

NASC 2000 – Structured Sentencing in a New Millennium

Despite stormy weather just prior to the conference that complicated some travel plans, ninety commission members, staff, academics, researchers and policy experts attended the 2000 NASC Conference held on August 6-8 in Pittsburgh Pennsylvania. The conference opened with welcoming remarks from the Chief Justice of Pennsylvania as well as the Chair and Vice Chair of the host commission, the Pennsylvania Commission on Sentencing. Three plenary sessions, twelve breakout sessions, discussion groups, a dinner cruise and *NASC Jeopardy* rounded out the agenda.

Monday's *Keynote Address*, given by Judge Richard P. Conaboy, former Chair of the Pennsylvania and United States Sentencing Commissions, focused on the benefits and limitations of sentencing guidelines. Judge Conaboy's message discussed the importance of sentencing in the criminal justice process and set a wonderful tone for the conference. Judge Thomas Ross, a Superior Court Judge in North Carolina and Director of the North Carolina Administrative Office of the Courts, provided a *Luncheon Address* that reminded participants of the complexity of criminal justice decision-making and the many factors and players impacting on the sentencing process. He challenged the audience to address systemic issues when developing structured sentencing policies. Tuesday's *Keynote Address*, "Crime and Punishment in the U.S.: Some Recent Trends," was presented by Professor Alfred Blumstein, the J. Erik Jonsson University Professor at Carnegie Mellon University. Through the disaggregating of crime and punishment rates, Professor Blumstein illustrated how research can and should be used to inform criminal justice policy-making. Transcripts of these three presentations are being prepared and will be distributed to all conference attendees and NASC members.

The breakout sessions were organized into four tracks: Fundamentals; Emerging Issues; Information Technology & Research; and a Pennsylvania Guideline Training Session. Listed below are the specific sessions and the corresponding panel chair or presenter to be contacted for more detailed information on a session.

Fundamentals

Primary Guideline Factors	Barbara Tombs (KS)	btombs@cjnetworks.com
Guideline Recommendations	Cynthia Kempinen (PA)	cak16@psu.edu
Resources for New Commissions	Kim Hunt (DC)	khunt@dcacs.com

Emerging Issues

Juvenile Guidelines & Dispositions	Fritz Rauschenberg (OH)	rauschef@sconet.state.oh.us
Guidelines for Community Supervision	Michael Connelly (MD)	mconnelly@crim.umd.edu
Politics, the Media, and Sentencing Data	Richard Kern (VA)	rkern@vcsc.state.va.us

Information Technology & Research

Data Management & Integration	Debra Dailey (MN)	deb.dailey@state.mn.us
Correctional Projections & Forecasting	Susan Katzenelson (NC)	susank@mail-hub.aoc.state.nc.us
Using Research to Refine Guidelines	Kevin Blackwell (US)	kblack@ussc.gov

Guideline Training Session

PA Sentencing Guidelines Training	Carrie Peters (PA)	carriep@psu.edu
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The highlight of the conference social activities was a Monday evening Dinner Cruise on a chartered riverboat. The cruise of Pittsburgh's three rivers began with a reception sponsored by the Duquesne University Law School, followed by a fabulous dinner buffet. Those on-board during the beautiful summer evening could roam the observation decks to get great views of the city and surrounding area, including river-views of the State Correctional Institute-Pittsburgh and the Allegheny County Jail! The riverboat was also the venue for the first-ever game of *NASC Jeopardy*. Thanks to the generosity of many of the state commissions, NASC members and Pennsylvania schools and agencies, each contestant correctly answering a question won a prize. Categories included three of the conference training tracks, NASC Trivia, and Pennsylvania Potpourri. Even those who weren't contestants received prizes. Thanks to everyone who contributed and participated.

PLENARY SESSION - BENEFITS & LIMITATIONS OF SENTENCING GUIDELINES

Judge Richard P. Conaboy, Senior Judge

United States District Court for the Middle District of Pennsylvania

Former Chair, United States Sentencing Commission (1994-1998)

Former Chair, Pennsylvania Commission on Sentencing (1979-1982)

Sentencing has always been of deep interest to me. And as I look across the room here today, I recognize a lot of people that I've known over the years. Justice Flaherty -- Justice Flaherty and I were young judges together many, many moons ago. He now has a second family. He was telling me today he has a child 7 years old, and I almost fell over when he told me that.

I have grandchildren older than his children. My wife and I, by the way, have 48 grandchildren. So when I look out at a crowd this size, it really just looks a lot like breakfast in my home county.

And as Frank Dermody knows, Lackawanna County is not that big. So when you have 48 -- by the way, we have two of our families up in Chester. I was determined to get somebody there. My wife is from Jessop. I'm from a little town called Minooka. Just a little very important history for you.

Justice Flaherty gave you some history about Pennsylvania, and I'm giving you a little history about Lackawanna County. Frank comes from the home of the Democratic Party of Lackawanna County, from Chester, Pennsylvania.

We really thought it was the home of Minooka, Pennsylvania; but as I grew older, I realized it was up in Chester. We had a great leader called Mike Walter, and it was through Mike Walter that I got started in politics and got to know and work with the political leaders throughout this Commonwealth.

I was just discussing with Senator Piccola some of the great leaders in Dauphin County that I've been privileged to know over the years. I was the last person appointed to the Bench by Governor Lawrence; and when I put it that way, it sounds as though that was what destroyed his career. I really don't mean it that way.

I was appointed a few days, literally, before he went out of office. And he was a great friend of mine, and he always wanted to see me go on the bench; and I was very happy to be one of his appointees.

When I heard Justice Flaherty talk about how beautiful Pennsylvania is, it reminded me that yesterday -- and then the Senator talked about the storms, I was supposed to fly out here yesterday and fly back home tonight; but yesterday all the flights were cancelled out of Scranton.

And they said to me, We probably could get you to Pittsburgh some time very late tonight. So my wife, who wasn't going to be able to come but did come with me, we drove out yesterday.

Terrible drive from Scranton to Carlisle. The fog was just unreal.

It was almost as if somebody lifted a screen once we got out of Carlisle and it was a nice drive out here. So I hope the weather will remain pretty decent while you're here in the next couple of days.

But I'm very happy to be with you. As I said, the town of Jessop, I was so happy to see Frank Dermody because his uncle was our first probation officer, if you can imagine this, back in about 1965. And prior to that, we had none in Lackawanna County.

And he was a former member of the Pennsylvania State Police. When he retired, we hired him as a probation officer. And for years, he was the only one we had in Lackawanna County.

So things have changed and we -- in our county, we began to send

people out. We're renowned for reverse immigration in Lackawanna County. We send people like Frank Dermody to do great things around the rest of the world.

So it was a pleasure, if nothing else, to come here and know that I would be seeing Frank, who is the Chairman of the Sentencing Commission, and know that he too is from our county.

We have a lot of Irish characters in my town that I come from, and I tell stories about them. If you don't mind, that might make -- story this morning because I always think -- we have a plaque in our house in our kitchen where we do, as I said, we sometimes have very large breakfasts.

My wife and I always insisted as our twelve kids were growing up that we always had breakfast and dinner together, and I think that was a great help in raising the family.

It was a terrible thing on the stomach. And I remember one time a doctor said to me, Dick -- I was complaining about my stomach, which I've complained about since I was a child. He said, You have dinner with the whole family? And I said, Yes, I do. His name was Lou Murphy.

Well, he said, that's not a very good idea for digestion, especially as they get older. Of course, I knew that. I said, Well, what can you do about it? And he said, What you should do is you should go to the living room with your wife, have her put the dinner out and have a glass of red wine and maybe even have two glasses, and then go out and have dinner.

I said, Well, that sounds good, Lou; but if I go in the living room and have a glass of wine, when I come out, there will be no dinner left for me. I'm lucky to get a seat at the table as it is right now.

We have a lot of Irish people who, as I said, some who are characters and some who are not very responsible people like we talk about in sentencing and probation; and some of them even drink. Most Irishmen don't drink hardly at all anymore, as I understand.

We had a guy named Jack Noland who lived in my town, and I tell a lot of stories about him. One is I'm reminded of it when I see crowds like you here seated together for long periods of time.

He drank a little bit more than he should, and his poor wife had many difficult times with him. And as luck would have it, he was out of a job very often; and, finally, he got a job in a brewery of all places.

And his job in the brewery was stirring a vat of beer as they began to brew it. In it those days, the vats were very large -- and as a result, about 45,000 gallons of boiling, hot beer. And as you might gather, he fell in one day and drowned.

And it came to the foreman's duties to go and tell his wife what happened. And he wasn't happy about it; but he knocked on the front door of the Doland home and Mrs. Doland answered the door and he said, Sara Ann, he said, I have some terrible news for you. He said, Jack was working today at his job and he fell in the vat of boiling beer and the poor fellow drowned.

She said, Oh, my God. That poor guy; he probably never had a chance. You know, she said, he never learned to swim; so he must have had an awful death. The foreman said, Well, I'm not sure about that, he said, he did get out three times to go to the men's room.

I mention that to you in case you want to leave. Doland was dying and his wife eventually decided she should call a priest -- I was hoping there would be a priest here and a doctor maybe to hear this story.

But she decided she should call the priest and the doctor because it didn't look as though he'd make it through the night. And Jack was in his bed and the priest sat on one side of the bed and the doctor sat on the

other.

The priest asked him if there was anything he'd like to do before he died because, he said, Jack, you're in very bad condition and you may want to get something straightened out before you pass. He said, Yes, I'd like to send a letter to my mother in Ireland.

And he said, There is a thousand dollars in my pants pocket hanging there on the bedpost; and I'd like to send that to her. And when the doctor heard the thousand dollars, his ears perked up and he said, Jack, before you mail that out to your mother, I'm going to mention to you -- it's a terrible time, I realize -- but, you know, I've been taking care of you and your family for a long time and you haven't paid me in years.

And Doland said to him, Well, what do I owe, Doctor? I might as well go safely and pay all my bills. And the doctor said, It happens to be \$500. So he said to the priest, he said, Father, take \$500 and give it to the doctor and I'll be straight with him.

The priest did that and he said, Jack, I hate to mention it at this time; but, you know, you haven't paid your dues at church. And I don't know if -- in fact, you haven't been to church. And Doland said to him, Well, how much do I owe you, Father, to get straightened up with the church? I sure want to go to the Great Beyond not owing anything to the church.

And he said, Well, it happens to be you owe us \$500 also. And he said, Well, all right, Father, he said, Fine. Take the other \$500. That's the end of my money, but at least I'm straightened out with you. And the priest said to him, Well, that's very good to have that done, Jack.

He said, By the way, do you still want to write the letter? He said, Oh, I indeed do now, Father. He said, more now than ever; but it will be very short and simple. He said, Just say, Dear Mother, you'll finally be proud of your dear son, Jack. He died just like Christ: Between two thieves.

Well, I can tell you a lot more of those. I would rather do that, actually; but I -- we have a sign in our kitchen that says the most wasted day is one in which you haven't laughed. And we believe that. So I know what we're about here is serious business; and I wanted to make sure you laughed before we thought of it -- or before we get into the serious matters.

My talk this morning is supposed to be the keynote speech; and as a result, it's probably a little bit longer than I normally like to give. So if you feel like yawning or stretching, I'll understand.

But I have some what I think are important matters to talk to you about, and especially matters that I think you should be thinking about in these days as you talk about this enormous human problem of sentencing other human beings.

And before I begin my own remarks, I want to bring to your attention the remarks or the positions of about five other people who had different ways that I feel you should think about during this conference.

