION OF EACH PROJECT REPRESENTED

- Project Mandate
- Current Stage of Activity
- Summary of Research Approach

6:30 P.M. - 8:30 P.M. AMERICAN UNIVERSITY RECEPTION Julep Room

SATURDAY, MARCH 17

North Hall .

I. 8:30 A.M. - 11:30 A.M. PLANNING, RESEARCH AND TESTING  
(Pastry and Coffee)

8:30 A.M. - 9:15 A.M.      *Issues to Consider in Planning the Sentencing Guidelines Project*  
Moderator:      *Honorable Stanley Goodfarb*

9:15 A.M. - 11:30 A.M. *Data Collection and Analysis*

**-Data Base and Data Collection Methods (9:15 - 10:30)**  
**Moderators: Saundra DiIlio, Sandra Shane-DuBow**

## Common Data Base Problems

- 1) Lack of an Existing Data Base
- 2) Inadequate Existing Data Base

- Inaccurate Information
- Incomplete Information
- Lack of Uniform Data Source

## WORKSHOP AGENDA

PAGE TWO

- *Data Collection Methods*

- 1) *Developing Data Collection and Coding Procedures*
- 2) *Assuring Access to Necessary Information*
- 3) *Sampling Techniques*
- 4) *Verification Techniques*

-Constructing the Guidelines Model (10:30 - 11:30)  
Moderator: Marvin Zalman

- *Techniques for Data Analysis*

- *Analyzing Multiple Charges*

II. 11:30 A.M. - 12:15 A.M. IMPLEMENTATION: DEVELOPING SUPPORT AMONG JUDGES, THE LEGISLATURE AND OTHERS

Moderator: James Larsen

12:15 A.M. - 1:00 P.M. BUFFET LUNCH (Cold Buffet in Meeting Room)

III. 1:00 P.M. - 2:00 P.M. MONITORING/EVALUATION

Moderator: Jack McCarthy

- *Obtaining Necessary Case Information*
- *Updating the Guidelines*
- *Reporting Sentencing Information to Judges and the Public*

IV. 2:00 P.M. - 2:45 P.M. KEY ADMINISTRATIVE/ORGANIZATIONAL RELATIONSHIPS

Moderator: Michael Hutner

V. 2:45 P.M. - 3:45 P.M. SPECIAL ISSUES

Moderator: Dale Parent

- *Dealing with the Juvenile Offender*
- *Dealing with Regional Differences in Sentencing Practices*

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## WORKSHOP AGENDA

### PAGE THREE

- *Interface of Sentencing Guidelines with Parole Guidelines*
- *Assessing the Impact of the Guidelines on Correctional Populations*
- *Analyzing Plea Bargaining Practices*
- *Dealing with Legislative Changes Which Affect Guidelines Developed*

VI. 3:45 P.M. - 4:00 P.M. WRAP - UP

### III. ORIENTATION

Friday, March 16

Following a brief welcome and introduction from Joe Trotter, representatives from each of the sentencing projects present summarized their project mandate, current stage of activity, research approach, and special areas of interest which project staff hoped might be addressed during the Workshop.

#### MINNESOTA:

Dale Parent indicated that the Minnesota Guidelines will focus on sentences and the length of incarceration. The Guidelines have been developed on the basis of information obtained on 50% of FY 78 cases and all release decisions during that period. Data analysis will be completed by August 1979, with the guidelines then submitted by the Commission to the Legislature. The guidelines will become operational May 1, 1980 unless vetoed by the Legislature. Under the guidelines, there will be no discretionary parole although there will be credit for good time earned. Two issues of special concern to Minnesota are (1) the impact of the guidelines on the correctional population and (2) techniques for monitoring the guidelines and their application by judges.

#### FLORIDA:

Kenneth Plante noted that the sentencing project in Florida had been undertaken because of a concern over sentencing disparity, plea bargaining, interest in the potential utility of presentence reports, and the desire to develop a training package for judges on sentencing issues. Initially, AOC staff had undertaken a literature survey of sentencing alternatives and gathered preliminary data on recent sentencing decisions. This information was presented to the judges with the recommendation that the feasibility of developing sentencing guidelines be explored. Among the immediate problems which Florida is addressing to determine the feasibility of such a study, are (1) the lack of uniform data (pre-sentence reports are not standard throughout the state); and (2) inconsistencies in the data (reporting differences regarding "charges" and "counts" among the local jurisdictions involved). The AOC plans to complete the sentencing study by the end of May at which time it is hoped that the state will have received LEAA funds to conduct a multi-jurisdictional test design which is deemed preferable to a statewide project. Among the specific issues of interest to Florida are (1) the various ways local sentencing commissions have been established and composed, and (2) the effect which plea negotiations have on the development and use of guidelines.

