

Day One

Welcome and Introductions

The Honorable Ricardo H. Hinojosa, *Chair, U.S. Sentencing Commission*

SUMMARY

On July 14–15, 2008, the United States Sentencing Commission held a national symposium on alternatives to incarceration in Washington, D.C. This symposium continued the Commission's tradition of bringing together leaders from the federal judiciary, law enforcement, the legal community, and academia to discuss cutting edge legal issues and to exchange innovative ideas regarding current federal sentencing policy. The purposes of this symposium were to gather information regarding the use of alternatives to incarceration and to provide a forum for idea-sharing concerning implementation of non-incarceration sanctions in the federal system.

Presenters at the symposium included federal and state judges, congressional staff, professors of law and the social sciences, corrections and alternative sentencing practitioners and specialists, federal and state prosecutors and defense attorneys, prisons officials, and others involved in criminal justice. Approximately 250 individuals representing the federal and state criminal justice communities, academia, and public interest groups attended and examined topics such as the use of drug courts, treatment options for certain offender populations, restorative justice-based programs, the Second Chance Act and re-entry issues, experiences with intermediate sanctions, and collateral consequences of convictions.

The symposium opened with welcoming remarks by the chair of the Commission, Ricardo H. Hinojosa, a United States District Court judge for the Southern District of Texas. Chair Hinojosa explained that the U.S. Sentencing Commission is a bipartisan, independent agency in the judicial branch of the federal government created by the Sentencing Reform Act of 1984. Its principal purposes are (1) to establish sentencing policies and practices for the federal courts, including guidelines to be consulted regarding the appropriate form and severity of punishment for federal offenders; (2) to advise and assist Congress and the executive branch in the development of fair, effective, and efficient criminal sentencing policy; and (3) to collect, analyze, research, and distribute information on federal crime and sentencing issues. Chair Hinojosa expressed the Commission's hope that the symposium would further the ongoing discussion of sentencing policy, including the use of alternatives to incarceration, whether as a stand-alone sanction or in conjunction with imprisonment. He explained that the focus of the symposium would be sentencing options currently available in the state and federal systems.

Next, Chair Hinojosa introduced the other commissioners present: Vice Chair William Sessions III, the chief United States district court judge for the District of Vermont; Commissioners Michael Horowitz, Beryl Howell, and Dabney Friedrich; and the *ex-officio* members of the Commission, Kelli Ferry, representing the Office of the Attorney General, and Edward F. Reilly, Jr., the chair of the U.S. Parole Commission. Chair Hinojosa then invited those members of the Commission present to make any additional introductory remarks.

Commissioner Howell echoed Chair Hinojosa's welcome. She noted that the symposium was particularly well-timed because it occurred one month after the release of two reports by the Department of Justice and the Pew Center that discussed the state of and rate of incarceration in the United States. Commissioner Howell summarized some of the information from those reports and noted that the information therein demonstrated the importance of the Commission's study of alternatives to incarceration.

Commissioner Howell explained that the Sentencing Reform Act of 1984 (SRA) included a directive to the Commission to consider alternative sentences to imprisonment for appropriate offenders. She expressed the opinion that the high incarceration rate in the United States seemed difficult to reconcile with this SRA objective. Commissioner Howell expressed the hope that the symposium would provide a forum to explore how the states' use of alternatives to incarceration had operated to slow the growth of their prison populations and looked forward to hearing ideas for moving forward at the federal level to ensure that one of the original objectives of the SRA continues to be fulfilled.

WELCOME AND INTRODUCTIONS

CHAIR HINOJOSA: Good morning. My name is Ricardo Hinojosa, and I'm the chair of the United States Sentencing Commission. It's my honor this morning on behalf of the Sentencing Commission to welcome each one of you to this Symposium on Alternatives to Incarceration.

As you may be aware, the Commission is a bipartisan independent agency within the judiciary, created by the Sentencing Reform Act of 1984. We all know the Commission's responsibilities include the promulgation and amendment of guidelines, but we also know that the Commission has other statutory duties, including advising and assisting Congress, the executive branch and the federal courts in the development and execution of a fair, effective, and efficient criminal sentencing policy.

Another responsibility that the Commission has is collecting and analyzing data, as well as conducting research and distributing information on federal criminal sentencing issues. That's what brings us here today, a discussion of alternatives to incarceration. It is the hope of the Commission that this symposium will further the ongoing discussion of sentencing policy, including the use of alternatives to incarceration in the sentencing process, whether as a stand-alone system or in conjunction with some imprisonment time in the use of alternatives to incarceration in the sentencing process.