First, I want to talk to you about some remarks of Judge Joseph Tauro. And Judge Tauro is a district judge up in the district of Massachusetts, and he published some remarks in the 1999 edition of the Handbook for Judges. And he said this about himself and about sentencing of judges:

He said, I think at least one impression gained by me from my years of experience as a judge would go unchallenged by most of my colleagues on the bench; and that is that sentencing is the toughest of many responsibilities faced by a federal judge.

Our sentencing process is imperfect, he said, and in inevitably so.

It is, after all, administered by men and women wearing black robes who, despite their best efforts and intentions, are nothing more or less than mere mortals.

Judges do their best, but there can be no doubt that our inherent imperfection has caused some irreparable injustice over the years; and that is tragic. But more tragic, he said, would be a futuristic, computer-like sentencing system whose focus would be on the nature of the crime rather than on a personalized analysis of the man or woman facing judgment. And that's Judge Tauro's quote that I wanted to bring to your attention this morning.

The second one is some remarks of Judge Marvin Frankel, who is also a federal district judge in the Southern District of New York; and he was mentioned prominently in your program and was one of the leaders in the sentencing guidelines concepts some years ago.

He was the most influential. Of all the criticisms of the judicial sentencing discretion was probably that of Judge Marvin Frankel. He in 1972 organized a survey that they took in the Southern District of New York, and that was the basis of a lot of his concern about sentencing.

I always thought it was a very, very incomplete and less than thorough survey. I haven't studied it in years; but, nonetheless, it shocked Judge Frankel, as it would anybody. His book, *Criminal Sentences: Law Without Order*, published the following year would therefore confer upon him the title of the father of the sentencing reform, or the father of guideline sentencing in the United States.

And it was during his time as a United States District Judge in what we always considered as one of the outstanding trial courts in this land, the Southern District of New York, and with the full authority of that office and in passing sentences himself, he published his rhetorically powerful indictment of the sentencing authority of federal judges, powers that he described as almost wholly unchecked and sweeping.

And he found those powers, he said, terrifying and intolerable for a society that professes devotion to the rule of law. He was struck with how little direction there was in sentencing, among other things.

And one of the things I wanted to talk to you about, he proposed a commission that would require what he called prestige and credibility. He said it would be necessary to find for that commission people of stature, competence, devotion, and eloquence.

Those people he thought should include lawyers, judges, penologists, and criminologists. And he said, finally, they should also include sociologists; psychologists; business people; artists; and lastly, for emphasis, he said the commission should contain former or present prison inmates.

The third set of comments that I wanted to bring to your attention are the comments of Judge Jose Cabranes, who also happens to be a federal judge. He sits on the Second Circuit Court of Appeals. And with his wife, Professor Kate Stith of Columbia, they also wrote a book on sentencing guidelines particularly.

In that book in which he is very critical of the concept of disparity, they say this: In our view, the fixation on reducing sentencing disparity that results from the exercise of judicial discretion has been a mistake of tragic proportions.

It is not, they say, that the ideal of equal treatment is unworthy; rather, this ideal cannot be, and should not be, pursued through complex, mandatory sentencing guidelines.

Now, these people, a lot of them are talking about the federal

sentencing guidelines; but it applies to all of us in all of the states where we have guidelines. They said, We reject the premise of sentencing reformers that uniform treatment means equal treatment and thus that judicial discretion, insofar as it undermines uniformity, necessarily denies justice.

Uniform treatment, they said, ought to be one objective of sentencing, to be sure, but not the sole or overriding or only objective. A just sentence, they go on to say, must also be a reasoned sentence and a proportional sentence imposed through procedures that comport with basic understandings of fairness and due process of law in a constitutional scheme of checks and balances.

That's a quote directly from their book. Fear of Judging is the name of the book that they wrote and published in 1998.

Four comments that I want to talk to you you might think are a little bit strange for a sentencing conference; but it's of a doctor that I have quoted and been impressed with over the years.

The man's name is Dr. Frederick Wertham, W-E-R-T-H-A-M. He was a renowned psychiatrist and a social commentator over many, many years; and he talked a lot about communication and violence.

And he said this: To discuss violence without referring to the mass media is as impossible as to discuss modern mass media without referring to violence. This is the important sentence: He said, If somebody had said a generation ago that a school to teach the art and uses of violence will be established in the United States, no one would have believed him.

He would have been told that those whose mandate is the mental welfare of children, the parents and the professionals of this country, would prevent such a school from ever being established. And yet, he said, this education for violence is precisely what has happened and is still happening in the United States of America.

We teach violence to young people -- listen to that -- we teach violence to young people to an extent that has never been known before in history. Communication, he said, is the opposite of violence. Where communication ends, violence begins.

Why then, he questions, is there so much violence or threat of violence in the world today when the technical means of communication has been so perfected?

Part of the answer he says lies in the discrepancy between what is actually done with these means of communication and what could be done. He said, We have the greatest opportunity for communication that any civilization has ever had.

We can reach millions of people in the remotest places with the greatest of speeds, but we do not take or make constructive use of that ability. That was out of one of his books called, A Sign for Cain.

By the way, last week some of you I'm sure saw in the newspaper that after 30 years that American Medical Association, the American Psychological Association, and the American Psychiatric Association finally conclusively determined that there's a direct connection between the violence committed by young people and what they watch on television.

Isn't that remarkable? Isn't that remarkable that we have to wait 30 years? Dr. Wertham said that in 1966 by the way of that quote that I gave you. I guess it's probably, if anything, gotten worse.

Finally, something I think you might enjoy and I think it's very worthy of looking at is a fifth thing that I thought would be interesting to talk a little bit about today.

And this comes from a transcript of a sentencing that was handed

down in 1881 -- not 1981, 1881 by the notorious Judge Roy Bean of Texas who was renowned for tough sentences. And he worked in a time when there were no sentencing guidelines.

And the following is a transcript of an 1881 sentencing by that famous judge, Judge Roy Bean, clearly unfettered by the Federal Sentencing Guidelines. This is the quote: He says, Jose Manuel Miguel Xavier Gonzales, in a few short weeks, it will be spring -- now, you have to picture Mr. Gonzales standing in front of him.

He said, The snows of winter will flow away; the ice will vanish; the air will become soft and balmy. In short, Jose Manuel Miguel Xavier Gonzales, the annual miracle of the years will awaken and come to pass; but you won't be there.

The rivulet will run its soaring course to the sea, the timid desert flowers will put forth their tender shoots, the glorious valleys of this imperial domain will blossom as the rose, and still you will not be here to see it.

From every treetop some wild woods songster will carol his mating song, butterflies will sport in the sunshine, the gentle breeze will tease the tassels of the wild grasses, and all nature, Jose Manuel Miguel Xavier Gonzales, will be glad; but you will not be there to enjoy it.

Because I command today the sheriff of this county to lead you away to some remote spot, swing you by the neck from a knotting bough of some sturdy oak, and let you hang until dead.

And Jose Manuel Miguel Xavier Gonzales, I further command that such officer retire quickly from your dangling corpse so that vultures may descend from the heavens upon your filthy body until nothing remains but bare, bleached bones of a cold-blooded, blood-thirsty, throat-cutting, murdering son-of-a-bitch.

That's what you call a tough sentence. I often think that somebody must think of those sentences when they pass guidelines and they pass laws in making sentences.

One other little objective thing that I might mention to you; and that is, just recently I was up in the Poconos area where they do a lot of skiing in the wintertime. And some of the signs are still up there.

And at one of the lodges there's a big sign. It's as big as that blue board in the back of the room. And it says, Warning, every skier must have a pass -- one of those things you clip on your zipper. Violators be punished severely, \$5,000 or 5 years in jail.

Can you imagine that? I know when we passed those laws or when we enforce them as judges we think they're proper and right; but it's hard for me to believe that you'd have to send some poor 14-year-old kid -- five years in jail. I can't imagine that would be a fair sentence. And, yet, if that law is followed properly, that's exactly what will happen.

Well, these are some comments, rather, on what I call the conduct of human beings and particularly on the sentencing process that I want to try to tie together in my remarks to you this morning as we open this great conference.

By the way, I'm going to add my congratulations to the Chairman, particularly to Frank Dermody and the Senator from the Sentencing Commission of Pennsylvania for organizing and putting together this conference and welcoming you all to Pittsburgh.

It's a great thing that we do here; and I'm happy to do it, even though I had to drive five and a half hours and drive back again at my age. And I'm happy to be with you to help you think about what we should be doing

at this time.

I remember as if it were yesterday my first sentencing. I had only been on the Bench about a week when I was assigned to take a plea and to impose a sentence on a defendant who was to admit, I was told, to a series of very serious burglaries in Lackawanna County.

In a panic, I asked our president judge that morning, a man who was a distinguished and exceptionally fine judge, wonderful human being, how I should handle the case. I had never sentenced a person in my life, and I'm only a judge at that time about a week.

In his own gruff way, Judge Coleman said to me, Dick, just go in there -- meaning in to his courtroom that I was going to use -- go in there and listen very carefully to everything that will be said and something in your stomach, not your brain, will tell you what to do.

Well, needless to say, that was shocking information for me and that was -- that was about the broadest guideline that I was ever given. In those days, you might know -- well, if some of you are that old to remember, there were no probation officers, much less presentencing reports, and the defendant had no counsel representing him. He was standing there alone with the prosecutors and the police officers who were prosecuting him.

After taking the plea -- and, by the way, there was no required colloquy or discussion; you just listened to everybody in the courtroom. Everybody was standing, nobody took the witness stand, and the clerk would simply reach literally over his shoulder and hand you what we call a rap sheet. And that was the extent of your written information. And you'd sentence him on the spot.

The law at that time, of course, provided only for maximum penalties in Pennsylvania; and we imposed at that time indeterminate minimum to maximum sentences. Strangely, we did act viscerally and there was, indeed, a stomach reaction that triggered your brain into formulating what you seemed and what you hoped would be a proper sentence.

And, by the way, there were no appeals; and so your decision was very, very final. Today, with defense counsel and well-trained and dedicated probation officers, the judges, as you know, are much more informed and much better prepared for sentencing and we hope are imposing more fair and just sentences.

That experience stayed with me, however; and I began at that time a lifelong inquiry into the sentencing process. I never liked the criminal side of my court, and I've been stuck in it for 40 years. I can't get myself out of it.

It's voluntary, because you can do some civil work if you'd like to; and I do lots of civil work. But there's something that draws you to the criminal side. I guess it's the human side of the court.

I felt then as I do now that judges need continual guidance and continual training in sentencing. And that should be one of the most fundamental things that your commission could do.

I know there are not many judges here today. Perhaps there should be more, and perhaps it should be all judges here. Because of your own vast experiences, I won't bore you with the details of what we did in Pennsylvania; but let me just tell you a few things:

We formed a group whose main purpose -- and this was a formation that was done by the newly-formed group of state trial judges and the Pennsylvania Bar Association with the help of the Supreme Court and the governor.

And we formed a group whose main purposes were to establish better

coordination, cooperation, and communication among all the agencies in the criminal justice system, because at that time there was no communication at all among the various agencies in Pennsylvania.

And we also were formed to prevent what we all saw was a threatened legislatively-imposed sentence of mandatory minimum sentencing. People who were

in our legislature at the time were concerned deeply about sentencing and they were worried that there was no uniform system in Pennsylvania, and there was a lot of pressure on them to pass a mandatory minimum sentencing law. And we were hopeful of staving that off and finding a better way of sentencing.

