



DEPARTMENT OF SOCIOLOGY
405 HILGARD AVENUE
LOS ANGELES, CALIFORNIA 90024-1551

September 21, 1989

Ms. Phyllis Newton
U.S. Sentencing Commission
Suite 1400
1331 Pennsylvania Ave., N.W.
Washington, D.C. 20004


Dear Phyllis:

I trust that all went well last Saturday, and that you've now readjusted to real life at the Commission. In that spirit, I have enclosed a *draft* of the Advisory Committee's Recommendations. This needs to be circulated to the Committee (Only!) for comments and revisions. They should send their comments to me directly, and I will get you a final draft. I am also interested in your suggestions before we go on record.

I have also enclosed an invoice for my time, which includes preparation for the meeting and drafting the summary memo.

Bye for now.

Sincerely,


Richard A. Berk
Professor of Sociology &
Social Statistics

RAB/ahh

Enclosures.

DATE: September 21, 1989

TO: Rod, Norval, Dan, Julie and Joe

FROM: Dick Berk

RE: A brief *draft* summary of our conclusions

As we agreed, this memo is an effort to summarize our conclusions, largely for the record. I see no need to (and could not easily in any case) write much about the substance of our deliberations, since the staff have a version from their own participation and since it is probably impossible to accurately encapsulate the many subtleties considered.

CONCLUSIONS AND RECOMMENDATIONS

- I. It is clearly impossible to properly complete the many tasks outlined by staff with current resources. Difficult and painful choices need to be made based upon substantive priorities established by the Commissioners. Ideally, these choices should be made from a set of feasible options provided by staff. That is, staff should provide the Commissioners with various data collection/data analysis options, perhaps as "packages," clearly specifying what could be learned and not learned from each.
 - A. As priorities are established, a clear distinction must be made between the monitoring effort and the evaluation effort, although some data will be shared between the two. Monitoring will focus on *how* the guidelines are functioning *now*. The evaluation will focus on the *impact* of the guidelines, *comparing* sentencing under the guidelines to sentencing under earlier practices. This does not preclude in any way monitoring which compares current sentencing practices across jurisdictions.
 - B. The evaluation will include several different studies addressing different outcomes (e.g., discretion, disparity, etc.). Priorities need to be established between the monitoring and the evaluation as well as between the various evaluation studies.
 - C. For the monitoring at least, it probably makes sense to limit the posttest period to after the Mistretta decision.
 - D. For the monitoring, the data collection/data analysis options could vary in the tradeoffs between the number of cases on which data were collected and the number of variables for each case. For example, "intake" information might be collected on *all* post-Mistretta cases: ID numbers for "crosswalking" between data sets, variables for sampling strata, and perhaps a few key substantive variables for which a "census" is really needed. Then, for a *probability* (perhaps stratified) sample of cases (e.g.,

20%), data should be collected on a moderate number of variables (e.g., 100) essential for monitoring *and* evaluation. Most of the monitoring analyses and much of the evaluation will rely on these variables. Finally, for a much smaller probability sample of cases nested within the first two groups (e.g., 1%), most of the information available might be collected. Sampling strata might be determined by substantive problems of special interest (e.g., securities cases) or provocative findings from the intermediate sample.

- E. Data in document form (e.g., Appeals Court rulings) might also be archived with ID links to the computer files for textual, indepth analyses.
- F. Whatever the resource allocation decisions, a greater effort must be made to insure that data required from the field is in fact delivered.

II. The substantive questions and designs for the "qualitative" evaluation studies in general need clarification.

- A. The collection of an enormous amount of information is proposed, as yet, with no priorities. Priorities are needed not just to make resource allocation decisions, but to better focus the interviews.
- B. Findings from the quantitative analyses might be used to focus the interviews and make the interview questions less open-ended and hypothetical.
- C. The qualitative research might be productively postponed until some of the quantitative findings are in. Then, the sampling of sites and the form of the interviews might respond to particular findings and the questions they raise.
- D. Ideally, probability sampling should be used to select sites, perhaps stratified to reflect particular substantive and policy concerns. Probability sampling should also be used (again perhaps stratified) for the selection of respondents within sites.
- E. The sampling of sites might productively be linked to the sampling decisions made in the quantitative evaluation studies and to the sampling decisions made for monitoring. That is, all three data collection efforts (monitoring, quantitative evaluations, qualitative evaluations) should ideally draw from overlapping sites.
- F. Questions on the interview schedule should include the role of court decision in shaping sentencing.
- G. Defense attorneys should be among the respondents and interviewers.

III. Ambitions for the quantitative evaluation studies need to be cut back. In particular, it is better to do a few things very well than a lot of things superficially.

- A. The "micro" quantitative study of sentencing processes is probably a poor bet. The required data would be expensive to collect and the modeling problems very difficult. That is, the payoff per dollar would probably be very low.
 - B. The data from the earlier vignette study is probably not worth analyzing and should not constrain the development of a new and stronger vignette study. The new study might concentrate only on the post test period (a form of monitoring) or address sentencing under the new and old law. In the second instance, pilot testing will be especially important.
 - C. Ideally, the sites used for the vignette study should overlap with the sites used in other evaluation studies, including the qualitative studies.
 - D. "Disparity" should be defined "both ways": variation in sentences for "like" offenders and variation in offenders for "like" sentences.
 - E. There were a number of research approaches proposed for the disparity study that have implications for the other evaluation studies. In particular, there was concern about how best to make the data from the pretest and posttest periods really comparable.
 - 1. Recode all of the primary data from scratch using identical pretest and posttest coding procedures.
 - 2. Recode pretest data consistent with the guidelines.
 - 3. Recode posttest data consistent with the old statutes.
 - 4. Use the research literature as a pretest.
 - 5. Find cases pre-Mistretta/post-guideline sentenced under the guidelines and not sentenced under the guidelines. A similar approach might be useful even for current cases.
 - 6. Address "backwards" disparity (similar sentences, different offenders) pre and post.
 - 7. Only analyze the subset of cases for which the pretest and posttest data are most comparable (e.g., for a subset of crimes).
- IV. The Advisory Committee was universally impressed with the research staff. They are a talented, well trained, and motivated group who should be allowed to concentrate on the research tasks ahead. Except in true emergencies, they should not be diverted from their research tasks to fight brush fires. At the same time, however, *substantive* research priorities must be explicitly determined by the Commissioners in writing.