#### UTAH:

Richard Oldroyd explained that the guidelines effort in Utah had developed after a blue ribbon criminal justice task force criticized sentencing practices in the state. The AOC then contracted with a private consultant who had been the former Director of Corrections to develop sentencing guidelines over a four month period. Because of this short time frame, the guidelines were developed in the form of postulates, or "risk assessment factors", rather than as the result of empirical study, and submitted to the Courts and the Board of Pardons for consideration and approval.

## PHILADELPHIA, PENNSYLVANIA:

Saundra Dillio announced that the Philadelphia Project had just been implemented. Data collection had begun in 1976 under the supervision of an advisory committee of judges. A guidelines model was developed and revised by the judges and then tested. Further refinement was made on the basis of the test results and a second test was conducted in November and December 1978. Additional minor revisions were then made after a meeting with the Judges' Advisory Commission before implementing the Project March 5.

## PENNSYLVANIA:

Sam McClea described the recent legislative authorization for statewide guidelines development. A commission has been established composed of four legislators, three judges (to be appointed by the Chief Justice), and three private citizens appointed by the Governor (including a defense attorney and a prosecutor). Guidelines will be developed for all felonies and misdemeanors and submitted to the Legislature which will have the power to veto them. In addition to the guidelines development, the legislation has also established an appellate review board.

## MASSACHUSETTS:

Mike Hutner described the Project which began in June 1978 under the auspices of the Massachusetts Supreme Court's Committee on Probation and Parole. The guidelines will deal with felonies (criminal cases with sentences over 2 1/2 years) handled by the Superior Courts. A coding manual was completed in November and reviewed by American University T/A Project consultants in early February. The Project is conducting a construction sample of approximately 1500 cases handled during the period of October 1977 - October 1978, followed by a validation sample of 300 of these cases. Specific issues of interest during the Workshop were: (1) data collection techniques, (2) anticipating issues which can arise after the data is collected and analyzed, and (3) handling cases with multiple charges.

## NEW JERSEY:

Jack McCarthy described the New Jersey Project which began in 1973 when the state's 90 sentencing judges were gathered together and asked to indicate sentences for selected sample cases. The results indicated a tremendous diversity in sentence outcomes. Following this exercise, over 800 items of information on over 15,000 cases were studied. Law students were used to collect data which had a variety of uses beyond that of guidelines development. In October 1978 statewide guidelines were implemented and preliminary results of guideline use appear favorable.

## WISCONSIN:

Sandra Shane-DuBow noted that the sentencing project in Wisconsin is not geared to guidelines development. It is designed, rather, to analyze sentencing practices in six counties, based on 1974-75 data, and to determine if sentencing disparity exists. One of the additional issues which the project is addressing is the potential impact of various possible sentencing reforms.

#### OHIO:

Tom Swisher explained that the sentencing activity in Ohio was the outgrowth of a 1977 session on Sentencing conducted by the Ohio Bar Foundation for the Judicial College. Since the Bar Foundation lacked resources to conduct a preliminary analysis of sentencing practice, "guidelines" were postulated and then field tested. Guidelines were first used in Lucas County, are now in use in Montgomery County, and will be tested shortly in Cuyahoga and Hamilton Counties. Judges in other counties may use them informally. The objectives of these local guidelines projects have been (1) to reduce sentencing disparity and (2) to give judges a sense of the "average" sentence imposed in various types of cases. The guidelines, he felt, were particularly helpful to new judges.

#### COLORADO:

Cabell Cropper said that the Denver District Court Project had recently been evaluated and that 75% of sentencing decisions were found to be within the guidelines. The presumptive sentencing law passed by the Colorado Legislature will, however, have some impact on the guidelines, and one of his principal interests at the Workshop is to learn how other jurisdictions with guidelines handle such legislation.

#### RHODE ISLAND:

Susan McCalmont said that Rhode Island was beginning a study of sentencing practices. The study had been mandated by the Chief Justice and would be guided by a committee composed of court, defense, prosecution and bar officials. The major concern of the study is to determine the extent of sentencing disparity and to provide the Committee with an analysis of any disparity problems which might exist.