So we held four major conferences, one of them right in here in Pittsburgh, one in each corner of the state. And we asked the participants at those conferences to choose between four types of sentencing: Determinate sentencing, indeterminate sentencing, mandatory sentencing, and sentencing guidelines.

We had about 400 people. Everybody who was involved in the system -- legislators; police; prosecutors; defense counsel; probation officers; many, many inmates; leaders of the corrections system -- and we asked them those questions to determine what of those were best for Pennsylvania. And we had what we thought at that time were the best leading commentators on the various kinds of sentencing throughout the country.

After a year and a half of those conferences, the choice was almost unanimous for a sentencing guideline system. And, eventually, that group, with the help of both the Democratic and Republican legislators at the time, passed a new sentencing law in Pennsylvania that included an 11-member sentencing commission whose job it was to write and establish sentencing guidelines to be used by all Pennsylvania judges.

The same commission that exists today that Representative Dermody is chairman of I happened to be the first chairman, and that was in 1978. And in 1979 I was appointed to the federal bench and had to leave that job, and Judge Anthony Serrigno took over to succeed me as chairman.

By then we had hired our friend, John Kramer, who is with us today.

By the way, we looked all over the country, interviewed everyone that we thought had the ability to lead a sentencing commission.

And myself and a number of others were very impressed with John Kramer and wanted to get somebody from this state, and we hired him to be our first executive director; and he remained with that commission all through the years.

I finally persuaded him to come to Washington with me a few years ago. And we tried our best down in Washington under such trying conditions to make the United States Sentencing Commission a little bit better.

Essentially, here in Pennsylvania a system was adopted that as you probably know calls for a presumptive sentence in each case and allows a judge to increase or decrease that sentence within limits so long as the judge's reasons for doing so are put on the record.

Comparatively speaking, Pennsylvania's system is a simple system; but it's a very good system. And more important than anything else, it's working well in this state.

As you know, this process at that time was happening all across the United States in the '70s -- late '70s and into the 1980s. And many of the states, many of them represented by you here today, have adopted specific methods of sentencing.

Over that same ten-year period of time, there was the same concern about alleged disparity in sentencing announced by the federal government and

the United States Congress. Many congressmen and many senators spent a long time, many years, studying ways to make the sentencing process in the federal courts more accountable, more orderly, and supposedly more fair.

Strangely, over that period of time there were very few judges who were invited in or became involved in the process of discussing how sentencing could be better. I always look back on that and regret that more judges didn't get involved with the legislators and others to help get a more balanced approach to what was done on the federal system.

Eventually, as you know, the United States Sentencing Commission was formed and sentencing guidelines were adopted and are now in mandatory use in every federal court in the United States.

An additional and very dramatic aspect on the federal sentencing system was the abolition of parole, something that was a major change in sentencing on the federal system. And that has been abolished and there is no longer federal parole.

This, of course, is a very brief and a concise history of the sentencing process in the United States in the last 20 years; but it truly does underscore what you are all about at this convention.

As I've stated several times, I have been deeply involved in this process; but I can tell you honestly and I can say to you very straightforwardly that the more I study and the more I learn, the less I seem to know about this troubling process of what we should do about and what we should do to those who do not conform to what we all think are the normal rules of society.

Equally troubling is how do we establish a process as well as establishing sentences -- how do we establish the process of punishing those people that will hopefully result in more just sentences and more peaceful communities throughout the nation.

Because we must remember that that's what we're all about: Trying to protect our cities and our communities and victims of crime as well as those who commit crime.

I truly do want to commend all of you for organizing this national conference and for organizing this national group and for working so hard in all of your individual states to try to learn about the sentencing process and to visit and to communicate with each other. I wish there were a hundred more of you here so that we can all learn how to do this job a little bit better.

I tell you, this is not an easy task and it's not one that will probably ever be concluded. Since the creation of man, the task of handling and punishing those who violate society's rules has bedeviled each and every generation.

Typical of our democratic way of life here in the United States, we continue to try different approaches over and over again, none of which seems to fully satisfy; and mostly and often our efforts bring more criticism than they do praise.

But the secret is -- and this is what you must remember: The secret is we must not be discouraged and we must continue to challenge and to hopefully improve each and every method and each and every system that we develop and come up with.

It's very easy for a person who reaches my age to look at your agenda and to say, we've been discussing these same methods and these same things over and over again. And, indeed, we have. But there still are disagreements. There still are areas to be improved and still problems to be solved.

We must remember that we cannot simply punish our way out of many of our problems and we cannot continue to simply build more prisons and send more people to jail. We have more people in jail in America today than any other country in the nation. That's a disgrace, for those people and for us.

And there is obviously a need for change when we spend more money in almost every state and on the federal level on building prisons than we do on education and training. There is simply something out of balance there, and it's only going to change if you and I keep at it and keep talking about it.

I urge you then not to tire in your efforts. Keep the communication. Keep the cooperation going. That's what's going to make a change. And fear not, fear not to try new approaches to these difficult, new problems. It's worth trying to change.

Now, you may wonder, I hope and I think, a little bit about these five items that I've talked to you about before and how they fit into your work here in Pittsburgh. Let me refer to each of these items and try to relate them to my keynote remarks and to your work here in the next few days.

I would say to you -- and I hope you agree with me -- that you cannot talk about sentencing without talking about or thinking about judges. Traditionally in our country, the task of sentencing has been commended to judges.

Without sounding parochial, I hope, I'm convinced that judges generally do a thorough, they do a fair and appropriate job in the most difficult challenges that we have to face. And in my judgment, the judiciary is where the sentencing process belongs; and I hope it will always stay there.

No judge that I know of enjoys the job of sentencing, but no judge that I know of takes it lightly. And as we try to develop overall and all-inclusive rules or methods of sentencing, we should remember that the same -- that some one individual judge must and should make the final decision in each case no matter how many rules we have.

Thus those remarks that I read to you of Judge Tauro's are important, and I think they should be remembered by you in your deliberations today and in the next few days. And partly I requote what he said as follows:

Judges do their best, but there can be no doubt that our inherent imperfection has caused some irreparable injustice over the years; and that's tragic. But more tragic would be a futuristic, computer-like sentencing system whose focus would be on the nature of the crime rather than on a personalized analysis of the man or woman facing judgment.

Among the important items then that I strongly feel that you should be thinking about is the necessity of continual and expanded judicial education in this whole field of sentencing.

The United States Sentencing Commission, as many of you know, has a wonderful division for training judges. I always thought it was our strongest division. And I went across this nation with that division talking to judges and urging judges to take more interest and get more education about sentencing and urging them to take on their responsibility -- not to be worried about their discretion, but to take on the responsibility of working with the hardest system and trying to make the best sentences.

And I'm sure that various states among you have good divisions for training. This training must be deep and it must be strengthened so that judges will have a fuller understanding of sentencing processes as well as sentencing procedures.

You should consider, I think, in your deliberations whether judges at sentencing, for instance, should have more options rather than narrow choices as you design guidelines systems.

Reference to the contributions of Judge Frankel are uniquely important, the ones that I talked to you about. His concerns were incorporated, as I told you, in his 1973 book. And those concerns were that judicial power was almost wholly unchecked and sweeping and terrifying and intolerable for a society that professes devotion to the rule of law.

He was struck, as I and many other judges, that when you first come on the bench there are no directions and no guidelines to help you understand what sentencing is all about.

He was struck, as I and many other judges were at the time, with the fact that we had no similar starting point when each of us was imposing a sentence on a similar defendant for a similar offense.

Most of us at that time when we were thinking of the guidelines had thought that was what they should incorporate: A basic, similar starting point so that we would all start at the same point and then in the individual cases decide whether there should be an increase or a decrease in that sentence depending on the circumstances of that individual case.

Today, to be sure, in hindsight, his concerns over disparity and other items -- there is concern that his concerns over disparity and other items were not well researched or documented; and many people have challenged those.

But Judge Frankel's vision of a guideline system did, in fact, activate much of the concern in Congress and eventually led to the Federal Sentencing Guideline System.

Certainly his concept of a sentencing commission with broad experience in all fields of human conduct is one of the constant needs of review and study and one of the things that you people should be thinking about, the very makeup of your commissions.

In the initial Federal Guideline legislative proposals -- you might know this -- initially back in the early proposals of legislation, the Federal Sentencing Commission was to be appointed by the Judicial Conference of the United States. That's the group that appoints all committees which make the rules applied in our federal courts in this nation.

But time and political compromise changed all that; and, eventually, the law required that all appointments to the commission would be made by the president of the United States with the consent of the United States Senate.

And both the president and the United States Senate worked very hard on making these appointments, but it's a very complicated system as a result of so many people being involved in it.

There are seven members of the Federal Commission, and the law now requires that at least three must be federal judges. As a matter of fact, at the present time, the new commission is composed of five federal judges, one lawyer, and one professor.

The terms of the members of the Federal Commission are staggered. And I think that reality, that fact, and the problem it creates especially when vacancies are not filled, together with the natural political considerations and pressures that surround such a system, I think that makes for a very sound argument that the initial method of appointment of the commissioners -- that is, by the Judicial Conference of the United States -- would make a sounder commission.

Certainly if the commissioners were appointed by the Judicial

Conference it would be more isolated from political and popular pressures which often parade under the banner of being tough on crime.

And it would eliminate the necessity of a president and other members of the Legislature from trying their best to find people who will take and accept these positions and try to be as independent as possible at the same time realizing that their terms may be very short and that, in fact, there will be long periods of time when there will be no commissioners serving.

When I was appointed, there were four of us appointed at the same time; and after two and a half years, there was finally a seven-member commission. Almost two years -- or over two years prior to that there were not enough members to pass any laws.

I was only chairman about a year and a half and I lost three of the commissioners to their terms expiring and to somebody taking a different job.

And suddenly for 75 percent of my term, I had four members. And the law requires to pass anything of substance four votes, but you know to get a unanimous vote is almost impossible.

So we spent a good deal of our time just keeping things -- the lid on matters and trying to do our best to train people around the country, a very important job. But we missed the opportunity to get on some of the other things that might have made the sentencing process better.

So I propose you think of that and see whether or not there are not better methods of establishing the sentencing commissions. And so you can see that the remarks that I bring to your attention of Judge Frankel are important and should be considered by you.

The Federal Guidelines, as all of you know, were not immediately and fondly embraced. And that's a nice way to put it. Over 200 judges declared them unconstitutional saying, among other things, that it was an illegal delegation of powers transferring the sentencing power to some other parts of the government.

That eventually worked its way through the courts, and the guidelines were found to be constitutional. And they are now in place, and the criticism and comment both constructive and otherwise still continues.

Judge Cabranes and his wife, Professor Stith, who I mentioned to you a minute ago, incorporated much of that criticism in their book called Fear of Judging where, as I pointed out, they concluded that, In our view, the fixation on reducing sentencing disparity that results from the exercise of judicial discretion has been a mistake of tragic proportions.

We reject the premise of sentencing reformers that uniform treatment means equal treatment and that thus judicial discretion insofar as it undermines uniformity necessarily denies justice. Uniform treatment ought to be only one objective of sentencing, they say, but not the sole or overriding objective.

Many people, including members of the United States Sentencing Commission and its staff itself, have joined in or tried to understand this criticism and tried to make adjustments to make the system work better.

There have been over 500 amendments to the Federal Sentencing Guideline System. That tells us something in itself. The Federal District and Appellate Courts have written hundreds of opinions because appeal is allowed under this system, and there have been many opinions written out to assure that the use of the system itself results in fair and proper sentences.

And the Supreme Court of the United States in the recent Koon decision has restated the age-old responsibility of the sentencing court to fashion an appropriate sentence in each and every case, even while using the

Federal Guidelines sentencing process.