Over the next two days, the focus will be on the presentation and discussion of sentencing options available in both the federal and the state systems at the present time. We are fortunate that we have been able to gather a group of experts on this particular issue from the state and the federal criminal justice community. We thank them for their presence, and we thank them for taking their time to be here today because we realize they all have very busy schedules. These individuals include judges, congressional staff, academics, prosecutors, defense attorneys, and corrections and alternative sentencing practitioners.

Certainly, we realize that they all bring different perspectives from different viewpoints from both the state and the federal system. We hope that we all will benefit from the sharing of the views over the next two days.

It is clear that in the United States, where we have 50 different state jurisdictions as well as the federal government all involved in the criminal justice system, that there may be some issues that are different with regard to the criminal law policy of each state as well as the federal system.

In the federal system, the makeup of the defendants who are being sentenced is different from perhaps what it is in some of the state systems. In the federal system at the present time, 37 percent of the defendants who were sentenced last year are non-citizens of the United States. It is also clear that different jurisdictions have different types of crimes that are being prosecuted and, therefore, sentenced. Nevertheless, there is enough common ground that listening to the perspectives about the different state and the federal systems should be of help and benefit to all of us.

We thank each one of you for being here. We realize that everybody who is here has a keen interest in the federal sentencing process as well as in the state sentencing process. We look forward to continuing our work with all of the components of the federal criminal justice system, whether it's Congress, the executive branch, defense attorneys, prosecutors, as well as the public, to ensure that fair and just sentences in the interest of the individual defendants as well as the public are handed down in each case.

It is a special honor for me this morning to also introduce the other members of the Commission who are present and will participate throughout the entire session, either as moderators or to hear your views with regard to what you have to say on this important subject.

To my left is Vice Chair William Sessions, who has served as vice chair of the Commission since 1999, and has served as a United States district judge for the District of Vermont since 1995. He is presently the chief judge of that district.

Commissioner Michael Horowitz has been a member of the Commission since the year 2003. He is a partner in the law firm of Cadwalader Wickersham & Taft in Washington, D.C., and has previously served in the Justice Department's Criminal Division as a deputy assistant attorney general and the chief of staff.

Commissioner Beryl Howell has been a member of the Commission since the year 2004. She is the executive managing director and general counsel of the Washington, D.C., Office of Stroz Friedberg. Prior to joining Stroz Friedberg, she was the general counsel for the Senate Committee on the Judiciary. She worked for Senator Patrick J. Leahy when he was chairman and when he was ranking member of the full committee.

Commissioner Dabney Friedrich has been a member of the Commission since 2006. She has previously served as associate counsel at the White House, counsel to Chairman Orrin Hatch of the Senate Committee on the Judiciary, and was an assistant U.S. attorney in the Southern District of California and the Eastern District of Virginia.

I will also say that Commissioner Howell and Commissioner Horowitz have also served as assistant U.S. attorneys in New York, in both the Eastern and the Southern District.

Commissioner Kelli Ferry has been an *ex-officio* member of the Commission since the year 2007, representing the Office of the Attorney General. She also serves as counselor to the assistant attorney general for the Criminal Division of the Department of Justice, and is an assistant U.S. attorney for the Eastern District of Virginia.

Commissioner Edward F. Reilly, Jr. was designated chair of the U.S. Parole Commission in 2001, and as such, serves as an *ex-officio* member of the Commission. He has served in various capacities in both the Kansas House of Representatives and Kansas Senate. He has served four presidential administrations in various capacities.

At this point, I will ask any of the commissioners if they have any additional comments that they want to make.

Yes. Commissioner Howell.

COMMISSIONER HOWELL: Good morning everybody. I just want to echo our chairman's warm welcome to everybody here. And I wanted and thought it would be appropriate to comment at the outset about how well-timed our symposium is after two—I think—very important reports that came out last month by the Justice Department and by the Pew Center about the state of and rate of incarceration in

this country. The Justice Department statistics reported that there are almost 2.3 million inmates incarcerated in the country, two-thirds of whom are in state or federal prison; one-third were held in local jails. This is an incarceration of 762 persons for 100,000 U.S. residents or one in every hundred adults.

The recent Pew Center Report, at the same time, compared U.S. incarceration rates to those around the world, and the U.S. turns out to be the global leader in incarceration ahead of China and Russia, in terms of both the real numbers and the rate of incarceration.