#### WASHINGTON:

Jim Larsen described the guidelines effort in Washington which had been modeled after the Albany Research designs. The study is almost complete and a decision will be made at the Judicial Conference in April on whether or how to implement it. The Legislature wants guidelines to be drafted but the court wants to maintain control over such an effort. The study has focused on most general jurisdiction court offenses and the following offenses handled by the limited jurisdiction courts: theft, simple assault, driving while intoxicated, and driving while license is suspended.

#### PHOENIX, ARIZONA:

Judge Stanley Goodfarb noted that the "guidelines" in Phoenix are not referred to as "guidelines" to avoid the suggestion that they would interfere with judicial discretion. Newer judges appear more interested in the guidelines than judges who have served longer. The Arizona Legislature recently passed a presumptive sentencing act which curtails the Phoenix Guidelines considerably so that they are now used primarily for informational purposes relating to the in/out decision.

#### NORTH DAKOTA:

Ted Gladden said that North Dakota had just begun a project to gather information on sentencing practices in the state for the purpose of sharing

information with the state's judges. The information gathered will be analyzed by the AOC to determine any areas of disparity. These findings will be discussed with the judges who can then recommend what further action, if any, might be appropriate.

#### MONTANA:

Judge Bennett noted that, while no specific sentencing studies had been undertaken in Montana to date, the chief justice had been curious about the feasibility of undertaking a sentencing guidelines project in a state where the number of trial court (District Court) judges totals 29. After listening to the preceding state project presentations, he had several specific questions: (1) did Montana have a large enough data base to even consider guidelines? (2) what are the detrimental as well as useful effects of guidelines? i.e., do guidelines set things into concrete and make them harder to change? (3) what are the mechanics of getting a project going? Where does one get the money and expertise to conduct such a project? Where can programming expertise be obtained?, etc.

#### KENTUCKY

Don Cetrulo explained that Kentucky might be interested in exploring the possibility of undertaking a sentencing study and he was therefore attending the session as an observer.

#### Other Attendees:

Zimmerman said that he had researched various sentencing guidelines models and was interested in the interaction between research staffs and policy boards.

Sparks and Sutton briefly described their research interests at, respectively, Rutgers and the National Center for State Courts. Wilkins noted his long involvement in the field, stemming originally from work with parole guidelines a number of years ago. He also noted, in response to Bennett's concern over whether guidelines might set practices into concrete, that guidelines were designed as an open system. A guidelines project must be concerned with both policy (set by the "group") and individual case decisions. The case decisions must feed into policy; they do not form it.

#### IV. PLANNING, RESEARCH AND TESTING

March 17, 1979

##### Issues to Consider in Planning the Sentencing Guidelines Project: Honorable Stanley Goodfarb, Moderator

Goodfarb outlined four key issues which affect the planning of a sentencing guidelines project:

- 1) Who wants the project?
- 2) Why is the project being undertaken?
- 3) What is the stated mandate and what is the real mandate? What resources are available?
- 4) Does the project mandate allow for flexibility to accommodate unanticipated study findings?

He then asked the attendees to respond to these issues on the basis of the specific experiences of their jurisdictions.

##### 1) Who Wants the Project?

McCarthy said that the judiciary and the AOC had been concerned about sentencing disparity for the last 10 - 20 years in New Jersey and that a study of disparity in Essex County (Newark) conducted by inmates during the 1960's had been instrumental in stimulating judicial interest in the possibility of guidelines development. In 1973, at a state Judicial Conference, judges were given various presentence reports and asked to make sentencing decisions. On the basis of this information, the AOC was able to further document the problem of sentencing disparity and bring it to the attention of the judges. The participation of Essex County in the Albany Research Project and the implementation there of local guidelines further demonstrate the feasibility of judicial acceptance of sentencing guidelines.

Knapp noted that, in Minnesota, the Project was initiated by the Legislature and represented a compromise between supporters of mandatory and determinate sentencing bills, the latter of which had been vetoed by the Governor. The judiciary, at least initially, had been disinterested in the effort.

##### 2) Why is the Project Being Undertaken?

Judge Goodfarb noted that, in Phoenix, the development of guidelines was viewed as a way of heading off a determinate sentencing bill by the Legislature. In Pennsylvania, McClea explained that the guidelines project was initiated by the Legislature after the cost of implementing a mandatory sentencing bill was assessed. The commission that had been established will take the immediate pressure off of the Legislature to articulate a public sentencing policy and will provide an opportunity to develop such a policy on the basis of the numerous factors which should be considered. Moreover, the appeal provisions of the Pennsylvania legislation provides more balance to the appeals process by permitting appeal by both the prosecution and defense. Shane-DuBow noted that the sentencing project in Wisconsin was a response to a determinate sentencing bill introduced in the Legislature and was undertaken to provide a base of information from which the sentencing problem could be analyzed and the utility of further efforts, if any, assessed. The judiciary of Wisconsin, she noted, had been apolitical on the subject; the Legislature, on the other hand, may get political mileage

from taking a position on the subject. In Rhode Island, McCalmont noted that the judiciary had responded from time to time to piecemeal bills introduced in the Legislature to limit judicial discretion in sentencing. The present study was, however, initiated in response to legislative moves in other states. Cetrulo indicated that one reason for Kentucky's interest stemmed from the success of using guidelines for parole decisions.