Here again, what I'm saying to you is there should be much study in these cases and commentaries such as those of Professor Stith and Judge Cabranes and others that I'm talking about.

And that's necessary if we are to make the federal system and each of your systems in the various states ones that we can be proud of and systems we can work with, with a feeling of confidence content that we are neither punishing, nor underpunishing solely for the purpose of uniformity or conformity.

And I bring to you this morning the thoughts of Dr. Wertham on violence because I say to you, my good friends, no matter how we phrase it, punishing as in sentencing has a violence component. And we know even Biblically that violence begets violence.

And so we must strive at both the federal and state levels as the law by the way it requires us to do, to see that our sentences and sentencing procedures cannot even be considered or cannot even be perceived as being too violent.

Fairness and compassion and just values must always be the hallmark of sentencing as we look for an even brighter future for this country and all of our communities. And when we talk about the future, we, of course, mean our young citizens and our children.

And Dr. Wertham I say to you in my opinion is exactly right when he says, If somebody had said a generation ago that a school to teach the art and uses of violence would be established in this country, no one would have believed him.

And yet this education for violence is precisely what has happened and is still happening on television and in the communication systems every day and every hour of the week.

We teach violence to young people, he says, to an extent that has never been known before in history. So can we blame them? Can we blame young people that become violent when we spend our time teaching them how to be violent?

And Dr. Wertham, of course, as you know, is talking about communication. He's talking about television and he's talking about the entertainment industry in general. And we shouldn't walk away from that, we shouldn't be afraid to talk about it, and we should encourage the people in those industries to consider that and to think about.

In all that we do, I urge you that we should strive to lessen the culture of violence that exists today, especially in these discrete areas of society. Especially for our children we must establish and reestablish strong family support and guidance.

We must establish and support strong education and training which in turn are based upon strong personal values, strong and proper conduct, and strong and good example so that when our children are confronted with hard times or when they're confronted with disappointment or frustration or despondency they will have a foundation to reject drugs and violence and a life of crime before they become subject to the system and the sentencing process.

We, as you know, in almost all of the sentencing processes have substantially eliminated many items like education, family background, and work history and so forth from consideration in most of the procedures.

And I earnestly suggest that we badly and urgently need to reconsider those decisions. And this is especially compelling when we deal with very young people and juveniles. And I know all of the systems are now

considering how to deal with juveniles.

And I urge you all to think, don't we need to look at their backgrounds and their family and their education and their training and who they are and what they are? And I know that there are deep concerns when you try to do that, that perhaps inherent in that is a way of being unfair to some people.

But I tell you we must make this country better, we must make it less violent, and we must teach our young people to be less violent and to expect us to be less violent or things are going to get worse. And I say to you that if we miss that point all of our other work is in vain.

And finally, I mentioned the sentence imposed on Jose Manuel Miguel Xaviar Gonzales to remind us that even if such a sentence were ever to be considered proper or appropriate it hopefully would not be rendered with such gratuitous meanness and such a lack of human decency.

Even if we look at it for its human, I hope we can all learn from its excessiveness. So, mercifully, I will close now. I usually don't go this long, believe me. With so many kids and a big family, I don't get a chance to do this. You're the quietest group that I've talked to since supper.

So, finally, then -- I was going to say members of the jury -- let me say to you as strongly as I can that I urge you to continue your good work and ask you to urge others and, particularly, I ask you to urge judges, by the way, to join. Not easy to get judges out to meetings, and sometimes we feel we don't belong there.

But I urge you to encourage judges to join in your work -- can and as often as you can and to organize more and more effective ways of teaching judges all about this process of sentencing.

A reference to sports might better convey my thoughts on all your endeavors. I often think that while your work and our work in sentencing process might be compared to pole vaulting, because you can -- you continue to look for and to seek new heights, it really is more, I think, like long distance running because you must learn to pace yourselves and you must never, ever stop running and moving ahead and you must know that the running continues no matter how much you accomplish.

But I say to you, my friends, we are fighting the good fight. And if we stay the right course, we will at least be content that we will become better human beings and that our work will not be in vain.

I hope God will bless your work here and bless all of you to do what you think is best in the sentencing process and that you'll continue your efforts so that we can try and make this system work better and at least the best we can for our generation.

Thanks for having me. I hope I haven't kept you too long. I know somebody said you might have some questions, but we've probably run out of time. And thank you very much for this opportunity.

(Mass applause.)

EXECUTIVE DIRECTOR BERGSTROM: Judge, on behalf of the NASC Conference and the Program Committee, I'd like to present you with this plaque made by Threshold Industries of Pennsylvania. Thank you for a wonderful address, Judge.

JUDGE CONABOY: Telling stories, a quick, fast, true story. I got a plaque made by inmates. I was up in the only state hospital for the mentally insane in our area in Wayne County. And many years ago, I was up there talking to the inmates and I was struck with a beautiful painting of John Kennedy that one of the inmates had done.

It was a young man from Philadelphia who killed his fiance fighting

over an argument. And I told him how beautiful I thought it was. And I was very enamored of the Kennedy days as many of you were and I had worked in John Kennedy's campaign.

And he said to me, Would you like to have it? And, of course, I was thrilled to think that he would even think of it. It was very big, and we had just built a new Kennedy School in Scranton and I was going to give it to the people at the school.

And he gave it to me and I had it in my living room for days. People were always struck when they were looking how realistic it was. And just before I got to give it to the school, the superintendent called me one day and he said, Gee, do you have still have that painting?

said, Yeah, I haven't given it to them yet. He said, Thank heavens. I said, Why? He said, The inmate claims you stole it from him; and he's going to start up a lawsuit against you to have it returned.

Honorable Thomas W. Ross
Director of the North Carolina Administrative Office of the Courts

Thank you for the very kind introduction. It is really nice to be here in Pittsburgh. When I came in last night, they told me that my room had been upgraded. I appreciate that, Mark. That was really nice of you to do. It's really an incredible room, about as big as this luncheon room. In fact, the towels are so nice and fluffy that I could hardly close my suitcase this morning.

Most of you, I think, are aware that Senator Specter was supposed to be here to speak today and apparently developed a conflict. And so Mark called and offered to me this honor, which I really appreciate. If any of you are Smokey Robinson fans you know that he was singing about me in the song that went, He's cute, but he's just a substitute. Those of you who have heard me speak before know that I like to begin all of my remarks with an old Scottish prayer that I learned from my grandfather. It goes like this: Lord, make 'em like me. And if they don't, afflict them in some temporary way so that when they leave I'll know who they are. I want you to think about that as we go through this.

You also know -- many of you know that I'm a news freak. I really like to keep up with the news and read newspapers and listen to CNN and all that stuff and regularly know what's happening. And so several years ago, I started collecting headlines that appeared in newspapers, which don't always say exactly what the meaning that was intended. So I thought I'd share a few of those with you before I get into my remarks. One went like this:

Never withhold herpes infection from loved one;
Drunk gets nine months in violin case;
Panda fails. Veterinarian takes over;
Iraqi head seeks arms.

If you're a little slow, got to be thinking about this:

Eye drops off shelf;
Plane too close to ground, crash probe indicates;
Miners refuse to work after death;
Study finds sex and pregnancy linked;
Stolen painting found by tree;
If strike isn't settled quickly, it may last a while;
Local high school dropouts cut in half;
Hospitals are sued by 7 foot doctors;

And finally, my most favorite:

Cold wave linked to temperatures.

So you never know what you might learn reading the newspaper.

When Mark called, he asked me if I would talk some about sentencing and corrections and what I see for the future of our work. So let me start out with sentencing. And I'd like to sort of take a second look backwards just to put things in perspective. If we think about it, it's only been 20 years since the experiment with sentencing guidelines began in the United States. If viewed in context, this is really a relatively short period of sentencing history since indeterminate sentencing has been with us for more than a

century. Yet in this relatively brief time, about one-third of our states and the United States Federal Government have adopted some form of guidelines and, in addition, half a dozen or more states are in the process of moving toward guideline systems.

Guidelines, in combination with simulation models, have become a reliable tool for managing the ever-increasing costs of correctional systems. More often than not, it is this ability to accurately project the costs of sentencing policy that continues to draw legislators to guidelines.

Guidelines, as many of you know, originally had as their primary purpose to eliminate what many perceived to be the wide disparity that was prevalent in indeterminate systems. Unfortunately, based at least in my view, we know that disparity in the criminal justice system still exists. And if you don't believe that, all you have to do, I think, is look at the makeup of the nation's prison population.

What we don't know at this point is where in the system this disparity and possible, indeed, probable discrimination occurs. Is it in sentencing still in those places that have guidelines or is it in other places in the system? And that's a question I think that we don't know the answer to that may have some bearing on our future.

So what about the future? Let me suggest a couple things to watch for: First, I would suggest to you that guidelines will continue to spread, although, I think more slowly over the next few years than perhaps they have in the past. It is my view that the cost of incarceration will continue to be the driving force behind the interest in guidelines, but, increasingly, the concern about disparity will contribute to that mood as well.

Particularly, I think when the economy and if the economy turns down the move to guidelines will pick up speed and be more rapid as budgets get tighter, as prison construction and operational costs continue to soar in the environment in which the money is not so readily available. I think existing sentencing commissions will increasingly be faced with legislative micromanagement. And I think this is really a danger -- I know it is not my state -- where it's a practical matter.

Guidelines have worked pretty well for the last five years since we've put 'em in. People seemed pleased with them almost at any point in the system, and yet the Legislature continues to try to chip away. So far I think the Commission has been successful in beating back those efforts. But it is a risk that micromanagement in the area of guidelines and it's something I think commissions are going to have to increasingly be aware of and look for ways to secure their independence.

How to do that, I think, will be difficult. One way may be to look at the membership of the commission and to continually reexamine who's on the commission, because I think that oftentimes can give you some of the independence that you need.

The other problem I think commissioners will always face is the crime of the day and the campaign of the year. As all of us know, sentencing policy is oftentimes dramatically affected simply by one crime or by one campaign. And I

think the Commission is really society's hope to insulate us from that, but it's an increasingly difficult one that we, I would think, commissions will continue to face.

I believe that there will be and must be attention given in the sentencing process and correctional process to the growing age of our prison population. With guidelines, we have often seen longer sentences, particularly for violent offenders, and we've seen the abolition of parole in a number of states.

This has resulted in longer stays for those inmates that are going to prison, even in states like mine where the incarceration rate has dropped dramatically. So I think we will see commissions begin to look for ways to get the sick and the elderly out of prison and get them out sooner than perhaps the guidelines call for.

We won't call it parole. We'll have to think of another name. I'm not sure what that name will be, but we'll have to come up with something. But I believe the move will be there. The argument being that you need to save the high medical costs.

I don't know that that's really the best argument because whether it's on the inside or the outside, the savings might more likely be -- might result more likely from less incarceration of those people even though they'll still have high medical costs to society. But I do think there will be a look at the aging population.

I think we'll also see in the area of sentencing increased attention to the discretion that resides in prosecutors. And this is where I think disparity will play a role. As we receive more research on disparity in the states, I think what we will find is that there's disparity everywhere, but probably less in states where there are guideline sentencing than in other parts of the system. And what we will find is that perhaps the greatest amount of disparity is caused by discretion and exercise by prosecutors.

Even law enforcement, which has great discretion at the time of arrest, is increasingly under the focus. Our states and other states have passed legislation that requires law enforcement to keep track of the race of the people they stop and to keep other information that will allow us to test the discrimination that might exist in the enforcement -- by law enforcement.

