

American Bar Association Justice Kennedy Commission
Hearing Schedule
November 12-14, 2003
George Washington University Law School
The Moot Courtroom
2000 H Street, NW
Washington, DC

Wednesday, November 12, 2003

I. What Works? (morning session, 9:00 to 12:30)

9:00 - 10:30 What Are The Objectives of Punishment and What Sentences Best Serve Those Objectives?

1. Does liberal use of incarceration as punishment deter crime? Generally? Specifically?
2. Is incapacitation a morally justifiable purpose of punishment? If so, who should be incapacitated and for how long? Are “three strikes”-type recidivist laws justifiable and effective?
3. If incarceration “works,” what is the relative importance of length of incarceration and certainty of incarceration?
4. When are probation and “intermediate” sanctions appropriate? Is community service effective as punishment?
5. What is the proper role for shaming penalties?
6. What role should the community play in a corrections scheme? Is there a role for forgiveness and restorative justice?

10:30-10:45 Break

10:45-12:30 Who Decides Sentences at the Front End?

1. What is the proper role of legislatures (mandatory minimums; other statutory determinate schemes)?
2. What is the proper judicial role? How to strike the balance between discretion /individualization and uniformity/equality?
3. What is the role of Sentencing Commissions? How should guidelines be drafted?
4. How much power should be entrusted to prosecutors? What is the impact of charging decisions and plea bargaining?
5. When are probation, diversion, and other special purpose sentencing options appropriate?

12:30 – 2:00 Break

Wednesday, November 12 (con't.)

2:00 – 3:30 Should There Be a Second Look at Sentences (Mid-Course Corrections)

1. Is there a place for parole in a sentencing system? When should parole be considered? How should parole revocation decisions be made?
2. How should probation revocation decisions be made?
3. What role should extraordinary sentence reduction mechanisms (e.g., executive clemency, compassionate release) play?
4. When should an offender's rights and status be restored?
5. When and how should the pardon power be exercised?
6. How effective are certificates of good conduct and judicial expungement?

3:30-3:45 break

3:45-5:30 Can Rehabilitation Succeed and Reentry Be Successful?

6. Should rehabilitation be a goal of corrections?
7. Can criminals be rehabilitated? Can some, but not others? How do we tell the difference?
8. How does sentence length affect the probability of successful rehabilitation?
9. How does the incarceration of a significant percentage of the population of a community affect the probability of successful rehabilitation of returning prisoners? How does it affect the stability of the community?
10. What is the effect of incarceration on families and children?
11. How can prisoners best make the transition from prison to freedom?
12. What programs assist reentry? What programs discourage reentry?
13. How effective are intensive supervision programs?
14. How can the community forgive?
- 15.

Thursday, November 13, 2003

9:00 – 9:45 What is the Impact of Drug Crimes on Incarceration?

16. What percentage of the prison population is incarcerated for drug crimes? State? Federal?
17. What percentage of imprisoned drug offenders were sentenced for possessory offenses and what percentage for distribution offenses?
18. What effect has drug sentencing had on the racial composition of prison populations?
19. How do sentences for drug crimes compare to other sentences?

20. What effect have mandatory minimum sentences had on drug crime sentences?
21. What types of institutions house drug offenders? What kind of special programming is necessary?

Thursday, November 13 (con't.)

9:45 – 10:30 What Works as to Drug Crimes, Part I: Imprisonment?

22. Does imprisonment reduce drug crime?
23. What is the long term effect of imprisonment on drug offenders?
24. Does imprisonment of drug offenders reduce non-drug crime?

10:30 -10:45 Break

10:45 – 11:45 What Works as to Drug Crimes, Part II: Prison alternatives?

25. What are the alternatives to prison for drug offenders? Have they worked?
26. What is the relative cost of imprisonment versus alternatives?
27. Is “drug court” a useful innovation or a passing fad?
28. Who should be given access to drug court (only drug-addicted drug offenders, or offenders who commit non-drug offenses under the influence of or in order to obtain drugs?)
29. Are alternative punishments race neutral?
30. What is the role of community corrections for drug offenders?

11:45 – 12:45 A View from Inside

31. How does the prison experience "work" as a specific deterrent to criminal behavior, in the view of those who have lived and worked on the inside?
32. Are conditions dehumanizing? Are conditions consistent with the goals of punishment?
33. What attitudes do prison conditions foster, in both inmates and staff?
34. How can custodial staff interact with inmates in a manner that is consistent with their responsibility to maintain security but also encourages inmates to change their behavior?
35. In what ways does incarceration provide support to an offender who wants to remain trouble-free following imprisonment? In what ways does incarceration inhibit an offender's ability to be productive and law abiding following release?
36. What institutional and programmatic changes could be made in the prison experience to encourage offenders to remain law-abiding once they return to the free community? Are there adequate opportunities for education, work, personal betterment?