### 3) What Resources are Available?

Goodfarb noted that the way a project is run depends upon the total resources available, including money, staff, time, information, computer support, etc. In Washington, Larsen noted that the original \$75,000 of LEAA funding proved inadequate for conducting the original scope of work, which included both felony and misdemeanor cases. Data collection was therefore conducted on a larger case sample in the general jurisdiction courts and limited to 500 of the 500,000 cases of the limited jurisdiction courts. Hutner noted that a major resource limitation which he encountered was the uneven quality of probation office reports throughout the state which supplied almost all of the sentencing information used. Oldroyd indicated that Utah had found similar resource limitations which accounted for the far less ambitious project plan than might be desired.

### 4) Does the Project Mandate Allow for Flexibility to Accommodate Study Findings?

Plante noted that Florida's mandate permitted such flexibility but may also be too general and too broad. Essentially, the project mandate in Florida was to look at everything to see what's going on. Many of the judges supporting the study therefore lack a specific focus to provide guidance to the staff. The Massachusetts project, Hutner noted, had a much narrower mandate, i.e., to develop guidelines for felony cases. In Georgia, Shope said no specific mandate for the project had been articulated. Most judges would like sentencing guidelines as a tool. There is no clamor to reduce prison populations or sentencing disparity; if anything, the opposite attitudes have been expressed.

In closing the discussion, Judge Goodfarb noted that the issues which he had identified at the beginning of the session should be taken into account in planning a sentencing study. Hopefully, sufficient flexibility will be available to permit the project to respond to unanticipated data findings. It is important not to be locked into a predestined conclusion.

## B. Data Collection And Analysis

Data Base and Data Collection Methods: Sandra DiIlio and Sandra Shane-DuBow, Moderators

DiIlio began the discussion by listing a variety of data issues which related to the conduct of the Philadelphia Project:

- 1) What information does a judge actually have?
- 2) Where are the files located? (In Philadelphia, records are maintained in two separate locations). Who has access to them?
- 3) What are the conditions of the files? Can the information in them be read?
- 4) Is there any missing data? If so, is it missing on a random basis or will it limit the items of information which can be collected on all cases?
- 5) If existing data is not sufficient for the project, what alternative measures can be taken to permit guidelines to be formulated?  
Can a set of interim guidelines be developed pending collection of requisite data? Or must the project be abandoned altogether?

McCarthy commented that, in his experience, the most important variables were the ones that were usually present. Where essential information was missing, one could make a choice of either striking the missing variable(s) or conducting a second file search. He also noted that the requirement of presentence reports for all cases in New Jersey made his collection efforts easier. Swisher, noted, however, that in Ohio, presentence reports were not discoverable and data collection was therefore hampered, although some of the key variables could sometimes be found in the rap sheet. In Maricopa County, Judge Goodfarb noted that, when the project began, a large amount of inaccurate data was discovered and that the quality of presentence reports greatly varied. He felt, however, that the quality of data improved as the project matured. He agreed with McCarthy that any data that was not there was probably not important to the sentencing decision. He noted, however, that sentencing projects must take note of possible inconsistencies in the ways data entries are perceived by sentencing researchers and the parties who filled out the reports. DiIlio pointed to the importance of researchers attending sentencing hearings to learn what information a judge asks for compared with the factors which are included in the pre-sentence reports studied.

Judge Bennett then questioned whether Montana had any data base for conducting a sentencing study in view of the wide divergence between the frequency with which the various courts completed presentence reports and the quality of information contained in them. Judge Goodfarb speculated that rural courts may run into more problems of information than urban courts, but that these data problems might be offset by the personal knowledge which rural judges have of the defendants whom they are sentencing. Zalman felt that each project will encounter data collection problems which will differ from jurisdiction to jurisdiction. While the experiences of other jurisdictions are relevant, they did not supplant the need for each project to have sufficient time to know its data base and the uses to which it is put. He also noted that two major problem areas with which every project must deal are in the determination of the size and nature of the sample used. McCarthy shared this view, noting that sample size in New Jersey was a critical issue and that a decision had been made to use as large a sample as possible to respond to



judges' concerns that the picture painted be as "graphic" as possible. Hutner noted that budget and staff constraints in Massachusetts resulted in a decision to collect information on as few cases as necessary. Since data is being collected on only 1500 cases, the categorizations developed for these cases has been a principal issue of concern to project staff.