But we're not doing much of anything to follow and watch and look over the very, very broad, in fact, I think most would argue unfettered discretion that prosecutors have in almost every state. And I believe as more disparity studies show up, so will more attention be given to prosecutors. Perhaps well it should.

I also think that we will see in the future more involvement by communities and more of the principles of restorative justice being used in the sentencing of low-level, nonviolent offenders. Now, a lot of people believe in this kind of development; that is, community involvement, whether it be through sentencing circles or other kinds of community involvement and restorative justice, people believe those principles are inconsistent with guidelines.

But I think to the contrary, that these principles can be and will be in the

future meshed together with guideline systems. In fact, Rob Lubitz, who was the associate director of the Pennsylvania Sentencing Commission for eleven years and was the director of the North Carolina commission for nine years, joined with me in writing a paper which we tried to describe how you can do this, how you can integrate restorative justice principles with guidelines. The Justice Department -- the United States Justice Department hopefully, if they keep their word, will be publishing that some time in the next few months.

I think we'll also see more problem solving courts. They're called all sorts of things around the country: Therapeutic courts, collaborative justice courts, and all sorts of other kinds of things. But what problem solving courts really are, it's a different methodology of sentencing. It involves collaboration between community organizations, people outside the traditional criminal justice system coming together to work with the court to impose really a plan of sentencing that includes significant follow-up.

You're familiar with drug courts, I know; but we're also seeing a rapid growth in Drug Courts and the birth of Mental Health Courts and an initiative to establish Re-entry Courts. This is -- this is a trend that's going to continue. Just last week at our joint meeting, the Conference of Chief Justices of the United States of the State Courts and the Conference of State Court Administrators -- we meet jointly once a year. And at our conference last week in South Carolina, each of those bodies passed a resolution supporting problem solving courts, supporting their expansion both as a court but also their integration in the operation, enrollment, administration of all of the nation's sentencing courts. So that not only will we have Drug Courts and Mental Health Courts and Re-entry Courts, but we'll take their principles and apply them in every sentencing court. Because, in fact, if they prove as successful as we think they will, they will assist us no matter what kind of case we're dealing with.

I also think that we will see an increase in the use of data when it comes time to sentence people. This will be done through risk assessments that we will develop all sorts of different kinds of risk assessments. And I think that's good in some ways, but it's also risky. It's good it seems to me because if you -- if you believe in using incarceration primarily to enhance public safety, then a good risk assessment ideally would help you refine how you use incarceration but would only use it for those people that you think are really a risk to the community. The problem is that approach in that way of individualizing sentencing it seems to me is that we run a real danger of punishing people for things they haven't done but only characteristics that they have.

You know, an assessment tool or a computer or whatever tool that we might look for to help us predict the future isn't always right. And as a consequence, we could end up incarcerating people, it seems to me, perhaps wrongly for things that they didn't do that we only thought they might do.

Well, what about corrections? Let me move to that a minute and think about where we're headed. As all of you now know, we have the ability to monitor both people and cars and all sorts of things through the use of global positioning. So I think we -- we need to think about how that kind of technology might be used. Will that replace, for example, electronic monitoring and other kinds of monitoring that we might use in corrections since

we'll have the ability to presumably to track where people with a simple implant that will allow us to determine where they are?

But we can also, I think, in today's world expect reasonably that we will have the ability to implant small video cameras either in people or in all of our surroundings so that we really would have the ability to track everybody no matter where they are and see what they're doing and all the time that they're doing it. And so we may be able to know more about what each of us is doing than perhaps we would like.

There also -- I went to a futures conference, and some of you heard me talk about this when you came to North Carolina. But I went to this futures conference and found out about these chips that they now are making which you can implant in a pair of glasses and it enables you when you see somebody and are introduced to them, it will record their name and their facial image so when you see them again in the future it will pull up that name and that face and it will identify you that.

Put me back on an even par with everybody else because everybody else can remember my name. They come up to me, Hey, Judge, how are you? So I'm going to get back on a even keel when they have that.

But you know, think about where that will lead. It's not just it'll be able to record that person's name and image, but it will be able to record if you want it to everything we know about that person, including whether they've ever been charged with a crime, convicted of a crime, suspected of a crime, if they've ever done anything as a juvenile, if they've, you know, ever -- ever done anything at all we'll be able to put it on that chip so that when you come up to them you'll know everything about them, right there. Might make it, you know, interesting when it comes time to try to pick up a date. You know you don't want that one.

But you know, you have to think about the information age and what do we want to really know about people. Maybe we ought to think about that in advance before all these tools are available. I know already that you can look on the internet in every state just about to see if any of your neighbors have been convicted of a sexual offense, right, if they've been convicted of a sex offense you can find that out, where sex offenders live. No doubt over time they want to know where everybody's who's ever been convicted, but maybe if you've even been charged. And then you ask yourself, do you really want to know all that about your neighbors, what kind of neighborhoods you going to live near? I mean, are you just going to wall yourself off from everybody because you know more about them than perhaps you want to? So, again, a certain that I think is out there.

But what about in the biotech world? As all of you've read, they've just completed or are very near completing the human genome project. So you get this map of everybody's amino acids, their DNA, and you can put those in sequencer machines and sift them all sorts of different ways so that you can analyze them, that map, and figure out peoples' characteristics. And, you know, we manage genes in a lot of ways in agricultural products; for example, to change the kind of resistance agricultural plants have to particular kinds of disease; we're using it in animals to increase their growth or to, again, change the character of their meat or whatever it is we might want to do.

Well, clearly, if we can do that with animals and plants we're going to do it with humans. We're going to have that ability to do it with humans so we'll be able to, for example, identify the gene marker if there is one. And I think a lot of people believe that shows somebody's predisposed to be addicted to substances. There may be a gene marker that identifies somebody as being a sexual offender or potential sexual offender.

Again, once we know that, what are we going to do with that information? We if we some day are able to predict that somebody's going to commit a violent offense? Should we lock them up before the violence occurs? If we're not going do that, we can at the least surveil them with a camera or, you know, global positioning device. We ought to know what they're doing all the time -- violence at some point. Maybe we ought to just make them -- label them somehow, you know, put a stamp on him saying that guy is a sex offender or this one's going to be a drug addict. We'll have that ability perhaps; and, if so, what should we do with that information?

Once we, you know, begin to identify things like this, we're going to be able to develop drugs to more than likely alter genes in a way that will prevent this conduct. So, again, do we do things preventively if we can go and fix the gene so that somebody can't commit an offense? Even though we know -- life in other ways, will we do it?

So I could keep going, but the bottom line is that I think in the future of corrections particularly, but seen in sentencing, information and technology are going to change what we do. They can be valuable; they can be important; but we had better use them wisely as we develop our policies because they will have a long-ranging effect. They can also be dangerous.

As I've indicated, I think we can make all sorts of information widely available if we want to, but we may well be sorry unless we examine the way we're going to live our lives under that kind of cloud of information that can be there. So we can use drugs, you know, for miracles and to save lives as we've done in the past; but I think we can also use them perhaps in ways that will be very destructive.

So I think as we continue our work together to think about these kinds of things because anybody who believes the field of sentencing and corrections is stale and there's nothing more going to happen, that we already know all there is to know I think is wrong. And we'll find that the next ten years will be even more rapidly changing than the last twenty. So those are my thoughts. I want to conclude by saying to you that being involved in sentencing reform has really been one of the most rewarding experiences of my life. And part of what's made it that is the opportunity to get to know many of you and to work with you. I believe what we do and have done is important, continues to be of importance, and I would like to just take this chance to thank each of you for giving of yourselves and of your talents to make a difference to really affect the way people live their lives and hopefully to improve both communities' safety but also the lives of those who live in our community.

So as you leave and go to your break-out sessions, remember the Scottish prayer. Thank you.

PLENARY SESSION #3 - CRIME RATES & POPULATION GROWTH IN U.S. PRISONS

Professor Alfred Blumstein, University Professor & J. Eric Johnson Professor of Urban Systems and Operations Research, and the former dean at the H. John Heinz III School of Public Policy and Management at Carnegie Mellon University; Director of the National Consortium on Violence Research

What I thought I'd cover is just the narrow topic of crime and punishment in the United States over the last 15, 20 years or so. I did want to say something about this National Consortium of Violence research. It's a virtual consortium. We have about 60 members scattered around the country and around the world doing research on violence. Part of the mission of the consortium is providing a data center that this dispersed community can use, and I thought you all might be interested in accessing it. It's accessible through our web site, www.NCOVR.heinz.cmu.edu. It's a web site with a data center that has a database management package, an oracle discoverer package that's now web accessible. And what we have there is the full UCR at the ORI level, at the individual recording department level, so you can get numerators if you want to calculate rates and the full '80 and the '90 census if you want to get the denominators to calculate rates, as well as a variety of other data sets. So I suggest you might want to find out what's going on with the Consortium by looking up this web site.

What I wanted to talk about is really some of the dramatic changes that have gone on in crime and punishment over the past 25 years. Since 1985, there was a fairly sharp start-up, major growth in youth violence since '85; major growth in prison populations since '75; and, of course, a major decline in crime and particularly violent crime since its peak in '91. And, obviously, there's a desire to examine some of the linkages that cut across these two processes, each of which obviously is intended to affect the other.

Please refer to PowerPoint slides, charts and graphs throughout presentation (attached).

Just as a brief overview of the crime trends, it's been declining impressively. And there's a book called *The Crime Drop* that Joe Wallman and I are putting together that should be out this September from Cambridge University Press, and it's got chapters on the variety of explanations that contribute to the understanding of what's going on in the crime drop. There's a chapter on essentially overview; there's chapter on guns, and I'll be talking more about that; there's a chapter on drugs, and I'll be talking more about that. Drug markets are an important part of the start-up in the late '80s.

The economy has been a strong feature. Prison has clearly been an important part of the story. And, mistakenly, lots of people think demography is part of the story because they think since demography contributed -- demographic changes like age composition of the population contributed to the crime decline of the early '80s that must be contributing to the crime decline now; but demography basically is going in the wrong direction. We're getting more people into the high crime ages these days, and that opens the question about whether this decline is starting to saturate. To a large degree what we've been seeing in the decline has been largely an undoing of the growth that went on in the '85 to '93 period, particularly young offenders with handguns.

The flip side: The punishment trends, prison population, prison incarceration rates were impressively stable through 50 years from the '20s to the '70s with an incarceration rate of about 110 per 100,000 plus or minus 8 percent with no up or down trends. Since the early '70s, we've seen this exponential growth of about 6 to 7 percent a year. And we're now at about quadruple that stable rate, about 460 per hundred thousand and approaching 2 million people in prisons and jails. And the key question that we would like to start exploring is what are

the links between these punishment trends and the crime trends.

So just to outline where we're going to go today, we're going to start talking about the crime trends with some discussion of why. And there's a paper that's in the Annual Review of Public Health that I did with Fred Rivera, who's a public health physician, and Rick Rosenfeld that pretty much summarizes a lot of the material I'll be talking about. Second issue is the punishment trends and why; and that's in the paper that's in your book, the paper I did with Allen Beck, looking at the factors that contributed to the growth in prison populations. And, of course, we want to talk about sentencing guidelines and rationality in ways they can link the two. And, of course, that at this point is nowhere to be -- I don't mean there's no rationality to be found; I mean that I don't have a particular reference to point to.