37. How can custodial staff interact with inmates in a manner that is consistent with their responsibility to maintain security but also encourages inmates to change their behavior?
38. What do correctional staff consider to be public's expectations of their jobs? What purpose do inmates think incarceration should serve?

Thursday, November 13 (con't.)

12:30 – 2:00 Break

2:00 – 3:30 What Are the States Doing to Reform Sentencing

39. What are the major reforms undertaken by states?
40. Why have states undertaken these reforms?
41. Have state sentencing reforms achieved their objectives?
42. In states that have adopted these policies, has “truth in sentencing” and abolition of parole worked?
43. Is rehabilitation getting renewed attention in state sentencing?
44. What types of community corrections have been successful?
45. How have states defined the proper judicial role? How have they balanced between discretion /individualization and uniformity/equality?
46. What are the political conditions necessary for successful state sentencing reform? In particular, what role does and should the cost of incarceration play in deciding upon a sentencing scheme? What is the role of public opinion? How important is it to have the support of the law enforcement and prosecutorial establishment?

3:30 – 3:45 Break

3:45 – 5:30 How Effective is Federal Sentencing?

47. Have the United States Sentencing Guidelines been a success?
48. Have the Guidelines reduced unjustifiable sentencing disparities?
49. Are the Guidelines a workable system? How might their workability be improved?
50. Should mandatory minimum sentences be a part of the federal guidelines system?
51. How should sentencing authority be distributed among Congress, the Sentencing Commission, the federal judiciary, and the Department of Justice?
52. What effect have guidelines and mandatory minimums had on prison populations?
53. Have the increased percentage of sentences of imprisonment and the increased length of prison sentences since the advent of the guidelines been effective in reducing or controlling crime?
- 54.

Friday, November 14, 2003

9 - 10:30 Overview of Racial Disparity in Criminal Justice – The Problem, the Causes,
and the Effects

1. What are the racial disparities in our criminal justice system?
2. Do they exist at every stage of the process?
3. What are the statistics for African Americans? Latinos? Asian Americans? Other minorities?
4. Are there particular disparities along gender lines?
5. What are the causes of racial disparity in the criminal justice system?
 - a. Discrimination (intentional or unintentional/unconscious)

. Disproportionate offending

. socio-economic factors, etc.

6. What are the effects of racial disparity in the criminal justice

system?

- a. On the defendant
- b. On criminal justice officials
- c. On society

7. How can we begin to resolve the problem?

- a. Collection of statistics
- b. Education
- c. Accountability
- d. Rehabilitative efforts, including better support upon re-entry, etc.

10:30 - 10:45 Break

10:45 - 12:00 Police and Racial Profiling

1. What is racial profiling?
2. How and under what circumstances does it occur?
3. How does it perpetuate the racial disparities in the criminal justice system?
4. What efforts have been made to address and eliminate racial profiling?
 - a. Legislation
 1. National
 2. State

- b. Voluntary Law Enforcement Efforts
 - c. Litigation
5. Recommendations

12:00 12:15 Break

12:15 - 1:30 Prosecution and Sentencing

1. Do prosecutors perpetuate racial disparities in the criminal justice system?
 - a. By prosecution of cases involving race-based arrests?
 - b. By their charging decisions?
 - c. By their plea bargain decisions?

Friday, November 14 (con't.)

2. Are prosecutors responsible for racial disparities that result from their race neutral decisions?
3. Should/can prosecutors take affirmative steps to reduce racial disparities in their charging/plea bargaining decisions?
4. Are crime victims treated differently based on race and/or class? Are cases involving educated, involved and/or wealthy victims prosecuted more zealously than other cases?
5. Are defendants treated differently based on race and/or class?
6. Can prosecutors take steps to assure that their race-neutral charging and plea bargaining decisions do not have a racially disparate effect?
7. Are there sentencing laws which have a racially disparate effect?
8. Do racial disparities result from the sentencing laws or the way they are enforced?
9. Would elimination of mandatory minimum sentences and the inherent reduction of prosecutorial discretion and power reduce racial disparities in the criminal justice system? Why or why not?
10. Would the restoration of more judicial discretion at sentencing help reduce racial disparities in prisons? Why or why not?
11. Recommendations