Dillio summarized this portion of the discussion by noting two principal issues which had to be dealt with regarding data collection. As a policy matter, what information should be gathered to justify the study's findings? As a research matter, what information is necessary to assure valid results? Knapp noted that, in Minnesota the problem of the sample's credibility had not posed a significant issue. The guidelines were only advisory and she felt that the precise characteristics of the sample would not be a problem as long as it represented a valid methodology.

Cetrulo then asked if any jurisdictions had used a delphic survey approach. Zalman responded that Michigan had just completed an offense severity questionnaire although the precise application which it would have was not yet known. Oldroyd noted that a number of sentencing decision factors had been isolated by the Utah project but many had been abandoned because they were not considered integral to the actual sentencing decision even though they did often provide predictive correlations. The factors which were ultimately selected for the guidelines were those which were felt to be most useful to the judiciary in making a sentencing decision.

The issue of validating information was then discussed. Craddock noted that every case was checked to assure coding accuracy. Shane-DuBow asked what techniques were used to assure content validity? Zalman felt it would be impossible to check for content validity without actually going to the individuals who completed the records. Shane-DuBow, however, felt other techniques were available. Goodfarb suggested that it might be necessary to proceed with the project, even if content validity checks were impossible, and to keep monitoring the information obtained. Swisher said that, because of the lack of computer resources, Ohio had not dealt with problems of coding or content validity. The approach used to develop guidelines was to query the judges on the factors they considered important to the sentencing decision. These factors were assumed to be basically correct although some modification has been made based on implementation experience.

Goodfarb then asked if it could be assumed that a sentencing project could rely on the factors judges felt were important to the sentencing decision. Swisher shared Goodfarb's concern, but felt it necessary to start at some point and that the opportunity to modify the guidelines once operational would correct any problems encountered in this regard. It was better to start with what judges think are reliable factors, he felt, then to take a probation officer's viewpoint. It would also be desirable to base factor selection on a data base, but, without funds, there is no choice.

C. Constructing the Guidelines Model: Marvin Zalman, Moderator

Zalman noted that there is no one "acceptable" way to present a guidelines table as long as it conveys the results of the empirical research undertaken. Questions were then raised regarding the utility of prescriptive approaches. Knapp commented that, since guidelines will affect public policy, it was better to develop them initially on the basis of empirical rather than prescriptive factors. McCarthy agreed, noting that when a judge is given a guideline, it is implicit that this is judicial policy on that case and such a statement must be based on empirical research. Goodfarb noted that judges are generally resistant to guidelines and often consider them an intrusion upon their discretion. When guidelines are presented as an informational tool on what judges do, they can get judicial acceptance more readily because judges are more ready to accept direction from judges than from others. Zimmerman then noted that it was a misnomer to say that guidelines are either "normative" or "formative". They are really both. It is an unwarranted assumption to say that an empirical description of sentencing practice is also sentencing policy. One can construct a variety of indicators to describe sentencing practice but these indicators will not necessarily describe sentencing policy. Several models could be developed for a jurisdiction, all, none or any combination of which may or may not reflect actual sentencing policy. The guidelines model is not a statement of cause and effect, but only a correlation of selected factors with sentencing practice. The choice of which factors to include, however, is a policy decision. Sparks agreed, noting that guidelines could not be developed by empirical methods alone. Empirically derived data must be complemented with judicial opinions. Swisher also agreed, noting that it was critical to get judicial input in the guidelines development process. If one wants judges to use the guidelines, the judges must feel the variables used are accurate. Cetrulo then asked if a guidelines project could be as valid if it were initiated with data derived from judges' opinions rather than cases? Swisher felt such an approach was feasible. In Ohio, "data collection" had started with judicial opinions and then validated with case data. The end results, he felt, were the same. Lubitz then suggested a compromise between the empirical and normative approaches through the development of hypothetical case studies.