Let me start with the crime trends. What I have here is a graph -- two graphs of the UCR crime rates in the United States. I scaled up murder to get it on the same scale as robbery. You see first rather flat oscillations until the '90s. We knew things were bad in the '70s, and they were. We knew they were getting better in the '80s, getting worse in the late '80s. But it's been striking that when you look at them (and murder, by the way, is the one in red), they've been rather flat, albeit oscillating, until these days when we are essentially at the lowest rates since the mid-'60s. Impressive improvement.

I've made some projections that you'd find interesting. If this trend continues, homicide rates are going to go negative in 2007. And that's going to happen on Easter Sunday. All of which is intended to make clear that these trends can't possibly continue indefinitely, that eventually it's going to start saturating. We will have cleaned up the mess that was created in the late '80s and go on to a different set of problems than the ones we've been working on. And those may well require a different set of solutions than the ones that worked so well for us in some respects through the '80s.

I chose these two in part because they are the best measured violent crimes. Aggravated assault has been a very noisy measure in large part because it has been increasing while other things have been decreasing, in part because domestic assaults that used to be ignored or counted as simple assaults are now counted as aggravated assaults. So you see a very different pattern in aggravated assaults. And rape reports are just unreliable because of fluctuations in reporting rapes, fluctuations in individual definitions. So when you see it, these two, robbery is reasonably well defined; homicide is very well defined. And so they really are following a very similar pattern.

What I want to do next is start disaggregating that aggregate because it really provides some important insights into where the murder growth of the late '80s was coming from. What I have here is the murder/arrest rate by age for the peak homicide ages -- traditional peak homicide ages of 18 through 24. You see this growth from '65 to '70, which was pretty much an across-the-board growth, and then reasonably flat from '70 to '85 and flat at each of the individual ages and the peak was fairly flat as reflected by the fact that these colors intertwine with each other. So one year the 18-year-olds may have been top; the other year the 24-year-olds may have been top. So it was a pretty flat peak. But after '85, we saw this major bifurcation between what was going on with the young people and what was going on with the older people. The 18-year-olds, in red, more than doubled their homicide arrest rate by '91, went up a bit in '93, and has been coming down but flattening out since then. The 24-year-olds, if anything, were flat or declining. So we really saw this major shift in that pattern.

And let me just show you for some of the other ages. Here are the younger ages. These are 18, which you just saw, down to 17, 16, 15. What you see here is as you go younger the rates are lower but the pattern was very much the same: pretty flat until '85 and then a major doubling or more for all of these ages and then a coming down after 1993. And when you look at the older ages, post-

24, you see nothing like that. You see the same thing -- here's 24 that you saw, late 20s, early 30s. All of them are on a fairly steady decline, a major difference across the ages. And we'll want to explore that. And here's a graph that really summarizes that story. What this is, is the ratio of the age-specific arrest rate by age in '93 compared to 1985, which is when all of this started. So that we see for 15-year-olds that rate more than tripled. For 15-year-olds between '85 and '93, their arrest rate for homicide tripled. The rate of growth, that ratio, goes down with age; but for 20, it's still more than doubled. But as you get into the later ages, the rate comes down. And when you get into the 30s and beyond -- now, you get into the 30s and beyond, it's more -- it's about 20 percent less than it was in '85. This ratio is about .8. So we see for the older folks a 20 percent reduction in their involvement in homicide.

So, again, based on the same data, this highlights the differences that went on in that late '80s period. The green graph is the 1998 data, which is the latest out of UCR. And it's interesting to note, obviously, everything has come down since then. The older folks have come down still more. But these young folks are still 30 percent or so above -- is that visible? You can't see the graph -- the axis. Those young folks are still about 30 percent above where they were in 1985. So there's still a lot of ways to go with those young people in terms of their involvement in homicide and violence.

Let's start unpacking. And the next dimension of unpacking that I'd like to talk about is the weaponry involved. If you look at the homicides by a group I'm calling adults, 25 to 45, there's some decrease in recent years, but no dramatic shifts, no dramatic shifts. The red are handguns, the green are long guns, and the blue are things other than guns: Baseball bats, knives, fists, and so on. When you look at this for the people that I'm calling youth, 18 through 24s, until this point, not much was going on; but '85 was a memorable year. By '93 -- this is an index scale, so that handguns in '85 were a hundred. It was about 230, or 2.3 times that number of handgun homicides in '93. It's clear that the youth were carrying handguns and using them in ways they had never done prior to that. And the story is even more dramatic when you go to juveniles, the under 18s. Again, the red are the handguns. This is almost four times as many homicides with handguns as was the case in 1985 when the scale was a hundred. So the major theme has been the handguns.

And starting in '93 we've seen this major decline in the use of handguns. And that's clearly part of the story and the solution. It's also the case that we're still reasonably above that level of a hundred but nowhere like the four times with handguns in the hands of kids.

There's also an important race to mention to this, and it's important that we deal with that. The red graph is African Americans, the green graph is whites and Hispanics that sometimes got partitioned and sometimes didn't. So at this point, I'm just going to aggregate them. The big growth in '85 that started in '85 and that leaped to about 2.6 times the '85 rate in handgun homicides was the blacks. It started up a few years later in the whites and Hispanics, but it grew nowhere as much. It grew by about 80 percent -- from 50 to about 80, about 60 percent. There's also a sense that all of this was associated with crack markets and crack, and I'm going to want to say something about that.

In the supplementary homicide reports that the FBI issues with a detailed report on individual homicides, they have a considered circumstance, a circumstance associated with each individual homicide. Unfortunately, they're only permitted one circumstance. So it could be a drug-related homicide, it could be gang-related, it could be argument-related, it could be an argument between two gang members over a drug deal, but you only get one circumstances. So we've been looking at other -- we've been coding data in a number of cities to permit any of a number of circumstances. And I think it's fair to say that the drug deals were not the major factor in what was going on.

And the fact that lots of people were carrying guns -- and we'll talk about why they were carrying them -- but lots of people were carrying guns, particularly young people, who didn't have the restraint that they should have that got into arguments; and those escalate quickly. And we know that teenage males are certainly not the world's best dispute resolvers. They've always fought. But when the fight is with fists, there's time for the loser to recognize where things are going and to get out of there; there's time for a third party to intervene. When you put a gun into that situation, the dynamics change dramatically. There's no time for anyone to do anything other than fire. And there's an incentive for a preemptive strike before he gets you, so that the handgun became a major factor in arguments. This is raw numbers of homicides; and we saw the number go from about 250 to about 700, almost tripling. And, again, not much going on with non-handgun weapons.

Highlighting the importance of weapons in this whole scenario is the data on weapons arrests. This picture, again, is 18 through 24; and it's strikingly similar to the graph I showed you earlier about homicides by age. Fairly flat from '70 to '85, major growth in the 18-year-olds; not much growth in the 24-year-olds; but, again, reaching a peak in '93. Following that '93 peak, we saw a rather sharp decline. Weapons arrests are like drug arrests: They represent some mixture of the level of the illegal behavior going on and the aggressiveness of the police in pursuing it. There's no indication that I know of, of any diminution in police aggressiveness during that post-'93 period. It's clear that something was going on that diminished the carrying of the weaponry, and the carrying was diminished through some mixture of carrot and stick. The stick was, in many places at least, the aggressiveness by the police in stop and frisk, in taking guns from kids who they suspected had them, particularly in some of these high-rate neighborhoods.

And we didn't see much outcry in those neighborhoods because the folks in the neighborhood were pretty scared of those crazy kids carrying their guns. Also because they weren't very good shots, there was a good chance they would miss their intended target and there was a good chance of ricochet. And the guns -- 15 years ago -- used to be revolvers; now they're semiautomatics; higher magazines; higher firepower; and a lot more holes in people that get shot. So there's a lot more high firepower weaponry. So something was going on here that contributed to that. And, again, exploring that in detail is particularly important.

And, again, you see the same story just like the homicide story with the young ages: lower rates as you go down from 18, peaking in about '93, and then coming down fairly steadily. And I don't have a full answer, but it's clear local police were an important part of it. I believe the Brady Bill was an important part of it in the sense that '94 was when the Brady Bill took effect. That started the trend down. Various efforts by the ATF in tracking gun purchases that had a reasonable suspicion of being straw purchases, tracking records of multiple purchases of guns at any time, tracing crime guns back to dealers who were disproportionately involved in the sale of crime guns. I think the gun piece of the story has been an important part of it. And, again, when you look at the older ages, again, some improvement. Even though these folks were not doing as much homicide, we did see some decline starting in about '93, '94 in their carrying these illegal weapons.

The drug story has got to be part of what happened in the violence of the late '80s. This is the drug arrest rate for adults. Not much going on in '65. Pretty much a rise almost comparable for non-whites as well as whites. Non-white adults started up in 1980 and accelerated in the late '80s, reached a peak in '89, and has been pretty flat since then. Whites have been relatively flat once the whole marijuana story stabilized with a peak in '74 -- a peak here in '74. And I want to go to juveniles because that's more interesting in a variety of ways.

Virtually no drug arrests in '65. Virtually all of this (growth in drug

arrests) was the sudden realization that marijuana is a killer weed, this growth in the '60s and the '70s. And one of the things I find particularly interesting here, throughout the '70s, the arrest rate for drug offenses was higher among whites than among non-whites for juveniles; one of the few occasions when you see an arrest rate for whites exceeding that of non-whites. Here's that 1974 peak. The white citizenry mobilized because those were their kids getting arrested, and that was going to keep them from going to law school or becoming a judge or maybe even a member of the Sentencing Commission staff.

Those records might be seen as a handicap, and so there was a major response to that and in a variety of places a degree of decriminalization of marijuana. Started to come down -- everyone was beneficiary. Non-whites benefited some, but the white juveniles benefited the most. There was a growing recognition there was a shortage of lawyers. So in the early '80s when non-white adults were building up their arrest rate, non-white juveniles were pretty flat. Not much involvement until this crucial year it starts up in '84/'85 when all the trouble starts. My sense of what went on then was that crack came on the scene. We were passing lots of mandatory minimum laws, very heavy sanctions against drug offending for adults. We also had a growth in demand for transactions.

Crack opened the cocaine market to people who couldn't afford the minimum available quantity of powder cocaine. They could afford a 5- or 10-dollar hit of crack. So it opened the market and it increased the number of transactions because these were folks who couldn't inventory very much. So they had a lot more transactions, so they needed a lot more sellers. That accelerated the adults, but it also encouraged the dealers to turn to young people: young people were cheaper; they needed less of a risk premium payment to work in the market because their risks were less. Those were not lush economic times, and there were a lot of adults going off to prison; so the natural worker in the street became the juveniles. And if you're in that market, which were typically street markets, you're very vulnerable to robberies and you can't call the cops. So how do you protect yourself? You carry a gun. And we know that kids are tightly networked. We saw the propagation of the sneaker epidemic in the '70s. What we saw in the late '80s was the propagation of a handgun epidemic. If I'm a seller, I'm going to carry it; my buddy is going to decide to carry it because either of some mixture of status or of self-protection against me; and his buddy is going to carry it. And we saw this massive diffusion of guns.

And Daniel Cork, who just did a dissertation on this, looked at the turn up in drug arrests by City of juveniles and the turn up of homicide arrests of juveniles by city and found typically a one- to three-year lag between the turn up of the gun epidemic and the turn up of the homicide epidemic by juveniles, which you saw earlier was predominantly handguns in that period. So the connection was clear. As we remove the older sellers who might have been more discrete and more restrained in their use of guns, we saw this widespread diffusion of guns among kids; we saw the emergence of gangs, most of which were not engaged in drug dealing as corporate activities, but many of the drug dealers were also gang members because that was a very useful protection against street vulnerability that they otherwise had.