So as we move forward with this symposium, we didn't know those two reports were going to be coming out last month, but I think it shows that this has been an issue that the commissioners have been looking at. We've been planning the symposium for awhile, and this only demonstrates why it's very important that we study this issue. I also think it's important to look back at the basic principles of the Sentencing Reform Act that established the Commission and the federal guidelines.

Because interestingly the SRA (Sentencing Reform Act) articulated a very basic principle of finding alternatives to incarceration for appropriate offenders. I think it's good to remind ourselves of this sort of fundamental premise of the SRA. What's interesting is that in the interim period after the SRA was passed and the first Commission promulgated the guidelines, the Congress, in the Sense of the Senate that was included in the SRA, spoke directly to federal judges to provide some guidance to them on what the Congress was expecting from federal judges.

Section 239 in the Sentencing Reform Act stated that federal sentencing practice should ensure that scarce prison resources are available to house violent and serious criminal offenders by the increased use of restitution, community service, and other alternative sentences in cases of nonviolent and nonserious offenders. And then the section concludes by saying that it is the Sense of the Senate that preceding enactment of the sentencing guidelines, federal judges should consider, among other things, the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant has not been convicted of a crime of violence or otherwise serious offense. This was a directive that was also included in the statutory mandate to the Commission (28 U.S.C. § 994(j)), to consider alternative sentences to imprisonment for appropriate offenders.

So the SRA objective at the national level, at least, of imposing alternative sanctions to incarceration is difficult to reconcile, in my mind, with the current situation where the U.S. has the highest incarceration rate in the world. Given this high incarceration rate, I also found it interesting that the headline of the Justice Department's report was "Slower Growth in the Nation's Prisons and Jail Populations." So I looked closer at those statistics to figure out how that could be the headline, and I think that revealed a fairly interesting thing in the underlying statistics. Because the slowdown in the overall growth of the prison population in 2007 that gave the Justice Department the headline to its report was due to a decline in the growth rate of prisoners under state jurisdiction. By contrast, the federal incarceration rate increased during the same period. Now this was just one period. There are lots of caveats to the statistics, but that was the headline to the report. So one of the questions that we hope to explore, and I certainly hope to explore, from listening to the various experts who have taken their time to be here today, is what are the states doing differently to find alternatives to incarceration that may account for the slower growth in their inmate population?

I'm going to thank you all again for coming, and I look forward to hearing from many of you on ideas for moving forward at the federal level to ensure that one of the original and persisting objectives of the SRA, to impose sentences other than incarceration on appropriate defendants, is fulfilled.

Thank you.

CHAIR HINOJOSA: Thank you, Commissioner Howell. I think her comments really help to point out the differences between the state and the federal system in some areas. One of the areas where we are different, and I'm sure we'll discuss this during the next few days, is, for example, in the federal criminal system, the sentencing process really has no recordkeeping of all the misdemeanor cases, which are in the thousands. They get taken care of in the magistrate's court. There is no reporting system to those because they're not covered by the guidelines. So there is nothing to record the number of cases in the federal system that really receive little or no imprisonment time on a pretty regular basis, whereas the state systems probably report those on a pretty regular basis with regard to incarceration rates.

That's certainly something that we can study; how we can better keep the records with regard to cases that are not within the guidelines, but get sentenced on a daily basis in the federal criminal justice system.

Again, I want to thank you for your presence here. I will have some housekeeping announcements. Both the plenary sessions and the smaller group discussions will be on this floor. They should be clearly marked so that you will know where each one of the smaller group discussions are being held, depending on which one you're interested in attending. And we will have staff outside throughout the next two days.

I do want to thank our staff director, Judy Sheon, as well as all the staff members who have participated in making this possible. They've worked very hard, and we certainly appreciate the work that has been put in on their part to make this possible.

To facilitate the Commission's review of what is being presented during the next two days, we do ask that if you do stand up and ask a question, you would please identify yourself, because this is being recorded, and it would be helpful to have the proper identification of the questioner with regard to any questions that you might have.

You should have already received a CD of the materials related to the presentations here that will take place during this symposium. Those materials, along with a transcript, will be on our website, which is www.ussc.gov. That's a little plug for our website.

Again thank you for your presence for what has turned out to be this roundtable discussion, as you can tell by your sitting at the roundtables. And we thank you for your interest. You represent a varied group of individuals that are very involved in the criminal justice system, and I hope that our discussion can, therefore, go out to the public, who obviously has a very serious interest both at the state and federal level with regard to what happens in the sentencing process.

I hope you enjoy this symposium, and I hope you find it helpful. On behalf of the Commission again, thank you for your presence.

At this point, we will ask the individuals who are participating in the first plenary session, if they would please come up here.