The discussion then turned to the handling of multiple charges. Particular problems had been encountered by projects collecting data on a crime-specific basis. Oldroyd explained that Utah had identified "high risk" crimes by looking at the total number of charges which the prosecutor could have brought. Hutner then asked what type of problems the attendees had encountered regarding the handling of multiple charges? Knapp noted the problem of whether one counts the convicted offense or the charged offense. Goodfarb said that, in Phoenix, the "highest" offense charge was used as long as the other charges all related to that offense. The other offenses which occurred were then considered in the overall offense score. Zalman, however, asked if that approach didn't multiply the effect of these factors. Goodfarb felt it did not because it was reflected in the way the judge viewed the case. A problem may arise, however, in cases where probation was revoked and the sentence imposed was more severe. Zalman noted that, in Michigan, that type of case was excluded from the guidelines. Judge Becker then asked how jurisdictions handled a situation where a judge could impose sentence and then probate it while still retaining the power to execute the original sentence if probation is revoked. He wondered, for example, if one found more serious sentences imposed in such cases and what affect this type of case had on the guidelines developed. Would a different set of guidelines be necessary for such a situation? Attendees did not have a specific answer to his questions.

In terms of collecting data on cases with multiple charges, Hutner indicated that he had dealt with the problem through the categorizations used. Categories were not based upon statutory distinctions but rather upon the variables necessary to describe the offense involved. The number of different categories were kept to a minimum. Different categories were developed only where unique factors were identified to require separate categories. Goodfarb then cautioned that guidelines should not be expected to solve every case. There will always be special cases and extremes to which guidelines can't apply. A finding of 75-80% application of guidelines is the most that can be expected; it should not be expected that all cases will fit into the guidelines model; if they do, one should consider whether the guidelines are being used as a crutch rather than as a guide.

## V. IMPLEMENTATION: DEVELOPING SUPPORT AMONG JUDGES,

### THE LEGISLATURE AND OTHERS

James Larsen, Moderator

Larsen noted that when guidelines are actually introduced it is important to develop support not only among the judiciary who will use them but also from other groups, such as the Legislature, whose support is essential. He then asked the attendees to share their experiences on methods that had been successful in their jurisdictions to obtain this essential support. Goodfarb noted that the guidelines effort in Maricopa County had been initiated by the Arizona Supreme Court which was seeking a pilot urban court to undertake the project. The Chief Justice had become very interested in the Denver project and had authority to introduce a project locally. There has been no pressure to undertake the project on a statewide basis because of the recent presumptive sentencing statute. In retrospect, Judge Goodfarb felt that it might have been desirable to introduce the guidelines project in a local rural community (rather than an urban community) which might have had greater need for the information which the guidelines provide.

In New Jersey, McCarthy felt the familiarity with guidelines on a local level (Essex County) greatly eased acceptance of a statewide program by providing a base of information and experience which could be drawn upon. The judges' lead in the project has been critical. The AOC has provided essential support for the Project; findings were presented to a subcommittee of judges which then presented them to the judiciary of the State. Moreover, great effort has been made to describe the guidelines as advisory and not as a measure to preempt judicial discretion. Reasons for deviation are not required, although they are requested and obviously desirable. In Philadelphia, Dillio noted the importance of stressing particularly to the press, that the project deals with sentencing policy rather than a compilation of sentencing practice. In Denver, Cropper noted that support for the guidelines appropriately came from the judiciary rather than the AOC. Judges sold the guidelines to their colleagues, and, had the presumptive sentencing statute not passed, he felt the guidelines would have been implemented statewide.

Discussion then turned to possible appeals of sentencing decisions which had made use of guidelines and particularly the view which appellate courts might take to cases which deviated from a jurisdiction's guidelines. McCarthy felt it would be important to rely on appellate review in resolving questions relating to sentences which deviate from the guidelines. Goodfarb, however, disagreed, noting that peer pressure would have a greater impact on the significance of guideline deviation. Swisher agreed, adding that it is difficult to induce appeals judges to accept guidelines in the first place.

Larsen then asked attendees to comment on the reactions of their local Legislatures to guidelines development. McClea noted his concern that, throughout the discussion of implementation, no mention had yet been made of the importance of involving the legislature. Open lines of communication between the judiciary and the legislature were, he felt, essential. While it might be less complicated to develop and implement guidelines within the judicial system per se, the legislature should be involved early on because it is the legislature which, in the long run, will decide the future and parameters of any guidelines developed. Goodfarb added that judges must go out of their way to establish a congenial and mutually supportive relationship with the legislature. The discussion closed with a comment by Smaby on the

important role which the press had played in Minnesota in developing the sentencing project. The press educates, in a sense, the legislature and the judiciary to public concerns and thus has played a critical role in sentencing guidelines activities in Minnesota. Because many of the legislators are new this session, it will be particularly important to assure press coverage of the Commission's meetings this year so that these new legislators can become informed about the sentencing guidelines effort. Newspaper editors will be invited to Commission meetings and the Commission will also keep the news media informed of its activities.