Let me just finish this off with the crime prevention issue. It's clearly important because of the role of guns in homicide that we do things to keep guns from kids and other people who are statutorily declared irresponsible -- felons under the Brady Bill, people committed to mental institutions -- the variety of people who by statute are declared as irresponsible to find ways to keep them from getting guns. The theme for kids is one of prevention, socialization, job opportunities. And times are good and we should be able to afford that and we can -- we've seen some of the benefits of the good times.

Incarceration, I believe an important piece of the older offender success we've had -- the older offender success we've had is attributable to incarceration. Incarceration is particularly appropriate for violent offenders where the

violent offender carries his offending with him. I think it's of limited value in terms of offenses like market-driven offenses where there's a resilience to the market to recruit substitutes who may even be worse than the people you're putting away.

Let's talk about the punishment trends. And the basic theme that we're going to come to is that it's all in the sentencing decision defined broadly. And sentencing trends, particularly in terms of sorting out the growth of the last 25 years, there are four factors that affect it: One could be higher offense rates, and particularly adults, because it's adults that comprise the great bulk of who goes to prison. So I'm going to focus on adult offenders; the second is more arrests per offense; that is, better policing. Do we do a better job of clearing up our offenses; third is more commitments per arrest, which is a mixture of prosecution and the in/out decision by the judge in sentencing; and longer time served, which again is a function of the sentence imposed and the parole process, both in terms of the delay in granting parole and in the aggressiveness of recommitment for violation of parole. And those obviously can change, and so it's the time served on parole and the time served on recommitment. So that if a robber is paroled and recommitted for whatever, we still count them as a robber -- most analyses of time served take a release cohort and look backward at the time they've served. And I think that underestimates time served because the people get released in general tend to be people who have served shorter times.

So what I've done is basically take the main of the population, which is the ratio of the stock divided by the flow. Those of you who remember the answer from last night know those are the factors that affect the population. And I'm going to talk about that disaggregating, an important theme of what we've been talking about, by six crime types which together comprise about 75 percent of state prison populations. So these crimes -- and the results, as I'm sure you know and will see, have been rather different across them.

Just to provide some international context, I've got here the incarceration rate. And this is for the U.S., at least, prison and jail. Jail is about a third of the total. So that the incarceration rate in prison is about 460, but the total is about 700. Some people make differences between prison and jail. These are data collected by the home office in Britain, and we see that most of Western Europe is down around or under a hundred. We see that two of the extremes are the Baltic countries, which are about 350; and Chile in Latin America, which is about 380; and, of course, Russia's a little bigger than us and we keep managing to stay just below them. I'm not sure how long that's going to continue, but we're up with prison and jail up around 700 per 100,000.

This is one of my favorite graphs. This is incarceration rate by year, and I mentioned earlier how stable that rate was through this 50-year period. It went up at the end of the Depression, came down in World War II, and -- but had been pretty stable at a hundred-ten per hundred thousand until the early '70s and has really quadrupled, gone up dramatically, since then. And in part it's a recognition of that shift that drives the search for how come. What was going on and why did that happen so dramatically? This breaks each year's incarceration rate out by individual crime type. The clear, dramatic story is the drug story, which grew by a factor of 10 from about 17, 18 in 1980 to about a hundred-fifty per adult, larger, larger than the incarceration rate of the entire United States for that 50-year period. So we see this dramatic growth of drug offenders in prison. But, again, we see a growth of all of the others. And so the issue is sorting the others out, and that's where we want to go next.

If you looked at the offense -- and the symbol for it and the color for it is just above the name of offense -- not much going on with the offenses. Again, this is UCR offense rate of adults. We don't have the offense rate for drugs. We just have the arrest rate. So, we've just taken that and put it on here.

The one that's grown has been assault; and, again, that's another indication of what I mentioned earlier, that we're now counting as aggravated assaults lots of domestic violence that 20 years ago probably wasn't counted at all. And so that's been the major growth there. I think it's fair to say that for the others, they've been relatively flat or declining. So there's no major growth in offense rate. Some growth, some decline, basically a wash.

The surprise, one of the surprises to me was the arrest rate. I think policing has been one of the most progressive activities within the criminal justice system over the last 20 to 30 years. There's been a lot of change, a lot of new technology. For good or bad, that hasn't shown very much in the way of arrests per offense. And that was rather striking. The interesting one is prison commitments per arrest, or per hundred arrests. So for murder, we've seen a major growth from about 40 to about over 60; and the failure of commitment would include prosecution failure, would include guidelines, would include judges. And there's been somewhat of an upward trend, particularly lately. Much of the contribution has been in time served, particularly in homicide, which went from about an average of five years to an average of about eleven years now. See, this counts lifers, for example; but it doesn't count them for life. But they were in the numerator of this calculation of the stock divided by the number coming in. So that if you deal with a release cohort, you don't count lifers. So I think it's a much more appropriate way to count -- to count prison population and time served. And so we see relatively flat but going up lately in most of the offense types.

What we've done here is taken this growth and allocated the growth to the four stages that I talked about: crime, arrest, commitments, time served. Twelve percent gets allocated to offending; 51 percent gets allocated to commitments per arrest; 37 percent to time served. But a big chunk of what's going on here is associated with drugs if we count drug arrests as drug offending. So if you take drugs out of the mix, not much is going on here. So 42 percent is associated with commitments per arrest and 58 percent is associated with time served over this whole period. A big chunk of that time served is attributable to parole. This is the graph of parole violators admitted to prison. This is thousands of parole violators. And, again, this major growth in drug offending that I believe will exceed the incarceration of drug offenders because the technology for recommitting drug offenders is so good through urinalysis. So the technical violation is an important part of that, and there's no clear evidence of the crime control effects of that.

The other one that's intriguing is burglary. Burglars are notorious recidivists; and, by God, they do come back a lot. And the other is robbers. But there's been a clear growth in all of those. And I think part of that growth is associated with a political phenomenon called the parole boards of the '70s and '80s being the patsies in the system. They were the soft guys; they were the people releasing people, releasing criminals. So the politics started to weigh on them, everyone else was becoming tough, and they saw it in their interest also to start getting tougher. And so we've seen delay in parole, increasing recommitment as part of that process.

I think this one is interesting. Again, this aggregates across the six crime types. For a long time now, since about 1990, the new commitments to prison have been flat, no new commitments for the three crime types -- these six crime types across the states. The growth has been in parole, and that's been flat for two years. These data run to '86, so I don't have the data more recently; but I suspect that things aren't changing much. The first glimmer of spring was the fact that I think California had out of its 150,000 prisoners a reduction in the first half of 2000 of about 300 prisoners. So the first indication of anything reflecting an abatement in this growth.

Let me just finish up with some observations and perhaps some suggestions. It's clear and, obviously, no surprise but I think it's helpful to get some numeric estimate of the role that the drug offenders have been primary in this growth.

Incarceration rate group by a factor of 10, they're 60 percent of federal prisoners, 20 percent of state prisoners at this point. There has been a growth in arrest and commitments but no growth in the average time served. And the predominant growth was in the '80s for drug offenses. These are statements about the drug offenses. The feds have been growing arrests and have been growing time served appreciably, and drug offending has certainly been an important contributor to the racial trends.

And I think one couldn't leave this issue without some addressing of the profound racial disproportionality in prison, particularly with African Americans, less so with the Latinos. 8.2 times the incarceration rate of African Americans; whereas, in 1980 it was 7.6 times. So that has grown. And an important contributor to that has been their disproportional involvement in the growth in drug offending. Of black males in their 20s, 8 percent, one out of twelve black males in his 20s is in a prison today, which is an astonishing impact on a community. 1.6 percent of all blacks in the U.S. are in prison, and BJS has a projection that 29 percent of black males can expect to enter prison.

And Mark Mower has an estimate that one-third of black males in their 20s are under control of the criminal justice system; that is, this 8.3 percent in prison is a subset of that 33 percent that include jail -- prison, jail, probation and parole.

And the question this has to raise is the degree to which we're diminishing deterrent effect of the criminal justice system. Part of the thrust of the deterrent effect is the stigma associated with it. If everybody in a community is going to prison, there's not much stigma associated with that. If everybody's engaging in adultery, there's not much stigma in being an adulterer. So that we've got to deal with the context of what we're doing and the concern of what it's doing to the communities. To the extent that some of these offenders are predators, the communities are better off. To the extent that they are entrepreneurs earning their living in the community, even through illegal activity, then this could be major disruption, particularly in the local communities where that happens.

For the non-drug crimes, no effect of the crime trends and no trends in arrests per offense for policing. All the growth has been in sentencing, again, broadly defined. And the parole effects are important in the time served. And the largest growth has been in murder and burglary, interestingly; not much growth in robbery. And that's an interesting one because as we've gotten tougher, we've sort of saturated on what we can do with robbery. But with burglary, there was a lot of room to grow. I remember a study I did about 15 years ago. First-time burglars almost never went to prison. Now we're sending them to prison, keeping them longer. So there's a lot more slack. And to the extent that the offenders are rational, as we increase burglary relative to robbery, even though we don't surpass it, the incentives to do robbery at the margin increase. Time served is the major one now. And one of the questions that really has to be sorted out and that we didn't but can only speculate on, what has been the effect of guidelines, what has been the effect of truth in sentencing laws and incentives, and what has been the effect of changing values and politics of parole boards.

Some issues that come up then: No. 1, the growth is in time served. If the research in criminology says anything about the relative benefits of longer time served compared to greater commitments, it argues that the benefits are more associated with a certainty of commitment rather than the time served, in part because that affects the perception of the person being sentenced; and that's the deterrence issue. And in incapacitation terms, the great majority of criminal careers are finite. People stop and so, in incapacitation terms, keeping them after their criminal careers would have ended, and certainly during their geriatric period, just doesn't make sense in terms of incapacitation. There's a question of whether we see some new forces stabilizing the prison populations. Certainly, the crime decline has been part of that. Is the public starting to get tired of the soft-on-crime theme or the

get-tough theme? And a growing concern, particularly in state budgets, is where are we going to get the money to do the things we want to do? Corrections budgets are the one item in state budgets that keep growing. And a real question about what's the contribution of prison to the crime decline, I certainly believe it's been important for the older offenders but probably increasingly inefficient as we put more marginal offenders and particularly drug offenders into the prisons.

Let me just make a few more observations. First, I think in most of what we do it's crucial that we disaggregate by age, by weaponry, by crime type in order to understand some of these aggregate phenomena that either make us happy or sad but we don't know why they're making us happy or sad. Crime is certainly moving in the right direction I think in part because guns are being taken from kids and we've seen this reduced drug demand by new users. Old users are still using them, but we've seen this major reduction; and economic vitality has provided economic options for these young kids. And incarceration of older offenders has been a part of that. But I think our punishment policy is crying for rationality. And you are the people who are supposed to bring the rationality, so let me make some suggestions.

No. 1, we should be focusing incarceration where it works best. And I believe that violent offenders and their incapacitation consequences are key to that. I think the mandatory minimum sentencing laws have been acts of political passion in response to the crime of the month. Lots of regrets subsequently, but no one can ever repeal one of those laws. So the prospect I think would be enhanced for bringing that rationality in if we introduce sunset legislation that says all of these mandatory laws have to be reconsidered after some period of time -- three years, five years -- and they can be reenacted; but at least it allows us to reconsider some of those acts of passion.