## VI. MONITORING/EVALUATION

Jack McCarthy, Moderator

Following lunch, discussion turned to specific issues relating to monitoring and evaluating sentencing guidelines activities. In response to Judge Bennett's request for an explanation of the actual process by which a judge utilized sentencing guidelines, McCarthy selected a case example from materials prepared by the New Jersey AOC and the group walked through a case in which guidelines might be applied. Discussion then turned to issues relating to sentencing guidelines evaluation and monitoring. McCarthy noted that, based on the four months in which guidelines had been used in New Jersey, he saw evaluation as encompassing two concerns: (1) the subjective perception by judges and other court personnel of the affects of guidelines on the sentencing process and (2) objective evidence of actual changes that had occurred in both sentencing and other aspects of case process. Sparks noted that many issues had to be considered in evaluating implementation data for judges: the significance of medians, means, etc.; the degree of guidelines compliance which should be sought; determining criteria for success of a guidelines project such as disparity reduction, etc. McCarthy then pointed to the importance of updating information on current sentences, particularly, as Larsen noted, when some cells fall into disuse. Sparks then addressed the problem of not only how to evaluate (whether to use means, medians, ranges, etc.) but specifically what to evaluate. Should one attempt to measure "success" by disparity reduction, guidelines compliance, or other factors? The ultimate question, he felt, which must be asked is: What should the project do? Sutton also added that the evaluation focus may vary with a jurisdiction's objectives.

Judge Bennett then noted the importance of building into the sentencing guidelines the impact of decisions made at the Parole Board level. McCarthy noted that two separate systems were involved, each of which required guidelines. McClea agreed, commenting that the issue was really "whose domain is it to make the sentencing decision?" Bennett, however, stressed that it is significant for the judge passing sentence to know what ultimately happens to that sentence. Goodfarb disagreed. He felt that the responsibility for the parole decision rests with the corrections department. It is not the judges' responsibility to weigh such factors as whether or not there is room in a prison facility to accommodate the judicial sentencing determination. Parent suggested that neither set of guidelines should be used in isolation of the other; the sentencing guidelines should be used with the parole guidelines so that the judge can have a sense of the total sentencing determination process.

Sutton concluded the session by describing NCSC's approach to guideline evaluation. He stressed several ways in which a guidelines program could be evaluated: measurement of changes in long-term sentencing trends; measurement of the degree of guidelines compliance and the reasons for deviation; measurement of the severity of sentences, etc. Different variables would be appropriate for different jurisdictions. Based upon the NCSC findings to date, it appears that compliance rates change cyclically (i.e., from month to month). One essential question which each jurisdiction must ask is whether compliance should be the goal of the Court and whether or not each sentence should "hit the target". Compliance may also be studied from different viewpoints, i.e., is a court most interested in measuring judge-specific, case-specific, or defense-specific activities? An infinite number of value questions must also be addressed and these have been documented in his paper delivered to the Academy of Criminal Justice Sciences Conference earlier in the week which will be made available to the Workshop attendees.

## VII. KEY ADMINISTRATIVE/ORGANIZATIONAL RELATIONSHIPS

Michael Hutner, Moderator

Hutner divided the discussion into two segments: relationships between external groups and relationships relating to the internal operation of the project. In regard to external relationships, McCarthy highlighted the need to develop a good relationship with the Legislature. He stressed the need to develop strategies for forestalling legislative actions which conflict with guidelines efforts and for dealing with such actions if they occurred. The importance of developing a good relationship with the press was again highlighted. McClea urged that the positive affects of guidelines such as the reduction of sentencing disparity which can be derived from monitoring be continually emphasized to the Legislature and the press to discourage possible efforts to reduce their impact. He also noted that in Pennsylvania a central newspaper office existed to which news releases could be sent for distribution to local papers. In Minnesota, contact was made with the criminal justice reporters assigned to newspapers. In Maricopa County, a local criminal justice group conducted regular meetings to which key media representatives were invited for the purpose of informing them of relevant developments in the criminal justice system. Contacts with the media should be an on-going staff activity.

Discussion then returned to developing relationships with the legislature. The question was asked: What will the legislature look for? McClea again said that he had been discouraged to hear of the lack of involvement which most of the judicial sentencing projects had had with the Legislature. The theme, he noted, was one of high judicial activity which, in some instances, was then stymied by a sudden legislative blow. Hutner noted, however, that in Massachusetts, the judiciary didn't appear interested in coordinating with the Legislature. McClea stressed the need to develop informal routes of communication to diffuse some of the conflicting reform moves and to keep the Legislature attuned to developments in the judicial branch. The "success" of guidelines will, in the end, be a legislative decision. McCarthy then noted a problem with some legislators who don't find guidelines politically advantageous. McClea agreed with this observation and noted that many compromises are often made to get legislative support. Goodfarb supported the need for the court to maintain a close relationship with the legislature; the court may get rebuffed but it still must continue communication. McClea suggested consideration be given to coordinating with the criminal justice subcommittees of legislative organizations, such as the Council of State Governments. Minnesota staff supported this suggestion and noted that a series of regional meeting will begin in that State to get suggestions from various public groups regarding the guidelines developed so that criticisms can be addressed and/or anticipated prior to submission of the guidelines to the Legislature next year. Smaby again noted the importance of cultivating good relationships with the media and special interest groups to develop support for guidelines projects. She reiterated that the success of the Minnesota Project was largely attributed to the Commission's efforts to solicit input from the press and special interest groups through the use of surveys and regional meetings. This approach, she felt, gave each group an opportunity to express its opinion. When the Commission returns to the Legislature with the recommended guidelines, it will be in a position to say that they were not developed in a vacuum but rather, the result of input received from groups across the State.

## VIII. SPECIAL ISSUES

Dale Parent, Moderator

### A. Assessing the Impact of the Guidelines on Correctional Populations

While this issue had apparently not posed a problem in other jurisdictions, it had been an area of concern in Minnesota. Staff had developed a model for projecting the impact of the guidelines on the State's correctional population for use by the Legislature. In terms of applying guidelines to sentencing decisions, it is anticipated that judges would review the parole guidelines and take into account the physical space available at correctional institutions when making the specific sentencing determination. Parent also noted that Oregon has dealt with this problem by establishing an Advisory Board Commission on Prison Terms and Parole, a coordinated effort between judges and the Parole Board, to develop parole sentencing guidelines.

### B. Dealing with the Juvenile Offender

Initially questions were raised as to the degree to which information from the juvenile record could be available for use by the guidelines project and, particularly, how expunged information was handled. McCarthy indicated that, in New Jersey, juvenile records could be factored in as a variable when using the guidelines. Zalman noted that juvenile records could be used in adult sentencing in Michigan. While juvenile records could be available to a judge in Arizona, Goodfarb stressed that the prior convictions must meet Gideon standards to be considered when sentencing. In Minnesota, however, expunged records are sealed so that no access to juvenile information can be had. In Ohio, expunged information can be used in subsequent sentencing determinations.

### C. Analyzing Plea Bargaining Practices

Smith asked, initially, for a definition of plea bargaining which yielded a variety of responses. Knapp noted the distinction in Minnesota between "illusory" and "real" plea bargains. A single criminal event, she explained, can involve several charges but result in only one conviction. The Minnesota Supreme Court views this situation as a "single behavioral incident". Goodfarb noted that plea negotiation practices may be altered if sentencing discretion is reduced through guidelines. Judge Carson suggested that guidelines might also increase the likelihood of trials, particularly in urban areas. Knapp noted that, while the development of guidelines can affect plea negotiation practices in a number of ways, it may also result in a more rational process of plea negotiation because the defendant will have more information on the sentencing determination process and will therefore be able to enter into more honest and meaningful negotiation.

### D. Dealing with Regional Differences in Sentencing Practices

Parent noted that regional differences he had noted involved the in/out decision rather than sentence duration. Further, he felt these differences were more the result of resource limitations rather than philosophical differences. In an earlier session, McCarthy indicated that no significant disparities had been noted in New Jersey between sentencing practices in rural and urban areas. Whatever differences were identified between local jurisdictions were more the result of differences in the viewpoints of individual judges rather than geographical factors.



## IX. WRAP-UP

In closing, Joseph Trotter asked if there was anything specific which the Technical Assistance Project could do to assist the attendees. Much interest was expressed in continuing the inter-jurisdictional communication begun at the Workshop, either through a newsletter, subsequent meetings or exchange of information. While the limited resources of the Technical Assistance Project made the possibility of subsequent meetings under its auspices unlikely, the Project would do what it could to disseminate sentencing guidelines information and materials which jurisdictions wanted to share.

**END**