I think it's important to recognize that sellers in demand-driven, illicit markets eventually get replaced. And one of the concerns is that replacement may have negative consequences that may be greater than the positive consequences that were intended by the incarceration. I think we ought to bring more intermediate punishment into guidelines. Pennsylvania's done that. I know a number of other states have. But recognize that the community can be a far more appropriate place for many offenders.

And I think there are technologies emerging that might allow us to do a better job of tracking offenders in the community such as we now have the telephone-connected transmitter. We could have a GPS that follows people wherever they may be or a cell phone triangulation, variety of technologies, so that we would be more willing to take risks on them if we know that we know where they are. And, clearly, community programming is part of that.

Just one more set of suggestions: reduce the focus on incarceration as the major instrument of the drug war. There are lots of medical possibilities that are emerging. Drug courts seem to be working and a continuum of supervision from relatively loose regular testing -- tighten up as they violate, loosen up as they stay straight - and use of community resources would be a lot more efficient and in many cases perhaps a lot more effective. The corrections system for the last 25 years has pretty much abandoned the theme of correction. Lots of other places are doing it. Canada, in particular, has been quite progressive in making assessments of risk in the community and dealing with rehabilitation.

And, basically, my final message is the intention of the sentencing commission was to bring rationality into the sentencing process. I appreciate that that can't always be done, but that's your mission; and I wish you well.

Q&A Session

Q: What's your reaction to the more guns/less crime argument?

A: DR. BLUMSTEIN: John Lott did a paper that started this whole thing and he did a county-level analysis of violent crime. The same journal that published his paper a year later published a paper by Dan Black and Dan Nathan to reanalyze those data. They found of the ten states that introduced these Shall Carry laws, one state had appreciably more violent crime. That was Delaware. One state has appreciably less violent crime. That was Florida. One of the reasons Florida had less crime was that just before they introduced the Shall Carry Law the Mario boat lift people came in from Cuba, and over that period they were getting arrested. So that was an important contributor to that reduction. The other states had no change in violent crime. Their data was at the county level, but the issue is a state level; and so I think there's been a lot of fallacious work. And John Lott keeps coming out with new papers, all of which coincidentally happen to support this ideological position. And one of the problems with econometric analysis is that once you know that someone is deeply committed to proving something there's so much flexibility in the econometric analysis that if you keep proving the same thing, then you've got to be suspicious. And when you think about it, I have difficulty imagining that a street robber is going to be profoundly affected by whatever relatively small percentage change he perceives goes on in the carrying of guns by potential victims. So I just don't accept his proof. I much more readily accept some contradictory proof. And some of the suggestions of more guns reflect the prospect of shoot-outs, that I find very distressing.

Q: Your statistics I think are cleverly presented to, I think, advocate for more gun control. But putting that aside --

[DR. BLUMSTEIN: What do you mean, cleverly presented? QUESTIONER: You rank it as No. 1 in every one of your charts. DR. BLUMSTEIN: I didn't rank it. The data did.] -- putting that aside, I think your more telling statistics are the increase in drug use, drug arrests, etc.; but you don't do anything that ties these increases to what I see as happening in my lifetime, late '60s, the decline in the family, the decline in the church attendance, synagogue attendance. I mean, have you tied any of that to the notion in society that started back then that anything goes; it's everybody else's fault but not my fault, the way kids were raised after that point in time?

A: DR. BLUMSTEIN: That's a lot tougher to try, but let me at least make some observations. The changes we saw in the late '80s -- you know, the thing you're talking about was going on in that period from 1970 to 1985. We didn't see anything going on profoundly in crimes within individual age groups, particularly the young age groups where that was going on. We then saw a dramatic change, a 5 to 10 percent change per year between '85 and '91. '91, '93 was flat. The changes you're talking about are relatively slow, relatively subtle. What we saw was a drug market phenomenon that represented major change. There was a major transition going on there in those mid-'80 years.

Q: That's when those kids born in the late '60s came of age, got into their late -- mid to late teens.

A: DR. BLUMSTEIN: But the late teens (in '85) were the people born in '70, '68, right. But they didn't suddenly spring upon us. I mean, it's a lot tougher to get good data on all of those; and I think when you look at all of those you'll see very slow, subtle shifts in terms of these causal factors that

you're talking about. Nothing like the very sharp rises that we saw, the very sharp rises in homicides by young people, the very sharp rises in handgun homicides by young people. Those changes are much too glacial than the very mercurial shifts that we saw -- and the mercurial shifts downward. Suddenly, people are not going back to churches in dramatic numbers these days. I think we've seen some very important improvements. Part of that is that the kids are not carrying guns. That's reflected in the police statistics. So there have certainly been societal changes. Media has changed; values have changed. But I think those are glacial.

Q: I was wondering on what you based your conclusion -- you had a graph much earlier on which was a breakout of blacks versus whites and Hispanics and you talked about aggressive police arrests (one on drug arrests between non-whites and whites; non-whites are predominantly blacks, 93 percent) and made a comment that there wasn't, I think you said, a cry of outrage or something from the community. And I was wondering on what you based that conclusion that there wasn't an outcry; and if there isn't, you also then imply that there was -- that people thought it was a positive -- positive policing. And then in a later graph when you sort of talked about marijuana arrests -- and although white privilege really is stunning, certainly not all white children are going to get to grow up to be lawyers. But certainly in that exaggerated sort of example is, I think, the truth that outcry in the white community about arrest is going to lead to some kind of change. I was just wondering if you have data and on what you base your conclusion that there was an outcry.

A: DR. BLUMSTEIN: I think this is probably one of the ones you were referring to. This is drug arrests of juveniles. I didn't say much about this right-hand side of this graph. I did say that we saw a major decline. And I don't think that was about guns, drug arrests are a function of the degree of the illegal behavior and the police aggressiveness in pursuing it. I don't think 1975 saw a major decline in marijuana use by young people. I think what we saw here was a diminution in police aggressiveness associated with a degree of public response that says why are you doing all this? What good are you doing? And look at some of the harm you're doing. I think it's interesting to note, this was the crack period when the non-white juvenile arrests really grew, came down; and in the early '90s, we've been seeing this major growth in the arrests of juveniles. This arrest rate of white juveniles is almost as high as it was in 1974; but it's about 250. And so it's about a four or five times growth that hasn't shown itself. And there's been a comparable growth here of non-whites. Again, these arrests, a lot of what was going on in the '80s was crack related. A lot of what's going on now of white and non-white juveniles is marijuana related because kids are not using crack the way they used to. We're not getting the new users into that market, not because of any particular impact of the drug war, but because the word is out on the street that that stuff is bad for you. And it's people who are working in the streets in terms of anthropologists, demographers are really coming back with a message that new kids are not using it, are not using cocaine in any form. Marijuana is what they are using, and that raises the question what we're doing with all of that marijuana.

Q: I think the concern that was raised by this chart and the comments that you made at that time, which garnered a lot of laughter in this room when you talked about how, you know -- lawyers and doctors and sentencing commission officials. And so there was this change in perception of the community. All of those numbers go down for African Americans, for whites, for Latinos. They all go down during the same time period. What your chart doesn't necessarily address is with the increase of crack there is a difference in the way crack was treated by the law versus powder cocaine versus marijuana and there is also a significant difference in the employment of law enforcement with respect to

African Americans and there is a difference in the treatment by African Americans in the criminal justice system. But in the presentation of your material, it might be less offensive to people like me if you don't so much emphasize how white families felt about their children being arrested in the '70s, because our families felt the same way and the outrage in our community has been just as dramatic. But the numbers that occur from '85 to the low '90s and now are going back up again in the early 2000s are because we have less control over some of the factors that drive the criminalization of our children than you have over the criminalization of your children. And so it had just had a ring to it that was uncomfortable that I wasn't going to raise in an open room; but the subject is out now, so it was important to raise.

A: DR. BLUMSTEIN: I'm pleased you did. If I was being offensive, I apologize; but that was not my intent. My intent was to highlight the power issue that when the white community was getting irritated by the enforcement process it had the power to say, hey, stop it. And that was the intent of my observation.

Q: If I understood some of your suggestions, you said the focus of your incarcerations based on violent offenders and allocate the sentences to cover career durations and to focus on the incarceration rate rather than the length of stay for some of the people.

A: DR. BLUMSTEIN: On commitment of people who are demonstrably currently active. If you've got to tradeoff, you've got so many prison cells, you either put in for what they've done or keep them longer. The argument is put more in because that's going to be more effective on deterrence and it's going to diminish the wastage of incapacitation, which is the time they're in prison after the career is over. And that doesn't address the whole issue of retribution, obviously, where we're going to do things that are neither deterring nor incapacitating. So it's a mixture, and the question is, how do we shift policy at the margin?

Q: For a sentencing commission who wants to look at that issue of whether its sentences are wastage or not, can you give me some guidance on how to start that process?

A: DR. BLUMSTEIN: The best piece I try to address all of those issues was the National Academy of Sciences report called Deterrence and Incapacitation done in 1978. And 1978 was 22 years ago; and a lot has changed. But we could talk about it. I could try to dig out some better sources of information. But I think the basic principles still hold. And let me try to get some stuff for you.

Q: Back to the issue of drugs and race for a minute. Many of our communities are moving towards the model that includes drug testing, drug sanctions, and drug treatment. And partly depending on how optimistic you are about those, that could promise if the treatment works to reduce perhaps what we're seeing here. If you're pessimistic, you might see that it could exacerbate that if you believe that people will continue to fail and the sanctions will end up going back to prison. Would you comment about that a little bit?

A: DR. BLUMSTEIN: I think this is a tough problem. We don't have very good data on treatment success long term on cocaine. The one observation that seems to prevail for various drug treatment programs is while the people are in the programs they tend either to abstain or to diminish their consumption

considerably. So, depending on what your goal is, if you want to reduce consumption, then chances are good that treatment is going to be more useful, particularly in terms of resources, because one of the major rationales for incarceration of drug offenders is an economic one. It says if we really increase the risk to the offender of going to prison and increase the pain of prison by making the sentence longer, they won't do it. The evidence of the 1980s was if they won't do it, then at the margin they're going to demand higher wages to sell the drugs. If they demand higher wages, that's going to increase the price. And if it increases the price, it'll reduce the demand. That's the ultimate rationale at a policy level for the incarceration policy because it would put recognition that incapacitation isn't going to do much because of replacement. In the 1980s when drug incarceration went up so dramatically, the price of cocaine dropped by a factor of two-to-five. Dropped by a factor of two-to-five at the same time. Now, maybe that was because the market was becoming more efficient; maybe because there were economies of scale that emerged. But it also doesn't comport with the presumption that when we go through this dramatic growth of incarceration the price is going to go up and demand is going to go down. Demand did come down in the '90s. That's because the word went out on the street and it's the street culture that's bringing demand down by new users. The older users to a large degree are doing it. And one of the benefits of that is a metaphor -- it got rid of the street markets, which were predominantly serving the new users. The older users could have door-to-door delivery with beepers and cell phones and so on. The metaphor that I think is appropriate is the community responds to call girls as opposed to street walkers. There's an offensiveness of the markets in the street, but there's not a terrible disdain for the fact that one of your neighbors happens to be using the drugs. That's his problem. But the street market's offended and disrupted and brought violence in a widespread way because the street markets were characterized by violence. So we'd like consumption to go down; but we'd certainly like consumption patterns and marketing patterns to change. And I believe they have in most cities. And that's part of what's contributed to the reduction in violence. They didn't need the young kids anymore because they were creating lots of problems in lots of ways. Perhaps associated with that we've seen this reduction in gangs. So I think there's a resilience to the supply side, (but we may be more successful) if we can get at the demand side through treatment, through a variety of ways of dealing with the users.